Chandrawat & Partners

INDIA- FRANCE

DOUBLE TAXATION AVOIDANCE AGREEMENT

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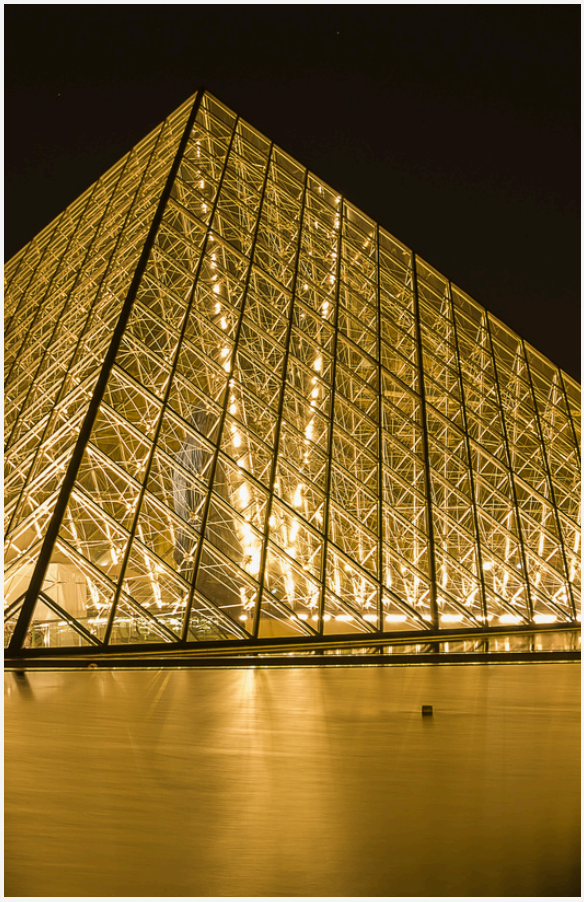
PREFACE

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

The government of India and the government of the French Republic had signed a DTAA for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income, which came into effect from 1 August, 1994. The DTAA has been revised in 2000 and 2009 with the aim to provide tax stability to the residents of India and France and facilitate mutual economic cooperation as well as stimulate the flow of investment, technology and services between the contracting states.

The DTAA signed between the contracting states has various beneficial clauses like a withholding tax rate of 10% for interest, dividend and royalty has been agreed to in the DTAA. An exemption has been granted to interests earned by government institutions. The provisions of the DTAA apply to income tax (including surcharges), surtax and wealth tax in India and the income tax, corporation tax and wealth tax in France. There has been a lot of talk around a lower withholding rate of 5% as India- France have characteristics of a most favoured nations (MFN) in the DTAA but the same has been denied and explained via a notification issued by India.



DTAA incorporates various other beneficial clauses like the elimination of double taxation which provides that the credit system shall be followed and in pursuance of the same, people subject to taxes are required to declare their property in either of the countries as they are to be taxed where they are located and if any income tax arises on it, a credit in this respect shall be granted to them in the other country. Further, the DTAA also provides for a mutual agreement procedure to be resorted to in case of a dispute and facilitating the exchange all tax related foreseeably relevant information with each other for imposing the correct taxes as per their respective domestic laws.

INDIA-FRANCE DTAA

(COMPREHENSIVE AGREEMENT)

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

FRANCE

AGREEMENT FOR AVOIDANCE OF DOUBLE TAXATION WITH FRANCE

Whereas the annexed Convention between the Government of the Republic of India and the Government of the French Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital has come into force on the 1st day of August, 1994 on the notification by both the Contracting States to each other of the completion of the procedures required under their law for bringing into force of the said Convention in accordance with paragraph 1 of Article 30 of the said Convention:

(2) Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964) and section 44A of the Wealth-tax Act, 1957 (27 of 1957), 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 681(E), dated 7-9-1994, as amended by Notification No. S.O. 650(E), dated 10-7-2000and S.O. No. 2106(E), dated 12-8-2009.

ANNEXURE

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

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

desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital;

Have agreed as follows :

ARTICLE 1

PERSONAL SCOPE

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

ARTICLE 2

TAXES COVERED

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

(a) in India :

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

(ii) the surtax ; and

(iii) the wealth-tax,

(hereinafter referred to as 'Indian tax');

(b) in France :

(i) the income-tax (1 'impot sur le revenu') including any withholding tax, pre-payment (precompte) or advance payment with respect thereto ;

(ii) the corporation tax (l 'impot sur les scietes') including any withholding tax, prepayment (precompte) and advance payment with respect thereto ; and

(iii) the wealth-tax (I 'impot le solioarite'sur la fortune).

(hereinafter referred to as "French tax").

2. The Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Convention in addition to, or in place of, the taxes referred to in paragraph 1. The competent authorities of the Contracting States shall notify each other of any substantial changes which are made in their respective taxation laws.

ARTICLE 3

GENERAL DEFINITIONS

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

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

(b) the term "France" means the European and overseas departments of the French Republic including the territorial sea and the air space above it as well as the areas within which, in accordance with International law, the French Republic has sovereign rights for the purpose of exploring and exploiting the natural resources of the sea bed and its sub-soil and of the superjacent waters ;

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

(d) the term "person" includes an individual, a company and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States ;

(e) the term "company" means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting States ;

(f) 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 ;

(g) the term "competent authority" means in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative; and in the case of France, the Minister in charge of the Budget or his authorised representative ;

(h) the term "national" means any individual possessing the nationality of a Contracting State and any legal person, partnership or association deriving its status from the laws in force in that Contracting State ;

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

(j) the term "fiscal year" in relation to Indian tax means "previous year" as defined in the Income-tax Act, 1961 (43 of 1961) and in relation to French income-tax means calendar year ;

(k) the term "tax" means Indian tax or French tax as the context requires.

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

ARTICLE 4

RESIDENT

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 management or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows :

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

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

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

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

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

ARTICLE 5

PERMANENT ESTABLISHMENT

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

2. The term "permanent establishment" includes especially :

(a) a place of management ;

(b) a branch ;

(c) an office ;

(d) a factory ;

(e) a workshop ;

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

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

(h) a premises used as a sales outlet ;

(i) an installation or structure used for the exploration of natural resources provided that the activities continue for more than 183 days.

3. A building site or construction, installation or assembly project constitutes a permanent establishment only where such

site or project continues for a period of more than six months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include :

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

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

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

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise ;

(e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for other activities which have a preparatory or auxiliary character, for the enterprise ;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2 where a person other than an agent of an independent status to whom paragraph 6 applies is acting in one of the Contracting States 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 the purchase of goods or merchandise for the enterprise ; or

(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.

6. An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph if it is shown that the transactions between the agent and the enterprise were not made under at arm's length conditions.

7. The fact that a company which is a resident of one of the Contracting States controls or is controlled by a company, which is a resident of the other Contracting State, or which carries on business in that other 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 (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other Contracting State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other

natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also 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 one of the Contracting States 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 the other Contracting State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of one of the Contracting States carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed 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. In any case where the correct amount of profits attributable to a permanent establishment is incapable of determination or the determination thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on the basis of an apportionment of the total profits of the enterprise to its various parts, provided, however, that the result shall be in accordance with the principles contained in this Article.

3. (a) In determining the profits of a permanent establishment, there shall be allowed as deduction 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, in accordance with the provisions of and subject to the limitations of the taxation laws of that Contracting State. Provided that where the law of the Contracting State in which the permanent establishment is situated imposes a restriction on the amount of the executive and general administrative expenses which may be allowed, and that restriction is relaxed or overridden by any Convention, Agreement or Protocol signed after 1-1-1990 between that Contracting State and a third State which is a member of the OECD, the competent authority of that Contracting State shall notify the competent authority of the other Contracting State of the terms of the corresponding paragraph in the Convention, Agreement or Protocol with that third State immediately after the entry into force of that Convention, Agreement or Protocol and, if the competent authority of the other Contracting State so requests, the provisions of that paragraph shall apply under this Convention from that entry into force.

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

performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

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

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

6. 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 derived by an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in that Contracting State.

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

3. For the purpose of this article, interest on funds connected with the operation of aircraft in international traffic shall be regarded as profits derived from the operation of such aircraft, and the provisions of article 12 shall not apply in relation to such interest.

4. The term "operation of aircraft" shall mean business of transportation by air of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft and any other activity directly connected with such transportation.

ARTICLE 9

SHIPPING

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

2. Notwithstanding the provisions of paragraph 1, such profits may be taxed in the other Contracting State from which they are derived, provided the tax so charged shall not exceed :

(a) during the first five fiscal years after the entry into force of this Convention, 50 per cent, and

(b) during the subsequent five fiscal years, 25 per cent,

of the tax otherwise imposed by the internal law of that Contracting State. Subsequently, only the provisions of paragraph 1 shall be applicable.

3. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency engaged in the operation of ships.

4. For the purposes of this article interest arising on funds connected, with the operation of ships in international traffic shall be regarded as profits derived from the operation of such ships, and the provisions of article 12 shall not apply in relation to such interest.

ARTICLE 10

ASSOCIATED ENTERPRISES

Where—

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

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

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

ARTICLE 11

DIVIDENDS

1. Dividends paid by a company which is 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.]

3. (a) A resident of India who receives dividends from a company which is a resident of France which, if received by a resident of France, would entitle such resident to a tax credit (avoir fiscal), shall be entitled from the French Treasury to a payment equal to such tax credit (avoir fiscal) subject to the deduction of tax as provided for under paragraph 2 of this article.

(b) The provisions of sub-paragraph (a) of this paragraph shall apply only to a resident of India who is :

(i) an individual ; or

(ii) a company which holds directly or indirectly less than 10 per cent of the capital of the French company paying the dividends.

(c) The provisions of sub-paragraph (a) of this paragraph shall not apply if the recipient of the payment from the French Treasury provided for in sub-paragraph (a) of this paragraph is not subject to Indian tax in respect of the payment.

(d) Payments from the French Treasury provided for under sub-paragraph (a) of this paragraph shall be deemed to be dividend for the purpose of this Convention.

4. When the prepayment (precompte) is levied in respect of dividends paid by a company which is a resident of France to a resident of India who is not entitled to the payment from the French Treasury referred to in paragraph 3 of this article with respect to such dividends, such resident shall be entitled to the refund of that prepayment, subject to the deduction of the withholding tax with respect to the refunded amount in accordance with paragraph 2 of this article.

5. As used in this article the term "dividends" means income from shares or other rights, not being debt-claims participating in profits, as well as income from other corporate rights treated in the same manner as income from shares by the taxation laws of the Contracting State of which the company making the distribution is a resident and any other item (other than interest which falls within the provisions of article 12) treated as a dividend or distribution under that law.

6. 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 15, as the case may be, shall apply.

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

ARTICLE 12

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 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 :

(a) interest arising in a Contracting State shall be exempt from tax in that Contracting State provided it is derived and beneficially owned by :

(i) the Government, a political sub-division or local authority of the other Contracting State; or

2[(ii) the "Reserve Bank of India" in the case of India and the "Banque de France" and "Agence Francaise de Developpement" in the case of France; or]

(iii) any other institution as may be agreed from time to time between the competent authorities of the Contracting States;

(b) interest arising in a Contracting State shall be exempt from tax in that Contracting State if it is beneficially owned by a resident of the other Contracting State and is derived in connection with a loan or credit extended or endorsed by :

(i) in the case of France, the Banque Francaise du Commerce Exteriur, or the Compagnie Francaise d'Assurance pour le Commerce Exterieur (COFACE) ;

(ii) in the case of India, the Export-Import Bank of India ;

(iii) any institution of the other Contracting State in charge of the public financing of external trade.

4. The term "interest" as used in this article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from Government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this article.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of article 7 or article 15, as the case may be, shall

apply.

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

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this article shall apply 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.

1. Substituted by Notification No. SO 650(E), dated 10-7-2000, w.r.e.f. 1-4-1997.

ARTICLE 13

ROYALTIES AND FEES FOR TECHNICAL SERVICES AND PAYMENTS FOR THE USE OF EQUIPMENT

1. Royalties, fees for technical services and payments for the use of equipment 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, fees and payments 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 these categories of income, the tax so charged shall not exceed 10 per cent of the gross amount of such royalties, fees and payments.]

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, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, 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 kind to any person, other than payments to an employee of the person making the payments and to any individual for independent personal services mentioned in Article 15, in consideration for services of a managerial, technical or consultancy nature.

5. The term "payments for the use of equipment" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment.

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, fees for technical services or the payments for the use of equipment being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties, fees for the technical services or the payments for the use of equipment 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 royalties, fees for technical services or the payments for the use of equipment are effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

7. Royalties, fees for technical services or payments for the use of equipment shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political sub-division, a local authority or a resident of that

Contracting State. Where, however the person paying the royalties, fees for technical services or the payments for the use of equipment, 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 contract under which the royalties, fees for technical services or the payments for the use of equipment, are paid was concluded and such royalties, fees for technical services or payments for the use of equipment, are borne by such permanent establishment or fixed base, then such royalties, fees for technical services or payments for the use of equipment 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 royalties, fees for technical services or the payments for the use of equipment, having regard to the royalties, technical services or the use of equipment 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 payment shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

1. Substituted by Notification No. S.O. 2106(E), dated 12-8-2009.

ARTICLE 14

CAPITAL GAINS

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

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

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

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that Contracting State. For the purposes of this provision, immovable property pertaining to the industrial or commercial operation of such company shall not be taken into account.

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

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

ARTICLE 15

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual or a partnership of individuals who is a resident of a Contracting State from the

performance of professional services or other independent activities of a similar character shall be taxable only in that Contracting State except in the following circumstances when such income may also be taxed in the other Contracting State :

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

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

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

ARTICLE 16

DEPENDENT PERSONAL SERVICES

(1) Subject to the provisions of articles 17, 18, 19, 20, 21 and 22, 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 the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the relevant "fiscal year"; and

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

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

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

ARTICLE 17

DIRECTORS' FEES

Directors' fees and 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 18

INCOME EARNED BY ENTERTAINERS AND ATHLETES

1. Notwithstanding the provisions of articles 15 and 16, income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste or a musician or as an athlete, from his personal activities as such exercised in the other Contracting State may be taxed in that other Contracting State.

2. Where income in respect of personal activities exercised by an entertainer or athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of articles 7,

15 and 16, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

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

4. Notwithstanding the provisions of paragraph 2 and articles 7, 15 and 16, where income in respect of personal activities exercised by an entertainer or any athlete in his capacity as such in Contracting State accrues not to the entertainer or athlete himself but to another person, that income shall be taxable only in the other Contracting State, if that other person is supported wholly or substantially from the public funds of that other Contracting State, including any of its political sub-divisions or local authorities.

ARTICLE 19

REMUNERATION AND PENSIONS IN RESPECT OF GOVERNMENT SERVICE

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof or out of public funds of that Contracting State to an individual in respect of services rendered to that Contracting State or sub-division or authority 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 is a national of that other Contracting State without being a national of the Contracting State to which the services are rendered.

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

3. The provisions of articles 16, 17 and 20 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 local authority thereof.

ARTICLE 20

NON-GOVERNMENT PENSIONS AND ANNUITIES

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

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

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

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

ARTICLE 21

PAYMENTS RECEIVED BY STUDENTS AND APPRENTICES

A student or business apprentice who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training, shall be exempt from tax in that other Contracting State on payments made to him by persons residing outside that other Contracting State for the purposes of his maintenance, education or training.

ARTICLE 22

PAYMENTS RECEIVED BY PROFESSORS, TEACHERS AND RESEARCH SCHOLARS

1. A professor, teacher, or a research scholar who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be taxable only in the first-mentioned Contracting State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other Contracting State.
2. This article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.
3. For the purposes of this article and article 21, an individual shall be deemed to be a resident of a Contracting State if he is resident in that Contracting State in the "fiscal year" in which he visits the other Contracting State or in the immediately preceding "fiscal year".
4. For the purposes of paragraph 1, "approved institution" means an institution which has been approved as an educational or research institution by the appropriate authority of the concerned Contracting State.

ARTICLE 23

OTHER INCOME

1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, which are not expressly 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 15, 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 of the Contracting State.

ARTICLE 24

CAPITAL

1. Capital represented by immovable property referred to in article 6 or rights treated as immovable property, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other Contracting State.
2. Capital represented by shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that Contracting State. For the

purposes of this provision, immovable property pertaining to the industrial or commercial operation of such company shall not be taken into account.

3. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services may be taxed in that other Contracting State.

4. Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

5. All other elements of capital of a resident of a Contracting State shall be taxable only in that Contracting State.

ARTICLE 25

ELIMINATION OF DOUBLE TAXATION

1. Double taxation shall be avoided in the following manner :

In the case of India :

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

2. In the case of France :

(a) Profits and other positive income arising in India and which are taxable in that Contracting State in accordance with the provisions of this Convention, are taken into account for the computation of the French tax where such income is received by a resident of France. The Indian tax shall not be deductible from such income. The beneficiary shall be entitled to a tax credit against French tax attributable to such income. Such tax credit shall be equal :

(i) in the case of income referred to in paragraph 2 of article 9, articles 11, 12, 13, paragraph 5 of article 14, paragraph 3 of article 16, article 17, paragraphs 1 and 2 of article 18 and paragraph 3 of article 23, to the amount of tax paid in India in accordance with the provisions of those articles. However, it shall not exceed the amount of French tax attributable to such income ;

(ii) in the case of other income, to the amount of French tax attributable to such income, which is thus exempted. This provision shall apply also to remuneration referred to in article 19 and in paragraph 4 of article 20.

(b) As regards the application of sub-paragraph (a) to income referred to in articles 12 and 13, where the amount of tax paid in India in accordance with the provisions of these articles exceeds the amount of French tax attributable to such income, the resident of France receiving such income may present his case to the French competent authority. If it appears that such a situation results in taxation which is not comparable to taxation on net income, that competent authority may

allow the non-credited amount of tax paid in India as a deduction from the French tax levied on other income from foreign sources derived by that resident. The provisions of this sub-paragraph shall not apply where tax is deemed to be paid in India according to the provisions of sub-paragraphs (c) and (d).

(c) For the purposes of the tax credit referred to in sub-paragraph (a) (i) the term "tax paid in India" shall be deemed to include any amount which would have been payable as Indian tax under the laws of India, and within the limits provided for by this Convention, for any year but for an exemption from, or reduction of, tax granted for that year under :

(i) section 10 (4), 10(4B), 10 (15)(iv) covering interest, section 10(6)(viia) covering salaries and section 80L covering interest and dividends, of the Income-tax Act, 1961 (43 of 1961), so far as they were in force on, and have not been modified since, the date of the signature of this Convention, or have been modified only in minor respects so as not to affect their general character ; or

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

(d) For the purposes of the tax credit referred to in sub-paragraph (c), where the Indian tax actually levied on interest arising in India is lower than the tax India may levy according to sub-paragraphs (a) and (b) of paragraph 2 of Article 12, then the amount of tax paid in India on such interest shall be deemed to have been paid at the rates of tax mentioned in the said provisions.

However, if the general tax rates under Indian law applicable to the aforementioned interest are reduced below those mentioned in the foregoing sentence these lower rates shall apply for the purposes of that sentence.

(e) Notwithstanding the provisions of sub-paragraphs (a) and (c), dividends paid by a company which is a resident of India to a company which is a resident of France, shall be exempt from French Corporation tax to the extent that the dividends would have been exempt under French law if both companies had been residents of France.

(f) Residents of France who own capital taxable in India may also be taxed in France on such capital. The French tax is computed by allowing a tax credit equal to the amount of tax paid in India in accordance with the provisions of article 24. However, such credit shall not exceed the French tax attributable to such capital.

INDO - FRANCE TREATY

ARTICLE 26

NON-DISCRIMINATION

1. Nationals of one of the Contracting States 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 the other Contracting State in the same circumstances are or may be subjected. The 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. Except where the provisions of paragraph 3 of Article 7 apply the taxation on a permanent establishment which an enterprise of one of the Contracting States 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.

3. The provision of paragraph 2 shall not be construed as obliging one of the Contracting States 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.

4. Except where the provisions of Article 10, paragraph 7 of Article 12 or paragraph 8 of Article 13, apply, interest, royalties and other disbursements paid by an enterprise of one of the Contracting States 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. Similarly, any debts of an enterprise of one of the Contracting States to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned Contracting State.

5. Enterprises of one of the Contracting States, 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.

ARTICLE 27

MUTUAL AGREEMENT PROCEDURE

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

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

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

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

5. The competent authorities of the Contracting States may, jointly or separately, if they consider it necessary, settle the mode of application of the Convention and, especially the requirements to which the residents of Contracting State shall be subjected in order to obtain, in the other Contracting State, the tax reliefs or exemptions provided for by the Convention.

INDO - FRANCE TREATY

ARTICLE 28

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information (including documents) as is

necessary for carrying out the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention, in particular, for the prevention of fraud or evasion of such taxes. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting State. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions.

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 or administrative practice of that or of the other Contracting State ;

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

ARTICLE 29

DIPLOMATIC AND CONSULAR ACTIVITIES

Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of agreement concluded between the parties to this Convention.

ARTICLE 30

ENTRY INTO FORCE

1. Each of the Contracting States shall notify to the other the completion of the procedure required by its law for the bringing into force of this Convention. This Convention shall enter into force on the first day of the second month following the date of reception of the later of these notifications and shall thereupon have effect :

(a) in India :

(i) in respect of income arising in any fiscal year beginning on or after the first day of April following the calendar year in which the Convention enters into force ;

(ii) in respect of capital which is held on the last day of any fiscal year beginning on or after the first day of April following the calendar year in which the Convention enters into force ;

(b) in France :

(i) in respect of income arising in any calendar year or accounting period beginning on or after the first of January following the calendar year in which the Convention enters into force ;

(ii) in respect of capital owned on the first day in any calendar year following the calendar year in which the Convention enters into force.

2. The Agreement between the Government of French Republic and the Government of the Republic of India for the avoidance of double taxation in respect of taxes on income signed in Paris on March 26, 1969 shall be terminated and its provisions shall cease to have effect when the corresponding provisions of this Convention shall become effective.

ARTICLE 31

TERMINATION

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

(a) in India :

(i) in respect of income arising in any fiscal year beginning on or after the first day of April following the calendar year in which the notice of termination is given ;

(ii) in respect of capital which is held on the last day of any fiscal year beginning on or after the first day of April following the calendar year in which the notice of termination is given ;

(b) in France :

(i) in respect of income arising in any calendar year or accounting period beginning on or after the first day of January following the calendar year in which the notice of termination is given ;

(ii) in respect of capital owned on the first day of any calendar year following the calendar year in which the notice of termination is given.

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

DONE in duplicate at Paris on this twenty nineth day of September, one thousand nine hundred and ninety two in the Hindi, French and English languages, all the texts being equally authentic.

PROTOCOL

At the time of proceeding to the signature of the Convention between France and India for the avoidance of double taxation with respect to taxes on income and on capital, the undersigned have agreed on the following provisions which shall form an integral part of the Convention.

1. For the purposes of this Convention, it is understood that the words "political sub-division" wherever they occur shall mean political sub-division of India.

2. With respect to paragraph 1 of Article 7 (Business Profits), it is understood that if in both India's new tax Conventions, Agreements or Protocols, with the United Kingdom and Federal Republic of Germany, it is provided that the profits of an enterprise of a Contracting State carrying on business through a permanent establishment in the other Contracting State may be taxed in that other Contracting State as are attributable directly or indirectly to that permanent establishment or attributable to:

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

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

such provisions shall also apply to the extent so provided to the present Convention with respect from the date from which the later of those two Conventions, Agreements or Protocols between India and United Kingdom and the Federal Republic of Germany enters into force. It is understood that only the provisions included in both new Conventions, Agreements or Protocols between India and U.K. and F.R.G. shall apply to the present Convention.

3. In respect of paragraphs 1 and 2 of Article 7, where an enterprise of one of the Contracting States sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of the remuneration which is attributable to the actual activity of the permanent establishment for such sales or business. Especially, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the Contracting State where the permanent establishment is situated. The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the Contracting State of which the enterprise is a resident.

4. It is understood that with respect to paragraph 2 of Article 7, no profits shall be attributed to a permanent establishment by reason of the facilitation of the conclusion of foreign trade or loan agreements or the mere signing thereof.

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

6. Where tax has been levied at source in excess of the amount of tax chargeable under the provisions of Article 11, 12 or 13, applications for the refund of the excess amount of tax have to be lodged with the competent authority of the Contracting

State having levied the tax, within a period of three years after the expiration of the calendar year in which the tax has been levied.

7. In respect of articles 11 (Dividends), 12 (Interest) and 13 (Royalties, fees for technical services and payments for the use of equipment), if under any Convention, Agreement or Protocol signed after 1-9-1989, between India and a third State which is a member of the OECD, India limits its taxation at source on dividends, interest, royalties, fees for technical services or payments for the use of equipment to a rate lower or a scope more restricted than the rate of scope provided for in this Convention on the said items of income, the same rate or scope as provided for in that Convention, Agreement or Protocol on the said items income shall also apply under this Convention, with effect from the date on which the present Convention or the relevant Indian Convention, Agreement or Protocol enters into force, whichever enters into force later.

8. It is understood that 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 those taxes is not considered as an interest for the purposes of article 12 (Interest) and is not considered as tax for the purpose of article 25 (Elimination of double taxation).

9. In respect of Article 13 (Royalties, fees for technical services and payments for the use of equipments) notwithstanding the provisions of paragraph 2 of this Article, royalties, fees for technical services and payments for the use of equipment arising in France and paid to a resident of India, shall not be taxable in France.

10. It is understood that in case India applies a levy, not being a levy covered by Article 2, such as the Research and Development Cess on payments meant in Article 13, and if after the signature of this Convention under any Convention or Agreement or Protocol between India and third State which is a member of the OECD, India should give relief from such levy, directly by reducing the rate or the scope of the levy, either in full or in part, or, indirectly by reducing the rate or the scope of the Indian tax allowed under the Convention, Agreement or Protocol in question on payments as meant in Article 13 of this Convention with the levy, either in full or in part, then, as from the date on which the relevant Indian Convention, Agreement or Protocol enters into force, such relief as provided for in that Convention, Agreement or Protocol shall also apply under this Convention.

11. As regards article 16 (Dependent Personal Services), it is understood that the provisions of this article apply to remuneration derived by a resident of a Contracting State in his capacity as an official in a top level managerial position of a company which is a resident of the other Contracting State. It is clear that in respect of the remuneration due from a resident of this other Contracting State, the provisions of paragraph 2 of article 16 shall not apply.

12. As regards the application of paragraph 1 of Article 26, it is understood that an individual, legal person, partnership or association which is a resident of a Contracting State shall not be deemed to be in the same circumstances as an individual, legal person, partnership or association which is a resident of the other Contracting State. This shall also apply where such individuals, legal persons, partnership or association are, in applying paragraph 1.1 of Article 3 (General definitions), deemed to be nationals of the Contracting State of which they are residents.

13. In respect of article 25 (Elimination of double taxation), it is understood that for the purposes of sub-paragraph 2(a)(ii), income which is exempt totally or partially in India shall also be considered as income taxable in India.

Done in duplicate at Paris on this 29th day of September, one thousand nine hundred and ninety-two, in Hindi, French and English languages, all the texts being equally authentic.

JUDICIAL ANALYSIS

Note the following case laws :

■ See Advance Ruling P. No. 13 of 1995, In re [1997] 94 Taxman 171 (AAR - New Delhi)

■ Income earned in France by Indian resident assessee is includible in his total income for rate purposes - Third ITO v. S.K. Sengupta [1983] 5 ITD 326 (Indore - Trib.)

■ Provisions of section 40A(5) were applicable to assessee-company which was French resident and had permanent establishment in India and it could not be said to be in violation of article III(3) of Double Taxation Avoidance Agreement entered into between Government of India and France—Banque National de Paris v. IAC [1991] 39 ITD 224 (Bom. - Trib.).

■ Specific provisions made in Double Taxation Avoidance Agreement between Government of French Republic and Indian Government would prevail over general provision contained in section 44D—Compagnie Francaise D'Etudes Et De Construction v. IAC [1984] 8 ITD 215 (Delhi - Trib.).

■ Where article III of DTAA between India and France provided that consideration for acquisition of technical know-how would not be royalty but would be treated as commercial profit exempt from tax in India, lump sum payment made in instalments for acquisition of technical know-how, apart from royalty charges payable separately, was not taxable in India in view of article III—Graphite Vicarb India Ltd. v. ITO [1992] 43 ITD 28 (Cal. - Trib.) (SB).

■ Where the Government of India, through ITI, a Government undertaking, entered into four different agreements with assessee, a foreign company, for development and manufacture of electronic digital telephone switching equipment in India including supervision of installation and the assessee-company further entered into an agreement with an Indian company MCPL under which MCPL was to provide support services to French Engineers who were visiting India quite often, expenditure incurred by assessee-company had to be allowed as deduction in view of article XVI of Double Taxation Avoidance Agreement and there was no reason to restrict it to 50 per cent as was done by IAC (Assessment)—Dy. CIT v. Alcatel [1993] 47 ITD 275 (Delhi - Trib.).

■ Where foreign company provided technical service on rigs owned by Indian company rigs could not be treated as place of management of foreign enterprise so as to conclude that foreign enterprise carried on business in India within meaning of article III of Double Taxation Avoidance Agreement between India and France—Boulder Christian v. ITO [1993] 46 ITD 114 (Delhi - Trib.).

Amending Notification No. S.O. 650(E), dated 10-7-2000

WHEREAS the Convention between the Republic of India and the French Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital came into force on the 1st day of August, 1994, after the notification by both the Contracting States to each other of the completion of the procedures required under their laws for bringing into force the said Convention.

AND WHEREAS the Central Government in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1969) and section 44A of the Wealth-tax Act, 1957 (27 of 1957), had directed that all the provisions of the said Convention annexed to the notification of the Government of India in the Ministry of Finance (Department of Revenue) (Foreign Tax Department) No. G.S.R. 681(E), dated 7th September, 1994, shall be given effect to in the Union of India.

AND WHEREAS paragraph 7 of the Protocol dated 29th September, 1992, to the aforesaid Convention provides that if after the 1st day of September, 1989, under any Convention Agreement or Protocol concluded between India and a third State which is a member of the Organisation for Economic Co-operation and Development, India should limit its taxation at source on dividends, interest, royalties, fees for technical services or payments for the use of equipment to a rate lower or a scope more restricted than the rate or scope provided for in this Convention on the said items of income, then, as from the date on which the Convention between India and France or the relevant India Convention, Agreement or Protocol

enters into force, whichever enters into force later, the same rate or scope as provided for in that Convention, Agreement or Protocol on the said items of income shall also apply under this Convention ;

AND WHEREAS in the Convention between India and Germany which entered into force on the 26th October, 1996, and the Convention between India and the United States of America which entered into force on the 18th December, 1990, which States are members of the Organisation for Economic Co-operation and Development, the Government of India has limited the taxation at source on dividends, interest, royalties, fees for technical services and payments for the use of equipment to a rate lower or a scope more restricted than that provided in the Convention between India and France on the said items of income ;

NOW, THEREFORE, in exercise of the powers conferred under section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that the following modifications shall be made in the Convention notified by the said notification which are necessary for implementing the aforesaid Convention between India and France, namely :—

I. With effect from the 1st April, 1997, for the existing paragraph 2 of article 11 relating to "Dividends", the following paragraph shall be read :

"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."

II. With effect from the 1st April, 1995, for the existing paragraph 2 of article 12 relating to "Interest", the following paragraph shall be read :

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

(a) 10 per cent of the gross amount of the interest on loans made or guaranteed by a bank or other financial institution carrying on bona fide banking or financial business or an insurance company or by an enterprise which holds directly or indirectly at least 10 per cent of the capital of the company paying interest ;

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

III. With effect from the 1st April, 1997, for paragraph 2 of article 12 relating to "Interest", referred to in paragraph II above, the following paragraph shall be read :

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

IV. With effect from the 1st April, 1995, for the existing paragraph 2 of article 13 relating to "Royalties and fees for technical services and payments for the use of equipment", the following paragraph shall be read :

"2. However, such royalties, fees and payments 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 these categories of income, the tax so charged shall not exceed—

(a) in the case of royalties and fees 20 per cent of the gross amount of such royalties or fees ; and

(b) in the case of payments referred to in paragraph 5 of this article, 10 per cent of the gross amount of such payments."

V. With effect from the 1st April, 1997, for paragraph 2 of article 13 relating to "Royalties and fees for technical services and payments for the use of equipment", referred to in paragraph IV above, the following paragraph shall be read :

"2. However, such royalties and fees and payments 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 these categories of income, the tax so charged shall not exceed 10 per cent of the gross amount of such royalties, fees and payments."

Amending Notification No. S.O. 2106(E), dated 12-8-2009

WHEREAS the Convention between the Government of the Republic of India and the Government of the French Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital had come into force on the 1st day of August, 1994, on the notification by both the Contracting States to each other of the completion of the procedures required under their law for bringing into force of the said Convention in accordance with paragraph 1 of Article 30 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, Extraordinary, Part II, section 3, sub-section (i) vide number G.S.R. 681(E), dated the 7th September, 1994 and amended by notification number S.O. 650(E), dated the 10th July, 2000.

AND WHEREAS sub-clause (iii) of clause (a) of paragraph 3 of article 12 of the said Convention provides for exemption of interest from tax in the Contracting State in which it arises provided it is derived and beneficially owned by any other institution as may be agreed from time to time between the competent authorities of the Contracting States;

AND WHEREAS both the Government of Republic of India and Government of the French Republic have now agreed to include Agence Francaise de Developpement in the list of institutions specified in clause (a) of paragraph 3 of article 12 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 the following amendment shall be made in the said notification, namely :—

In the said notification, in the Annexure, in article 12 of the Convention, in paragraph 3, in clause (a), for sub-clause (ii), the following sub-clause shall be substituted, namely:—

'(ii) the "Reserve Bank of India" in the case of India and the "Banque de France" and "Agence Francaise de Developpement" in the case of France; or'

2. This notification shall come into force from the date of its publication in the Official Gazette.

INDIA-FRANCE DTAA
(SYNTHESISED TEXT)

The original text of the agreement of the synthesised signed so as to supplement the DTAA between India and France can be referred to below:

SYNTHESISED TEXT

OF

THE MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING (MLI) AND THE CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA

AND

THE GOVERNMENT OF THE FRENCH REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

This document was prepared by the Competent Authority of India, after consultation with the Competent authority of France, and represents their shared understanding of the modifications made to the Convention by the MLI.

This document presents the synthesised text for the application of the Convention between the Government of the Republic of India and the Government of The French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on capital signed on 29 th September, 1992 (the "Convention"), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the India and French Republic on 7th June, 2017 (the "MLI").

The document was prepared on the basis of the MLI position of India submitted to the Depositary upon ratification on 25th June, 2019 and of the MLI position of the French Republic submitted to the Depositary upon ratification on 26th September, 2018. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on this Convention.

The authentic legal texts of the Convention and the MLI take precedence and remain the legal texts applicable.

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

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

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

References:

The authentic legal text of the MLI (in English) can be found on the MLI Depository (OECD) webpage at the following link:

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

The authentic legal texts of the Convention (in English) can be found at the following link:

In India:

https://www.incometaxindia.gov.in/Pages/international-taxation/dtaa.aspx In France: https://www.impots.gouv.fr/portail/les-conventions-internationales

The MLI position of India submitted to the Depositary upon ratification on 25th June, 2019 and of the MLI position of the French Republic submitted to the Depositary upon ratification on 26th September, 2018 can be found on the MLI Depositary (OECD) webpage.

Entry into Effect of the MLI Provisions: The provisions of the MLI applicable to the Convention do not take effect on the same dates as the original provisions of the Convention. Each of provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by India and the French Republic in their MLI positions.

Dates of the deposit of instruments of ratification: 25th June, 2019 for India and 26th September, 2018 for the French Republic.

Entry into force of the MLI: 1st October, 2019 for India and 1st January, 2019 for the French Republic. Unless it is stated otherwise elsewhere in this document, the provisions of the MLI have effect with respect to the Convention:

In India:

(a) With respect to taxes withheld at source on amounts paid or credited to nonresidents, where the event giving rise to such taxes occurs on or after 1 April 2020; and

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

In French Republic:

(a) With respect to taxes withheld at source on amounts paid or credited to nonresidents, where the event giving rise to such taxes occurs on or after the first day of the next calendar year that begins on 1 January 2020; and

(b) With respect to all other taxes levied by France, for taxes levied with respect to taxable periods beginning on or after the expiration of a period of six calendar months from 1 October 2019.

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE FRENCH REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION

AND

THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Republic of India and Government of the French Republic, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital;

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

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

Intending to eliminate double taxation with respect to the taxes covered by this 1 [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 this [Convention] for the indirect benefit of residents of third jurisdictions),

Have agreed as follows :

ARTICLE 1

PERSONAL SCOPE

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

ARTICLE 2

TAXES COVERED

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

(a) in India :

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

(ii) the surtax ; and

(iii) the wealth-tax, (hereinafter referred to as 'Indian tax');

(b) in France:

(i) the income-tax (l'impôt sur le revenu') including any withholding tax, pre-payment (précompte) or advance payment with respect thereto ;

(ii) the corporation tax (l'impôt sur les sociétés') including any withholding tax, prepayment (précompte) and advance payment with respect thereto ; and

(iii) the wealth-tax (l'impot de solidarité sur la fortune). (hereinafter referred to as "French tax").

2. The Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Convention in addition to, or in place of, the taxes referred to in paragraph 1. The competent authorities of the Contracting States shall notify each other of any substantial changes which are made in their respective taxation laws.

1 The texts of the boxes in [Square brackets] and in italics indicate minor terminology changes made to the text of the MLI.

ARTICLE 3

GENERAL DEFINITIONS

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

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

(b) the term "France" means the European and overseas departments of the French Republic including the territorial sea and the air space above it as well as the areas within which, in accordance with International law, the French Republic has sovereign rights for the purpose of exploring and exploiting the natural resources of the sea bed and its sub-soil and of the superjacent waters;

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

(d) the term "person" includes an individual, a company and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;

(e) the term "company" means any body corporate or any entity which is treated as a company or body corporate under

the taxation laws in force in the respective Contracting States;

(f) 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;

(g) the term "competent authority" means in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative; and in the case of France, the Minister in charge of the Budget or his authorised representative;

(h) the term "national" means any individual possessing the nationality of a Contracting State and any legal person, partnership or association deriving its status from the laws in force in that Contracting State;

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

(j) the term "fiscal year" in relation to Indian tax means "previous year" as defined in the Income-tax Act, 1961 (43 of 1961) and in relation to French income-tax means calendar year;

(k) the term "tax" means Indian tax or French tax as the context requires.

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

ARTICLE 4

RESIDENT

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 management or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows:

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

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

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

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

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

ARTICLE 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on. 2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

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

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

(h) a premises used as a sales outlet;

(i) an installation or structure used for the exploration of natural resources provided that the activities continue for more than 183 days.

3. A building site or construction, installation or assembly project constitutes a permanent establishment only where such site or project continues for a period of more than six months.

4. [MODIFIED by paragraph 4 of Article 13 of the MLI] [Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

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

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

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

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for other activities which have a preparatory or auxiliary character, for the enterprise;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of preparatory or auxiliary character.]

The following paragraph 4 of Article 13 of the MLI applies to paragraph 4 of Article 5 of the Convention:

[Paragraph 4 of Article 5 of the Convention] 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.

5. Notwithstanding the provisions of paragraphs 1 and 2 where a person other than an agent of an independent status to whom paragraph 6 applies is acting in one of the Contracting
States 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) [MODIFIED by paragraph 1 of Article 12 of the MLI] [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 the purchase of goods or merchandise for the enterprise; or]

The following paragraph 1 of Article 12 of the MLI applies with respect to the subparagraph (a) of paragraph 5 of Article 5 of this Convention:

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

Notwithstanding [Article 5 of the Convention], but subject to [paragraph 6 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].

(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.

6. [MODIFIED by paragraph 2 of Article 12 of the MLI] [An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph if it is shown that the transactions between the agent and the enterprise were not made under at arm's length conditions.]

The following paragraph 2 of Article 12 of the MLI applies with respect to paragraph 6 of Article 5 of this Convention:

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

[Paragraph 5 of Article 5 of the Convention as modified by Paragraph 1 of Article 12 of the MLI] shall not apply where the person acting in a [Contracting State] on behalf of an enterprise of the other [Contracting State] carries on business in the first-mentioned [Contracting State] as an independent agent and acts for the enterprise in the ordinary course of that

business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

7. The fact that a company which is a resident of one of the Contracting States controls or is controlled by a company, which is a resident of the other Contracting State, or which carries on business in that other 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 this Convention:

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

For the purposes of the provisions of [Article 5 of the Convention as modified paragraph 2 of Article 12 and paragraph 4 of Article 13 of the MLI], a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.

ARTICLE 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other Contracting State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also 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 one of the Contracting States 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 the other Contracting State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of one of the Contracting States carries on business in the

other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed 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. In any case where the correct amount of profits attributable to a permanent establishment is incapable of determination or the determination thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on the basis of an apportionment of the total profits of the enterprise to its various parts, provided, however, that the result shall be in accordance with the principles contained in this Article.

3. (a) In determining the profits of a permanent establishment, there shall be allowed as deduction 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, in accordance with the provisions of and subject to the limitations of the taxation laws of that Contracting State. Provided that where the law of the Contracting State in which the permanent establishment is situated imposes a restriction on the amount of the executive and general administrative expenses which may be allowed, and that restriction is relaxed or overridden by any Convention, Agreement or Protocol signed after 1-1-1990 between that Contracting State and a third State which is a member of the OECD, the competent authority of that Contracting State shall notify the competent authority of the other Contracting State of the terms of the corresponding paragraph in the Convention, Agreement or Protocol with that third State immediately after the entry into force of that Convention, Agreement or Protocol and, if the competent authority of the other Contracting State so requests, the provisions of that paragraph shall apply under this Convention from that entry into force.

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

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

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

6. 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 derived by an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in that Contracting State. 2. The provisions of paragraph 1 shall also apply to profits from the participation in

a pool, a joint business or an international operating agency. 3. For the purpose of this article, interest on funds connected with the operation of aircraft in international traffic shall be regarded as profits derived from the operation of such aircraft, and the provisions of article 12 shall not apply in relation to such interest. 4. The term "operation of aircraft" shall mean business of transportation by air of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft and any other activity directly connected with such transportation.

ARTICLE 9

SHIPPING

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

2. Notwithstanding the provisions of paragraph 1, such profits may be taxed in the other Contracting State from which they are derived, provided the tax so charged shall not exceed:

(a) during the first five fiscal years after the entry into force of this Convention, 50 per cent, and

(b) during the subsequent five fiscal years, 25 per cent, of the tax otherwise imposed by the internal law of that Contracting State. Subsequently, only the provisions of paragraph 1 shall be applicable.

3. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency engaged in the operation of ships.

4. For the purposes of this article interest arising on funds connected, with the operation of ships in international traffic shall be regarded as profits derived from the operation of such ships, and the provisions of article 12 shall not apply in relation to such interest.

ARTICLE 10

ASSOCIATED ENTERPRISES

Where:

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

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

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

The following paragraph 1 of Article 17 of the MLI applies to this Convention:

ARTICLE 17 OF THE MLI – CORRESPONDING ADJUSTMENTS

Where a [Contracting State] includes in the profits of an enterprise of that [Contracting State] — and taxes accordingly — profits on which an enterprise of the other [Contracting State] has been charged to tax in that other [Contracting State] and the profits so included are profits which would have accrued to the enterprise of the first-mentioned [Contracting State] if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other [Contracting State] shall make an appropriate adjustments 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 11

DIVIDENDS

1. Dividends paid by a company which is 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.]

3. (a) A resident of India who receives dividends from a company which is a resident of France which, if received by a resident of France, would entitle such resident to a tax credit (avoir fiscal), shall be entitled from the French Treasury to a payment equal to such tax credit (avoir fiscal) subject to the deduction of tax as provided for under paragraph 2 of this article.

(b) The provisions of sub-paragraph (a) of this paragraph shall apply only to a resident of India who is:

(i) an individual; or

(ii) a company which holds directly or indirectly less than 10 per cent of the capital of the French company paying the dividends.

(c) The provisions of sub-paragraph (a) of this paragraph shall not apply if the recipient of the payment from the French Treasury provided for in sub-paragraph (a) of this paragraph is not subject to Indian tax in respect of the payment.

(d) Payments from the French Treasury provided for under sub-paragraph (a) of this paragraph shall be deemed to be dividend for the purpose of this Convention.

4. When the prepayment (precompte) is levied in respect of dividends paid by a company which is a resident of France to a resident of India who is not entitled to the payment from the French Treasury referred to in paragraph 3 of this article with respect to such dividends, such resident shall be entitled to the refund of that prepayment, subject to the deduction of the withholding tax with respect to the refunded amount in accordance with paragraph 2 of this article.

5. As used in this article the term "dividends" means income from shares or other rights, not being debt-claims participating in profits, as well as income from other corporate rights treated in the same manner as income from shares by the taxation laws of the Contracting State of which the company making the distribution is a resident and any other item (other than interest which falls within the provisions of article 12) treated as a dividend or distribution under that law.

6. 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 15, as the case may be, shall apply.

7. 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 in so far as such dividends are paid to a resident of that other Contracting State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other

Contracting State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Contracting State.

ARTICLE 12

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 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:

(a) interest arising in a Contracting State shall be exempt from tax in that Contracting State provided it is derived and beneficially owned by:

(i) the Government, a political sub-division or local authority of the other Contracting State; or

2 [(ii) the "Reserve Bank of India" in the case of India and the "Banque de France" and "Agence Francaise de Developpement" in the case of France; or]

(iii) any other institution as may be agreed from time to time between the competent authorities of the Contracting States;

(b) interest arising in a Contracting State shall be exempt from tax in that Contracting State if it is beneficially owned by a resident of the other Contracting State and is derived in connection with a loan or credit extended or endorsed by:

(i) in the case of France, the Banque Francaise du Commerce Exteriur, or the Compagnie Francaise d'Assurance pour le Commerce Exterieur (COFACE) ;

(ii) in the case of India, the Export-Import Bank of India;

(iii) any institution of the other Contracting State in charge of the public financing of external trade.

4. The term "interest" as used in this article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from Government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this article.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of article 7 or article 15, as the case may be, shall apply.

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

the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this article shall apply 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.

1. Substituted by Notification No. SO 650(E), dated 10-7-2000, w.r.e.f. 1-4-1997.

ARTICLE 13

ROYALTIES AND FEES FOR TECHNICAL SERVICES AND PAYMENTS FOR THE USE OF EQUIPMENT

1. Royalties, fees for technical services and payments for the use of equipment 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, fees and payments 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 these categories of income, the tax so charged shall not exceed 10 per cent of the gross amount of such royalties, fees and payments.]

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, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, 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 kind to any person, other than payments to an employee of the person making the payments and to any individual for independent personal services mentioned in Article 15, in consideration for services of a managerial, technical or consultancy nature.

5. The term "payments for the use of equipment" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment.

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, fees for technical services or the payments for the use of equipment being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties, fees for the technical services or the payments for the use of equipment 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 royalties, fees for technical services or the payments for the use of equipment are effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

7. Royalties, fees for technical services or payments for the use of equipment shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political sub-division, a local authority or a resident of that Contracting State. Where, however the person paying the royalties, fees for technical services or the payments for the use of equipment, 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 contract under which the royalties, fees for technical services or the payments for the use of equipment, are paid was concluded and such royalties, fees for technical services or payments for the use of equipment, are borne by such permanent establishment or fixed base, then such royalties, fees for technical services or payments for the use of equipment 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 royalties, fees for technical services or the payments for the use of equipment, having regard to the royalties, technical services or the use of equipment 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 payment shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

1. Substituted by Notification No. S.O. 2106(E), dated 12-8-2009.

ARTICLE 14

CAPITAL GAINS

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

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

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

4. [MODIFIED by paragraph 4 of Article 9 of the MLI] [Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that Contracting State. For the purposes of this provision, immovable property pertaining to the industrial or commercial operation of such company shall not be taken into account.]

The following paragraph 4 of Article 9 of the MLI applies to paragraph 4 of Article 14 of this Convention:

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

For purposes of [this 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].

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

ARTICLE 15

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual or a partnership of individuals who is a resident of a Contracting State from the

performance of professional services or other independent activities of a similar character shall be taxable only in that Contracting State except in the following circumstances when such income may also be taxed in the other Contracting State:

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

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

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

ARTICLE 16

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of articles 17, 18, 19, 20, 21 and 22, 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 the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the relevant "fiscal year"; and

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

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

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

ARTICLE 17

DIRECTORS' FEES

Directors' fees and 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 18

INCOME EARNED BY ENTERTAINERS AND ATHLETES

1. Notwithstanding the provisions of articles 15 and 16, income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste or a musician or as an athlete, from his personal activities as such exercised in the other Contracting State may be taxed in that other Contracting State.

2. Where income in respect of personal activities exercised by an entertainer or athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of articles 7,

15 and 16, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

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

4. Notwithstanding the provisions of paragraph 2 and articles 7, 15 and 16, where income in respect of personal activities exercised by an entertainer or any athlete in his capacity as such in Contracting State accrues not to the entertainer or athlete himself but to another person, that income shall be taxable only in the other Contracting State, if that other person is supported wholly or substantially from the public funds of that other Contracting State, including any of its political sub-divisions or local authorities.

ARTICLE 19

REMUNERATION AND PENSIONS IN RESPECT OF GOVERNMENT SERVICE

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof or out of public funds of that Contracting State to an individual in respect of services rendered to that Contracting State or subdivision or authority 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 is a national of that other Contracting State without being a national of the Contracting State to which the services are rendered.

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

3. The provisions of articles 16, 17 and 20 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 local authority thereof.

ARTICLE 20

NON-GOVERNMENT PENSIONS AND ANNUITIES

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

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

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

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

ARTICLE 21

PAYMENTS RECEIVED BY STUDENTS AND APPRENTICES

A student or business apprentice who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training, shall be exempt from tax in that other Contracting State on payments made to him by persons residing outside that other Contracting State for the purposes of his maintenance, education or training.

ARTICLE 22

PAYMENTS RECEIVED BY PROFESSORS, TEACHERS AND RESEARCH SCHOLARS

1. A professor, teacher, or a research scholar who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be taxable only in the first-mentioned Contracting State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other Contracting State.
2. This article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.
3. For the purposes of this article and article 21, an individual shall be deemed to be a resident of a Contracting State if he is resident in that Contracting State in the "fiscal year" in which he visits the other Contracting State or in the immediately preceding "fiscal year".
4. For the purposes of paragraph 1, "approved institution" means an institution which has been approved as an educational or research institution by the appropriate authority of the concerned Contracting State.

ARTICLE 23

OTHER INCOME

1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, which are not expressly 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 15, 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 of the Contracting State.

ARTICLE 24

CAPITAL

1. Capital represented by immovable property referred to in article 6 or rights treated as immovable property, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other Contracting State.
2. Capital represented by shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that Contracting State. For the purposes of this provision, immovable property pertaining to the industrial or commercial operation of such company

shall not be taken into account.

3. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services may be taxed in that other Contracting State.

4. Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

5. All other elements of capital of a resident of a Contracting State shall be taxable only in that Contracting State.

ARTICLE 25

ELIMINATION OF DOUBLE TAXATION

1. Double taxation shall be avoided in the following manner: In the case of India :

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

2. In the case of France:

(a) Profits and other positive income arising in India and which are taxable in that Contracting State in accordance with the provisions of this Convention, are taken into account for the computation of the French tax where such income is received by a resident of France. The Indian tax shall not be deductible from such income. The beneficiary shall be entitled to a tax credit against French tax attributable to such income. Such tax credit shall be equal:

(i) in the case of income referred to in paragraph 2 of article 9, articles 11, 12, 13, paragraph 5 of article 14, paragraph 3 of article 16, article 17, paragraphs 1 and 2 of article 18 and paragraph 3 of article 23, to the amount of tax paid in India in accordance with the provisions of those articles. However, it shall not exceed the amount of French tax attributable to such income;

(ii) in the case of other income, to the amount of French tax attributable to such income, which is thus exempted. This provision shall apply also to remuneration referred to in article 19 and in paragraph 4 of article 20.

(b) As regards the application of sub-paragraph (a) to income referred to in articles 12 and 13, where the amount of tax paid in India in accordance with the provisions of these articles exceeds the amount of French tax attributable to such income, the resident of France receiving such income may present his case to the French competent authority. If it appears that such a situation results in taxation which is not comparable to taxation on net income, that competent authority may allow the non-credited amount of tax paid in India as a deduction from the French tax levied on other income from foreign sources derived by that resident. The provisions of this sub-paragraph shall not apply where tax is deemed to be

paid in India according to the provisions of sub-paragraphs (c) and (d).

(c) For the purposes of the tax credit referred to in sub-paragraph (a)(i) the term "tax paid in India" shall be deemed to include any amount which would have been payable as Indian tax under the laws of India, and within the limits provided for by this Convention, for any year but for an exemption from, or reduction of, tax granted for that year under:

(i) section 10 (4), 10(4B), 10 (15)(iv) covering interest, section 10(6)(viia) covering salaries and section 80L covering interest and dividends, of the Income-tax Act, 1961 (43 of 1961), so far as they were in force on, and have not been modified since, the date of the signature of this Convention, or have been modified only in minor respects so as not to affect their general character ; or

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

(d) For the purposes of the tax credit referred to in sub-paragraph (c), where the Indian tax actually levied on interest arising in India is lower than the tax India may levy according to subparagraphs (a) and (b) of paragraph 2 of Article 12, then the amount of tax paid in India on such interest shall be deemed to have been paid at the rates of tax mentioned in the said provisions.

However, if the general tax rates under Indian law applicable to the aforementioned interest are reduced below those mentioned in the foregoing sentence these lower rates shall apply for the purposes of that sentence.

(e) Notwithstanding the provisions of sub-paragraphs (a) and (c), dividends paid by a company which is a resident of India to a company which is a resident of France, shall be exempt from French Corporation tax to the extent that the dividends would have been exempt under French law if both companies had been residents of France.

(f) Residents of France who own capital taxable in India may also be taxed in France on such capital. The French tax is computed by allowing a tax credit equal to the amount of tax paid in India in accordance with the provisions of article 24. However, such credit shall not exceed the French tax attributable to such capital.

ARTICLE 26

NON-DISCRIMINATION

1. Nationals of one of the Contracting States 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 the other Contracting State in the same circumstances are or may be subjected. The 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. Except where the provisions of paragraph 3 of Article 7 apply the taxation on a permanent establishment which an enterprise of one of the Contracting States 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.

3. The provision of paragraph 2 shall not be construed as obliging one of the Contracting States 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.

4. Except where the provisions of Article 10, paragraph 7 of Article 12 or paragraph 8 of Article 13, apply, interest, royalties and other disbursements paid by an enterprise of one of the Contracting States 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.

Similarly, any debts of an enterprise of one of the Contracting States to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned Contracting State.

5. Enterprises of one of the Contracting States, 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.

ARTICLE 27

MUTUAL AGREEMENT PROCEDURE

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

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

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

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

5. The competent authorities of the Contracting States may, jointly or separately, if they consider it necessary, settle the mode of application of the Convention and, especially the requirements to which the residents of Contracting State shall be subjected in order to obtain, in the other Contracting State, the tax reliefs or exemptions provided for by the Convention.

ARTICLE 28

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention, in particular, for the prevention of fraud or evasion of such taxes. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting State. However, if the

information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions.

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 or administrative practice of that or of the other Contracting State;

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

ARTICLE 29

DIPLOMATIC AND CONSULAR ACTIVITIES

Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of agreement concluded between the parties to this Convention.

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

ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE

(Principal Purposes Test provision)

Notwithstanding any provisions of [the Convention], a benefit under [the Convention] shall not be granted in respect of an item of income or capital 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 30

ENTRY INTO FORCE

1. Each of the Contracting States shall notify to the other the completion of the procedure required by its law for the bringing into force of this Convention. This Convention shall enter into force on the first day of the second month following the date of reception of the later of these notifications and shall thereupon have effect:

(a) in India;

(i) in respect of income arising in any fiscal year beginning on or after the first day of April following the calendar year in which the Convention enters into force;

(ii) in respect of capital which is held on the last day of any fiscal year beginning on or after the first day of April following the calendar year in which the Convention enters into force;

(b) in France:

(i) in respect of income arising in any calendar year or accounting period beginning on or after the first of January following the calendar year in which the Convention enters into force;

(ii) in respect of capital owned on the first day in any calendar year following the calendar year in which the Convention

enters into force.

2. The Agreement between the Government of French Republic and the Government of the Republic of India for the avoidance of double taxation in respect of taxes on income signed in Paris on March 26, 1969 shall be terminated and its provisions shall cease to have effect when the corresponding provisions of this Convention shall become effective.

ARTICLE 31

TERMINATION

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

(a) in India:

(i) in respect of income arising in any fiscal year beginning on or after the first day of April following the calendar year in which the notice of termination is given;

(ii) in respect of capital which is held on the last day of any fiscal year beginning on or after the first day of April following the calendar year in which the notice of termination is given;

(b) in France:

(i) in respect of income arising in any calendar year or accounting period beginning on or after the first day of January following the calendar year in which the notice of termination is given;

(ii) in respect of capital owned on the first day of any calendar year following the calendar year in which the notice of termination is given.

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

DONE in duplicate at Paris on this twenty ninth day of September, one thousand nine hundred and ninety-two in the Hindi, French and English languages, all the texts being equally authentic.

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PROTOCOL

At the time of proceeding to the signature of the Convention between France and India for the avoidance of double taxation with respect to taxes on income and on capital, the undersigned have agreed on the following provisions which shall form an integral part of the Convention:

1. For the purposes of this Convention, it is understood that the words "political sub-division" wherever they occur shall mean political sub-division of India.

2. With respect to paragraph 1 of Article 7 (Business Profits), it is understood that if in both India's new tax Conventions, Agreements or Protocols, with the United Kingdom and Federal Republic of Germany, it is provided that the profits of an enterprise of a Contracting State carrying on business through a permanent establishment in the other Contracting State may be taxed in that other Contracting State as are attributable directly or indirectly to that permanent establishment or attributable to: (a) Sales in that other Contracting State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or (b) other business activities carried on in that other State, of the same or similar kind as those effected through that permanent establishment, such provisions shall also apply to the extent so provided to the present Convention with respect from the date from which the later of those two Conventions, Agreements or Protocols between India and United Kingdom and the Federal Republic of Germany enters into force. It is understood that only the provisions included in both new Conventions, Agreements or Protocols between India and U.K. and F.R.G. shall apply to the present Convention.

3. In respect of paragraphs 1 and 2 of Article 7, where an enterprise of one of the Contracting States sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of the remuneration which is attributable to the actual activity of the permanent establishment for such sales or business. Especially, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the Contracting State where the permanent establishment is situated. The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the Contracting State of which the enterprise is a resident.

4. It is understood that with respect to paragraph 2 of Article 7, no profits shall be attributed to a permanent establishment by reason of the facilitation of the conclusion of foreign trade or loan agreements or the mere signing thereof.

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

6. Where tax has been levied at source in excess of the amount of tax chargeable under the provisions of Article 11, 12 or 13, applications for the refund of the excess amount of tax have to be lodged with the competent authority of the Contracting State having levied the tax, within a period of three years after the expiration of the calendar year in which the tax has been levied.

7. In respect of articles 11 (Dividends), 12 (Interest) and 13 (Royalties, fees for technical services and payments for the use of equipment), if under any Convention, Agreement or Protocol signed after 1-9-1989, between India and a third State which is a member of the OECD, India limits its taxation at source on dividends, interest, royalties, fees for technical services or payments for the use of equipment to a rate lower or a scope more restricted than the rate of scope provided for in this Convention on the said items of income, the same rate or scope as provided for in that Convention, Agreement or Protocol on the said items income shall also apply under this Convention, with effect from the date on which the present Convention or the relevant Indian Convention, Agreement or Protocol enters into force, whichever enters into force later.

8. It is understood that 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 those taxes is not considered as an interest for the purposes of article 12 (Interest) and is not considered as tax for the purpose of article 25 (Elimination of double taxation).

9. In respect of Article 13 (Royalties, fees for technical services and payments for the use of equipments) notwithstanding the provisions of paragraph 2 of this Article, royalties, fees for technical services and payments for the use of equipment arising in France and paid to a resident of India, shall not be taxable in France.

10. It is understood that in case India applies a levy, not being a levy covered by Article 2, such as the Research and Development Cess on payments meant in Article 13, and if after the signature of this Convention under any Convention or Agreement or Protocol between India and third State which is a member of the OECD, India should give relief from such levy, directly by reducing the rate or the scope of the levy, either in full or in part, or, indirectly by reducing the rate or the scope of the Indian tax allowed under the Convention, Agreement or Protocol in question on payments as meant in Article 13 of this Convention with the levy, either in full or in part, then, as from the date on which the relevant Indian Convention, Agreement or Protocol enters into force, such relief as provided for in that Convention, Agreement or Protocol shall also apply under this Convention.

11. As regards article 16 (Dependent Personal Services), it is understood that the provisions of this article apply to remuneration derived by a resident of a Contracting State in his capacity as an official in a top level managerial position of a company which is a resident of the other Contracting State. It is clear that in respect of the remuneration due from a resident of this other Contracting State, the provisions of paragraph 2 of article 16 shall not apply.

12. As regards the application of paragraph 1 of Article 26, it is understood that an individual, legal person, partnership or association which is a resident of a Contracting State shall not be deemed to be in the same circumstances as an individual, legal person, partnership or association which is a resident of the other Contracting State. This shall also apply where such individuals, legal persons, partnership or association are, in applying paragraph 1.1 of Article 3 (General definitions), deemed to be nationals of the Contracting State of which they are residents.

13. In respect of article 25 (Elimination of double taxation), it is understood that for the purposes of sub-paragraph 2(a)(ii), income which is exempt totally or partially in India shall also be considered as income taxable in India.

Done in duplicate at Paris on this 29th day of September, one thousand nine hundred and ninety-two, in Hindi, French and English languages, all the texts being equally authentic.

Amending Notification No. S.O. 650(E), dated 10-7-2000

Whereas the Convention between the Republic of India and the French Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital came into force on the 1st day of August, 1994, after the notification by both the Contracting States to each other of the completion of the procedures required

under their laws for bringing into force the said Convention.

And whereas the Central Government in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1969) and section 44A of the Wealth-tax Act, 1957 (27 of 1957), had directed that all the provisions of the said Convention annexed to the notification of the Government of India in the Ministry of Finance (Department of Revenue) (Foreign Tax Department) No. G.S.R. 681(E), dated 7th September, 1994, shall be given effect to in the Union of India.

And whereas paragraph 7 of the Protocol dated 29th September, 1992, to the aforesaid Convention provides that if after the 1st day of September, 1989, under any Convention Agreement or Protocol concluded between India and a third State which is a member of the Organisation for Economic Co-operation and Development, India should limit its taxation at source on dividends, interest, royalties, fees for technical services or payments for the use of equipment to a rate lower or a scope more restricted than the rate or scope provided for in this Convention on the said items of income, then, as from the date on which the Convention between India and France or the relevant India Convention, Agreement or Protocol enters into force, whichever enters into force later, the same rate or scope as provided for in that Convention, Agreement or Protocol on the said items of income shall also apply under this Convention ;

And whereas in the Convention between India and Germany which entered into force on the 26th October, 1996, and the Convention between India and the United States of America which entered into force on the 18th December, 1990, which States are members of the Organisation for Economic Co-operation and Development, the Government of India has limited the taxation at source on dividends, interest, royalties, fees for technical services and payments for the use of equipment to a rate lower or a scope more restricted than that provided in the Convention between India and France on the said items of income ; Now, therefore, in exercise of the powers conferred under section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that the following modifications shall be made in the Convention notified by the said notification which are necessary for implementing the aforesaid Convention between India and France, namely :—

I. With effect from the 1st April, 1997, for the existing paragraph 2 of article 11 relating to "Dividends", the following paragraph shall be read:

"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."

II. With effect from the 1st April, 1995, for the existing paragraph 2 of article 12 relating to "Interest", the following paragraph shall be read:

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

(a) 10 per cent of the gross amount of the interest on loans made or guaranteed by a bank or other financial institution carrying on bona fide banking or financial business or an insurance company or by an enterprise which holds directly or indirectly at least 10 per cent of the capital of the company paying interest;

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

III. With effect from the 1st April, 1997, for paragraph 2 of article 12 relating to "Interest", referred to in paragraph II above, the following paragraph shall be read:

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

IV. With effect from the 1st April, 1995, for the existing paragraph 2 of article 13 relating to "Royalties and fees for technical services and payments for the use of equipment", the following paragraph shall be read:

"2. However, such royalties, fees and payments 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 these categories of income, the tax so charged shall not exceed—

(a) in the case of royalties and fees 20 per cent of the gross amount of such royalties or fees ; and

(b) in the case of payments referred to in paragraph 5 of this article, 10 per cent of the gross amount of such payments."

V. With effect from the 1st April, 1997, for paragraph 2 of article 13 relating to "Royalties and fees for technical services and payments for the use of equipment", referred to in paragraph IV above, the following paragraph shall be read:

"2. However, such royalties and fees and payments 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 these categories of income, the tax so charged shall not exceed 10 per cent of the gross amount of such royalties, fees and payments."

Amending Notification No. S.O. 2106(E), dated 12-8-2009

WHEREAS the Convention between the Government of the Republic of India and the Government of the French Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital had come into force on the 1st day of August, 1994, on the notification by both the Contracting States to each other of the completion of the procedures required under their law for bringing into force of the said Convention in accordance with paragraph 1 of

Article 30 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, Extraordinary, Part II, section 3, sub-section (i) vide number G.S.R. 681(E), dated the 7th September, 1994 and amended by notification number S.O. 650(E), dated the 10th July, 2000.

AND WHEREAS sub-clause (iii) of clause (a) of paragraph 3 of article 12 of the said Convention provides for exemption of interest from tax in the Contracting State in which it arises provided it is derived and beneficially owned by any other institution as may be agreed from time to time between the competent authorities of the Contracting States;

AND WHEREAS both the Government of Republic of India and Government of the French Republic have now agreed to include Agence Francaise de Developpement in the list of institutions specified in clause (a) of paragraph 3 of article 12 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 the following amendment shall be made in the said notification, namely:

In the said notification, in the Annexure, in article 12 of the Convention, in paragraph 3, in clause (a), for sub-clause (ii), the following sub-clause shall be substituted, namely:

'(ii) the "Reserve Bank of India" in the case of India and the "Banque de France" and "Agence Francaise de Developpement" in the case of France; or'

2. This notification shall come into force from the date of its publication in the Official Gazette.

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