Income Tax Department
Government of India

KOREA

Agreement for avoidance of double taxation of income and the prevention of fiscal evasion with Korea

Whereas the annexed Convention between the Government of the Republic of India and the Government of the Republic of Korea for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has been ratified and the instruments of ratification exchanged, as required by paragraph (1) of article 29 of the said Convention, on 1st August, 1986;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in Union of India.

Notification : *No. GSR 111(E), dated 26-9-1986, as amended by GSR 986(E), dated 20-12-1990.*

TEXT OF ANNEXED AGREEMENT DATED 19-7-1985

THE GOVERNMENT OF THE REPUBLIC OF INDIA, AND THE GOVERNMENT OF THE REPUBLIC OF KOREA, DESIRING TO CONCLUDE A CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, HAVE AGREED AS FOLLOWS :

ARTICLE 1

PERSONAL SCOPE

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

ARTICLE 2

TAXES COVERED

1. The Convention shall apply to taxes on income imposed on behalf of each Contracting State irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.

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

[1](*a*) In the case of Korea—

(*i*) the income-tax;

(*ii*) the corporation tax; and

(*iii*) the inhabitant tax;

(hereinafter referred to as "Korean tax");

(*b*) In the case of India,—

(*i*) the income-tax including any surcharge thereon imposed under the Income-tax Act, 1961 (43 of 1961);

(*ii*) the surtax imposed under the Companies (Profits) Surtax Act, 1964 (7 of 1964) ;

(hereinafter referred to as "Indian tax").

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

1. Protocol signed on 19-7-1985 and ratified on 1-8-1986 forms an integral part of the Convention. It states that in respect of sub-paragraph (*a*) of paragraph 3 of Article 2 of the Convention, it is understood that the Convention shall also apply to the Korean defence tax where charged by reference to the income-tax or the corporation tax.

Vide GSR 986(E), dated 20-12-1990, period of protocol has been enlarged from 5 years to 10 years.

ARTICLE 3

GENERAL DEFINITIONS

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

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

(*b*) the term "tax" means Korean tax or Indian tax, as the context requires;

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

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

(*e*) 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;

(*f*) the term "competent authority" means, in the case of Korea the Minister of Finance or his authorised representative; and in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or its authorised representative;

(*g*) the term "national" means any individual possessing the nationality of a Contracting State and any legal person, partnership, association or other entity deriving its status as such from the laws in force in the Contracting State;

(*h*) 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.

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

ARTICLE 4

FISCAL DOMICILE

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

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

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

(*d*) if he is a national of both 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 State in which its place of effective management is situated. In case of doubt the competent authorities of the Contracting States shall settle the question by mutual agreement.

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" shall include especially—

(*a*) a place of management;

(*b*) a branch;

(*c*) an office;

(*d*) a factory;

(*e*) a workshop; and

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

3. The term "permanent establishment" likewise encompasses a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than nine 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, display or delivery of goods or merchandise belonging to the enterprise;

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

(*c*) the maintenance of a 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 for collecting information, for the enterprise;

(*e*) the maintenance of a fixed place of business solely for the purpose of advertising, the supply of information, scientific research or any other activity, if it has a preparatory or auxiliary character in the trade or business of the enterprise;

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

5. Notwithstanding the provisions of paragraphs (1) and (2) if a person - other than an agent of independent status to whom paragraph (6) applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise unless the activities of such person are limited to those mentioned in paragraph (4) which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment by virtue of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

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

ARTICLE 6

INCOME FROM IMMOVABLE PROPERTY

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

2. The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property, 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 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 (5) shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7

BUSINESS PROFITS

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

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

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

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

6. Where income or 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.

[1]ARTICLE 8

AIR TRANSPORT

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

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

3. For the purposes of this article, the term "operation of aircraft" shall include transportation by air of persons, livestock, goods or mail 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 on a charter basis and any other activity directly connected with such transportation.

1. Protocol signed on 19-7-1985 and ratified on 1-8-1986 forms an integral part of the Convention. It states that for the purposes of articles 8 and 9 of the Convention, it is understood that :

   (*i*) interest on funds connected with the operation of aircraft and ships in international traffic shall also be regarded as profits from the operation of such aircraft and ships; and

   (*ii*) in respect of the operation of aircraft and ships in international traffic carried on by an enterprise of a Contracting State, that enterprise, if an enterprise of India, shall also be exempt from the value added tax in Korea and, if an enterprise of Korea, shall also be exempt from any tax similar to the value added tax in Korea, which may hereafter be imposed in India.

   Again, in respect of article 9 it is understood that :

   The provisions of its paragraphs (1) and (2) shall apply in respect of shipping transport carried on or after the taxation year in which an agreement related to shipping transport between the Contracting States or their authorised nominees is concluded and becomes effective.

   It is further understood that until an agreement related to shipping transport between the Contracting States or their authorised nominees enters into force, paragraph (2) shall read as follows: "profits derived from the operation of ships in international traffic may be taxed in the Contracting State in which such operation is carried on; but the tax so charged shall not exceed 90 per cent of the tax otherwise imposed by the internal law of that State."

[1]ARTICLE 9

SHIPPING TRANSPORT

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

2. Notwithstanding the provisions of paragraph (1) of this article, profits derived from the operation of ships in international traffic may be taxed in the Contracting State in which such operation is carried on; but the tax so charged shall not exceed 50 per cent of the tax otherwise imposed by the internal law of that State.

3. The provisions of paragraphs (1) and (2) of this article shall also apply to profits derived from the participation in a pool, a joint business or an international operating agency.

1. Protocol signed on 19-7-1985 and ratified on 1-8-1986 forms an integral part of the Convention. It states that for the purposes of articles 8 and 9 of the Convention, it is understood that :

(*i*) interest on funds connected with the operation of aircraft and ships in international traffic shall also be regarded as profits from the operation of such aircraft and ships; and

(*ii*) in respect of the operation of aircraft and ships in international traffic carried on by an enterprise of a Contracting State, that enterprise, if an enterprise of India, shall also be exempt from the value added tax in Korea and, if an enterprise of Korea, shall also be exempt from any tax similar to the value added tax in Korea, which may hereafter be imposed in India.

Again, in respect of article 9 it is understood that :

The provisions of its paragraphs (1) and (2) shall apply in respect of shipping transport carried on or after the taxation year in which an agreement related to shipping transport between the Contracting States or their authorised nominees is concluded and becomes effective.

It is further understood that until an agreement related to shipping transport between the Contracting States or their authorised nominees enters into force, paragraph (2) shall read as follows: "profits derived from the operation of ships in international traffic may be taxed in the Contracting State in which such operation is carried on; but the tax so charged shall not exceed 90 per cent of the tax otherwise imposed by the internal law of that State."

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 a resident of a Contracting State to a resident of the other contracting State may be taxed in that other State.

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

(*a*) 15 per cent of the gross amount of the dividends if the beneficial owner is a company which owns directly at least 20 per cent of the capital of the company paying the dividends ;

(*b*) 20 per cent of the gross amount of the dividends in all other cases.

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

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

4. The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such cases the provisions of article 7 or article 15, as the case may be, shall apply.

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

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph (2) of this article :

(*a*) where the interest is paid to a bank carrying on a *bona fide* banking business which is a resident of the other Contracting State and is the beneficial owner of the interest, the tax charged in the Contracting State in which the interest arises shall not exceed 10 per cent of the gross amount of the interest ;

(*b*) where the interest is paid to the Government of one of the Contracting States or a political sub-division or local authority or the Central Bank or the Export-Import Bank of that State, it shall not be subjected to tax by the State in which it arises.

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.

5. The provisions of paragraphs (1), (2) and (3) shall not apply if the beneficial owner of the interest, being a resident of a Contracting State carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claims in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such cases 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 State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or the fixed base is situated.

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

ARTICLE 13

ROYALTIES AND FEES FOR TECHNICAL SERVICES

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

2. However, such royalties and fees for technical services may also be taxed in that Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties or fees for technical services, the tax so charged shall not exceed 15 per cent of the gross amount of the royalties or fees for technical services.

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

4. The term "fees for technical services" as used in this article means payments of any 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 consultative nature, including the provision of services of technical or other personnel.

5. The provisions of paragraphs (1) and (2) of this article shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services arise through a permanent establishment situated therein, or perform in that other State independent personal services from a fixed base situated therein, and the right, property or contract in respect of which the royalties or fees for technical services and paid is effectively connected with such permanent establishment or fixed base. In such cases the provisions of article 7 or article 15, as the case may be, shall apply.

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

base, then the royalties or fees for technical services shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

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

ARTICLE 14

CAPITAL GAINS

1. Capital gains from the alienation of immovable property, as defined in paragraph (2) of article 6 or from the alienation of shares in a company the assets of which consist principally or immovable property, may be taxed in the State in which such property is situated.

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 purposes of performing professional services including such gains from the alienation of such a permanent establishment (alone or together) with the whole enterprise or of such a fixed base may be taxed in the other State.

3. Notwithstanding the provisions of paragraph (2), gains by an enterprise of a Contracting State from the alienation of ships and aircraft which it operates in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that State.

4. Gains from the alienation of any property, other than those mentioned in preceding paragraphs of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.

5. The term "alienation" shall mean alienation in accordance with the law of the Contracting State in which the property in question is situated.

ARTICLE 15

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

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

ARTICLE 16

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of articles 17, 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 State unless the employment is exercised, in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

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

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

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

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

ARTICLE 17

DIRECTORS' FEES AND REMUNERATION OF TOP-LEVEL MANAGERIAL OFFICIALS

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

2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 18

ARTISTES AND ATHLETES

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

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

3. The provisions of paragraphs (1) and (2) shall not apply to remuneration or profits, salaries, wages and similar income derived from activities performed in a Contracting State by entertainers or athletes if their visit to that State is substantially supported from the public funds of the other Contracting State, a political sub-division or a local authority thereof.

ARTICLE 19

PENSIONS

Subject to the provisions of paragraphs (2) and (3) of Article 20, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

ARTICLE 20

GOVERNMENT FUNCTIONS

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

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

(*i*) is a national of that State ; or

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

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

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

3. The provisions of articles 16, 17 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

4. The provisions of paragraph (1) of this article shall likewise apply in respect of remuneration or pensions paid, in the case of Korea, by the Bank of Korea, the Export-Import Bank of Korea and the Korea Trade Promotion Corporation and in the case of India, by the Reserve Bank of India and the EXIM Bank of India, and by organizations recognized by and agreed between the competent authorities of the Contracting States.

ARTICLE 21

PAYMENTS RECEIVED BY STUDENTS AND APPRENTICES

1. 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 State solely for the purpose of his education or training shall be exempt from tax in that other State on :

(*a*) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training, and

(*b*) remuneration from employment in that other State, in an amount not exceeding one million and seven hundred thousand Korean Won or its equivalent in Indian currency during any "previous year" or the "taxation year", as the case may be, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

2. The benefits of this article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this article for more than five consecutive years from the date of his first arrival in that other Contracting State.

ARTICLE 22

PROFESSORS, TEACHERS AND RESEARCH SCHOLARS

1. An individual who is or was a resident of a Contracting State immediately before making a visit to the other Contracting State, and who, at the invitation of any university, college, school or other similar educational institution, which is recognised by the competent authority in that other State, visits that other State solely for the purpose of teaching or research or both at such educational institutions shall be exempt from tax in that other State on his remuneration for such teaching or research, for a period not exceeding two consecutive years from the date of his first arrival in that other 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.

ARTICLE 23

OTHER INCOME

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

ARTICLE 24

ELIMINATION OF DOUBLE TAXATION

1. In the case of a resident of Korea, double taxation shall be avoided as follows:

Subject to the provisions of Korean tax law regarding the allowance as a credit against Korean tax of tax payable in any country other than Korea (which shall not affect the general principle hereof), the Indian tax payable (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) under the laws of India and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within India shall be allowed as a credit against Korean tax payable in respect of that income. The credit shall not, however, exceed that proportion of Korean tax which the income from sources within India bears to the entire income subject to Korean tax.

[1] *2.* For the purposes of paragraph (1), the term "Indian tax payable" shall be deemed to include the amount of Indian tax which would have been payable in accordance with Indian tax laws but for the exemption or reduction, of Indian tax in accordance with the laws relating to incentives for the promotion of economic development in India which were in force on the date of signature of this Convention or any other provisions which may subsequently be introduced in India in modification of, or in addition to, these laws so far as they are agreed by the competent authorities of the Contracting States, provided that the amount of the tax referred to in this paragraph shall not, however, exceed :

(*a*) in the case of dividends referred to in paragraph (2) (*a*) of article 11 an amount of 15 per cent of the gross amounts of such dividends and, in the case of dividends referred to in paragraph (2)(*b*) of article 11 an amount of 20 per cent of the gross amount of such dividends ;

(*b*) in the case of interest referred to in paragraph (2) of Article 12 on amount of 15 per cent of the gross amount of such interest and in the case of interest referred to in paragraph (3) (*a*) of Article 12 an amount of 10 per cent of the gross amount of such interest; and

(*c*) in the case of royalties referred to in paragraph (2) of Article 12 an amount of 15 per cent of the gross amount of such royalties.

3. In the case of a resident of India, double taxation shall be avoided as follows :

Subject to the provisions of Indian tax law regarding the allowance as a credit against Indian tax of tax payable in any country other than India (which shall not affect the general principle hereof), the Korean tax payable (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) under the laws of Korea and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within Korea shall be allowed as a credit against Indian tax payable in respect of that income. The credit shall not, however, exceed that proportion of Indian tax which the income from sources within Korea bears to the entire income subject to Indian tax.

[1] *4.* For the purposes of paragraph (3), the term "Korean tax payable" shall be deemed to include the amount of Korean tax which would have been payable in accordance with Korean tax laws but for the exemption or reduction of Korean tax in accordance with the laws relating to incentives for the promotion of economic development in Korea which were in force on the date of signature of this Convention or any other provisions which may subsequently, be introduced in Korea in modification of, or in addition to those laws so far as they are agreed by the competent authorities of the Contracting States, provided that the amount of the tax referred to in this paragraph shall not, however, exceed :

(*a*) in the case of dividends referred to in paragraph (2)(*a*) of article 11 an amount of 15 per cent of the gross amount of such dividends and in the case of dividends referred to in paragraph (2)(*b*) of Article 11 an amount of 20 per

cent of the gross amount of such dividends ;

(*b*) in the case of interest referred to in paragraph (2) of article 12 an amount of 15 per cent of the gross amount of such interest and in the case of interest referred to in paragraph (3)(*a*) of Article 12 an amount of 10 per cent of the gross amount of such interest; and

(*c*) in the case of royalties referred to in paragraph (2) of Article 13 an amount of 15 per cent of the gross amount of such royalties.

1. Protocol signed on 19-7-1985 and ratified on 1-8-1986 forms an integral part of the convention. It states that in respect of paragraphs 2 and 4 of article 24, it is understood that the provisions of those paragraphs shall apply for the first 5 years for which this Convention is effective but the competent authorities of the Contracting States may consult each other to determine whether this period shall be extended.
1. Protocol signed on, 19-7-1985 and satisfied on 1-8-1986 forms an integral part of the convention. It states that in respect of paragraphs 2 and 4 of article 24, it is understood that the provisions of those paragraphs shall apply for the first 5 years for which this Convention is effective but the competent authorities of the Contracting States may consult each other to determine whether this period shall be extended.

ARTICLE 25

NON-DISCRIMINATION

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

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

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

3. Except where the provisions of article 10, paragraph (7) of article 12, or paragraph (7) of article 13 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same condition as if they had been paid to a resident of the first-mentioned State.

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

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

ARTICLE 26

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 States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph (*1*) of Article 25, to that of the Contracting State of which he is a national. This case must be presented within three years from the first notification of the action giving 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 about 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 the avoidance of taxation which is 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 or 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.

ARTICLE 27

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of this 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. The exchange of information is not restricted by article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State.

However, if the information is originally regarded as secret in the transmitting State it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the 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. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information shall be made, including where appropriate, exchanges of information regarding tax avoidance.

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

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

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

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

ARTICLE 28

DIPLOMATIC AGENTS AND CONSULAR OFFICERS

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

ARTICLE 29

ENTRY INTO FORCE

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

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

2. This Convention shall have effect—

(*a*) in Korea,—

(*i*) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January of the calendar year next following that in which the Convention is initialled ; and

(*ii*) in respect of other taxes for taxation years beginning on or after the first day of January of the calendar year next following that in which the Convention is initialled,

(*b*) in India,—

(*i*) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of April of the calendar year next following that in which the Convention is initialled ; and

(*ii*) in respect of other taxes for previous years beginning on or after the first day of April of the calendar year next following that in which the Convention is initialled.

ARTICLE 30

TERMINATION

The Convention shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of ten 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 Korea,—

(*i*) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January next following the calendar year in which the notice of termination is given ; and

(*ii*) in respect of other taxes for taxation years beginning on or after the first day of January next following the calendar year in which the notice of termination is given.

(*b*) in India,—

(*i*) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of April next following the calendar year in which the notice of termination is given ; and

(*ii*) in respect of other taxes for previous years beginning on or after the first day of April next following the calendar year in which the notice of termination is given.

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

DONE in duplicate at New Delhi this 19th day of July, 1985 on three original copies each in the Hindi, Korean and English languages, all the texts being equally authentic. In case of divergence between the three texts, the English text shall be the operative one.

PROTOCOL

At the moment of signing the Convention between the Government of the Republic of India and the Government of the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed that the following provisions shall form an integral part of the Convention.

1. In respect of sub-paragraph (a) of paragraph 3 of Article 2 of the Convention, it is understood that the Convention shall also apply to the Korean defence tax where charged by reference to the income-tax or the corporation tax.

2. For the purposes of Articles 8 and 9 of the Convention, it is understood that:

(*i*) interest on funds connected with the operation of aircraft and ships in international traffic shall also be regarded as profits from the operation of such aircraft and ships; and

(*ii*) in respect of the operation of aircraft and ships in international traffic carried on by an enterprise of a Contracting State, that enterprise, if an enterprise of India, shall also be exempt from the value added tax in Korea and, if an enterprise of Korea, shall also be exempt from any tax similar to the value added tax in Korea, which may hereafter be imposed in India.

3. In respect of Article 9, it is understood that the provisions of its paragraphs 1 and 2 shall apply in respect of shipping transport carried on or after the taxation year in which an agreement related to shipping transport between the Contracting States or their authorised nominees is concluded and becomes effective.

It is further understood that until an agreement related to shipping transport between the Contracting States or their authorised nominees enters into force, paragraph 2 shall read as follows : "profits derived from the operation of ships in international traffic may be taxed in the Contracting State in which such operation is carried on; but the tax so charged shall not exceed 90 per cent of the tax otherwise imposed by the internal law of that State."

4. In respect of paragraphs 2 and 4 of Article 24, it is understood that the provisions of those paragraphs shall apply for the first 5 years for which this Convention is effective but the competent authorities of the Contracting States may consult each other to determine whether this period shall be extended.

IN WITNESS whereof, the undersigned have signed the present protocol which shall have the same force and validity as if it were inserted word by word in the Convention.

DONE in duplicate at New Delhi this 19th day of July of the year one thousand nine hundred and eighty-five on three original copies each in the Hindi, Korean and English languages, all the texts being equally authentic. In case of divergence between the three texts, the English text shall be the operative one.

For the Government of the Republic of India

(Vishwanath Pratap Singh)

MINISTER OF FINANCE

For the Government of the Republic of Korea

(Won Kyung Lee)

MINISTER OF FOREIGN AFFAIRS

Embassy of India

Seoul

Protocol of Exchange of Instruments of Ratification

The undersigned, Sudhir Tukaram Devare, Ambassador Extraordinary and Plenipotentiary of the Republic of India to the Republic of Korea and Shin Kee-Bock, Director-General of the International Organizations and Treaties Bureau, Ministry of Foreign Affairs of the Republic of Korea, being duly authorised by their respective governments, have met for the purpose of exchanging the Instruments of Ratification of the Convention between the Government of the Republic of India and the Government of the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, which was signed at New Delhi on 19th July, 1985.

The respective Instruments of Ratification of the aforementioned Convention having been examined and found to be in good and due form, the exchange thereof took place this day.

IN WITNESS whereof, they have signed the present Protocol.

DONE in two originals in the English language, both being equally authentic, at Seoul this first day of August, 1986.

(Sd.) Illegible

For the Government of the Republic of India

(Sd.) Illegible

For the Government of the Republic of Korea

Amendment in Notification No. G.S.R. 986(E), dated 20th December, 1990

WHEREAS the Government of the Republic of India and Government of the Republic of Korea had concluded a Convention for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income which was notified by the Government of India, Ministry of Finance in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (I), under G.S.R. No. 1111(E), dated 26th September, 1986:

WHEREAS paragraph 4 of the Protocol to the said Convention provides that the provisions of paragraphs 2 and 4 of Article 24 shall apply for the first 5 years for which the said Convention is effective but the Competent authorities of the Contracting States may consult each other to determine whether this period shall be extended;

WHEREAS the said period of 5 years has already expired:

AND WHEREAS the competent authorities of the Contracting States have since agreed to extend this period for a further period of 5 years so as to provide that the provisions of paragraphs 2 and 4 of Article 24 of the Convention will be applicable for the first 10 years for which the Convention is effective;

NOW, THEREFORE, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that the provisions of paragraph 4 of the Protocol of the Convention between the Government of the Republic of India and the Government of Republic of Korea for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income stands modified to the extent mentioned below, namely:—

In the said paragraph for the words and figures "the first 5 years", the words and figures "the first 10 years" shall be substituted.

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