



Income Tax Department

Government of India

SECTION 90 OF THE INCOME-TAX ACT, 1961 - DOUBLE TAXATION AGREEMENT - AGREEMENT AMONG THE GOVERNMENTS OF SAARC MEMBER STATES FOR AVOIDANCE OF DOUBLE TAXATION AND MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS

NOTIFICATION NO. 3/2011 [SO 34(E)]-FTD-II [F.NO. 500/96/97-FTD-II], DATED 10-1-2011

WHEREAS the annexed Agreement among the Governments of SAARC (South Asian Association for Regional Cooperation) Member States comprising the People's Republic of Bangladesh, the Kingdom of Bhutan, the Republic of India, the Republic of Maldives, the Kingdom of Nepal, the Islamic Republic of Pakistan and the Democratic Socialist Republic of Sri Lanka for the avoidance of double taxation and mutual administrative assistance in tax matters signed in Dhaka, Bangladesh on the 13th day of November, 2005 shall come into force on the 19th day of May, 2010, being the thirtieth day after the notification dated 19th April, 2010 issued by SAARC Secretariat regarding completion of all formalities, including ratification, wherever applicable, by all Member States, in accordance with Article 16 of the said Agreement;

NOW, THEREFORE, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India with effect from the 1st day of April, 2011.

ANNEXURE

SAARC LIMITED MULTILATERAL AGREEMENT ON AVOIDANCE OF DOUBLE TAXATION AND MUTUAL ADMINISTRATIVE ASSISTANCE IN TAX MATTERS

Preamble

The Governments of the SAARC (South Asian Association for Regional Cooperation) Member States comprising the People's Republic of Bangladesh, the Kingdom of Bhutan, the Republic of India, the Republic of Maldives, the Kingdom of Nepal, the Islamic Republic of Pakistan and the Democratic Socialist Republic of Sri Lanka;

Desiring to conclude an Agreement on Avoidance of Double Taxation and Mutual Administrative Assistance in tax matters with a view to promoting economic cooperation amongst the SAARC Member States

Have agreed as follows :

ARTICLE 1

GENERAL DEFINITIONS

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

- (a) the term "Member State" means one of the States as per Schedule I;
- (b) the term "person" includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Member States;
- (c) the term "tax" means, tax(es) covered as per Schedule II, as the context requires;
- (d) the term "Competent Authority" means Competent Authority as per Schedule III;
- (e) the term "national" means any individual possessing the nationality of a Member State; and
- (f) the term "fiscal year" means the year as defined in Schedule IV.

2. As regards the application of the Agreement at any time by a Member State any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Member State for the purposes of the taxes to which the Agreement applies and any meaning under the applicable tax laws of that Member State prevailing over a meaning given to the term under other laws of that Member State.

ARTICLE 2

PERSONS COVERED

This Agreement shall apply to persons who are residents of one or more of the Member States, in respect of which it has entered into force in accordance with Article 16.

ARTICLE 3

TAXES COVERED

1. This Agreement shall apply to taxes on income imposed by or on behalf of the Member States.
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 or deemed to be paid by enterprises.
3. The existing taxes to which the Agreement shall apply are listed in Schedule II.
4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The Competent Authorities of the Member States shall notify the SAARC Secretariat of any significant changes that have been made in their respective taxation laws.

ARTICLE 4

RESIDENT

1. For the purposes of this Agreement, the term "resident of a Member State" means any person who, under the laws of that Member State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that Member State and any political sub-division or local authority thereof. This term, however, does not include any person who is liable to tax in that Member State in respect only of income from sources in that Member State.
2. Where, by reason of the provisions of paragraph 1, an individual is a resident of more than one Member State, his/her status shall be determined as follows :
 - (a) he/she shall be deemed to be a resident only of the Member State in which he/she has a permanent home available to him/her; if he/she has a permanent home available to him/her in more than one Member State, he/she shall be deemed to be a resident only of the Member State with which his/her personal and economic relations are closer (centre of vital interests);
 - (b) if the Member State in which he/she has his/her centre of vital interests cannot be determined, or if he/she has not a permanent home available to him/her in any Member State, he/she shall be deemed to be a resident only of the Member State in which he/she has an habitual abode;
 - (c) if he/she has an habitual abode in more than one Member State or in neither of them, he/she shall be deemed to be a resident only of the Member State of which he/she is a national;
 - (d) if he/she is a national of more than one Member State or of none of them, the Competent Authorities of the concerned Member 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 more than one Member State, it shall be deemed to be a resident only of the Member State in which its place of effective management is situated. If the Member State in which its place of effective management is situated cannot be determined, then the Competent Authorities of the concerned Member States shall settle the question by mutual agreement.

ARTICLE 5

EXCHANGE OF INFORMATION

1. The Competent Authorities of the Member States shall exchange such information, including documents and public documents or certified copies thereof, as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Member States concerning taxes covered by this agreement insofar as the taxation thereunder is not contrary to the Agreement. Any information received by a Member State shall be treated as secret in the same manner as information obtained under the domestic laws of that Member State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes covered by the agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Member State the obligation :
 - (a) to carry out administrative measures at variance with the laws and administrative practices of that or of the other Member State;
 - (b) to supply information, including documents and public documents or certified copies thereof, which are not obtainable under the laws or in the normal course of the administration of that or of the other Member State;
 - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

ARTICLE 6

ASSISTANCE IN THE COLLECTION OF TAXES

1. The Member States shall lend assistance to each other in the collection of revenue claims. The Competent Authorities of the Member States may, by mutual agreement, settle the mode of application of this Article.
2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes covered by the Agreement together with interest, penalties and costs of collection or conservancy related to such amount.
3. When a revenue claim of a Member State is enforceable under the laws of that Member State and is owed by a person who, at that time, cannot, under the laws of that Member State, prevent its collection, that revenue claim shall, at the request of the Competent Authority of that Member State, be accepted for purposes of collection by the Competent Authority of the other Member State, and that revenue claim shall be collected by that other Member State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other Member State.
4. When a revenue claim of a Member State is a claim in respect of which that Member State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the Competent Authority of that Member State, be accepted for purposes of taking measures of conservancy by the Competent Authority of the other Member State. That other Member State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other Member State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned Member State or is owed by a person who has a right to prevent its collection.
5. The provisions of this Article shall be invoked on request of a Member State only after all permissible measures of recovery under the domestic laws of that Member State have been exhausted.
6. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Member State for purposes of paragraph 3 or 4 shall not, in that Member State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that Member State by reason of its nature as such. In addition, a revenue claim accepted by a Member State for the purposes of paragraph 3 or 4 shall not, in that Member State, have any priority applicable to that revenue claim under the laws of the other Member State.
7. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Member State shall only be brought before the courts or administrative bodies of that Member State. Nothing in this Article shall be construed as creating or providing any right to such proceedings before any court or administrative body of the other Member State.
8. Where, at any time after a request has been made by a Member State under paragraph 3 or 4 and before the other Member State has collected and remitted the relevant revenue claim to the first-mentioned Member State, the relevant revenue claim ceases to be :
 - (a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned Member State that is enforceable under the laws of that Member State and is owed by a person who, at that time, cannot, under the laws of that Member State, prevent its collection, or
 - (b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned Member State in respect of which that Member State may, under its laws, take measures of conservancy with a view to ensure its collection. The Competent Authority of the first-mentioned Member State shall promptly notify the Competent Authority of the other Member State of that fact and, at the option of the other Member State, the first-mentioned Member State shall either suspend or withdraw its request.
9. In no case shall the provisions of this Article be construed so as to impose on a Member State the obligation :
 - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Member State;
 - (b) to carry out measures which would be contrary to public policy (ordre public);
 - (c) to provide assistance if the other Member State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practices;
 - (d) to provide assistance in those cases where the administrative burden for that Member State is clearly disproportionate to the benefit to be derived by the other Member State.

ARTICLE 7

SERVICE OF DOCUMENTS

1. At the request of the applicant Member State the requested Member State shall serve upon the addressee, documents and public documents including those relating to judicial decisions, which emanate from the applicant Member State and which relate to a tax covered by this Agreement.
2. The requested Member State shall effect service of documents, including public documents :
 - (a) by a method prescribed by its domestic laws for the service of documents of a substantially similar nature;

- (b) to the extent possible, by a particular method requested by the applicant Member State or the closest to such method available under its own laws.
3. A Member State may effect service of documents directly through the post on a person in another Member State.
4. Nothing in the Agreement shall be construed as invalidating any service of documents by a Member State in accordance with its laws.
5. When a document is served in accordance with this Article and it is not in English language, the same should be accompanied by a translation into English.

ARTICLE 8

PROFESSORS, TEACHERS AND RESEARCH SCHOLARS

1. A professor, teacher or research scholar who is or was a resident of the Member State immediately before visiting the other Member State for the purpose of teaching or engaging in research, or both, at a university, college or other similar approved institution in that other Member State shall be exempt from tax in that other Member State on any remuneration for such teaching or research for a period not exceeding two years from the date of his/her arrival in that other Member State.
2. For the purposes of this Article, an individual shall be deemed to be a resident of a Member State if he/she is resident in that Member State in the fiscal year in which he/she visits the other Member State or in the immediately preceding fiscal year.
3. For the purposes of paragraph 1 "approved institution" means an institution which has been approved in this regard by the Government of the concerned Member State.

ARTICLE 9

STUDENTS

1. A student who is or was a resident of one of the Member States immediately before visiting the other Member State and who is present in that other Member State solely for the purpose of his/her education or training shall, besides grants, loans and scholarships and any payments received from sources outside that State for the purpose of his/her maintenance, education or training, be exempt from tax in that other Member State on remuneration which he/she derives from an employment which he/she exercises in the other Member State if the employment is directly related to his/her studies.
2. The exemption available under paragraph 1 above in respect of remuneration from employment shall not exceed an amount equal to US\$ 3000 per annum.
3. 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 six consecutive years from the date of his/her first arrival in that other Member State.

ARTICLE 10

TRAINING

1. The Member States shall endeavour to hold and organise training programmes, seminars and workshops for the tax administrators with the objective of:
- (i) providing a common forum for senior tax administrators to meet and discuss problems of common concern;
 - (ii) enhancing the technical and administrative knowledge and skills of tax administrators; and
 - (iii) evolving strategies to combat common tax problems like tax avoidance/evasion in the SAARC region.

ARTICLE 11

SHARING OF TAX POLICY

1. Each Member State shall endeavour to bring out a yearly report on changes made in its tax laws. This may also cover introduction of new systems or techniques for circulation among the Member States.
2. A Member State may, on request, make available its pool of talented experts to other Member States for the purposes of drafting and organising legislation, tax procedures, operational management, on the job training programmes, information system and technology etc.

ARTICLE 12

IMPLEMENTATION

The Member States shall hold periodic consultations, as appropriate, of Competent Authorities, with a view to facilitating the effective implementation of this Agreement.

ARTICLE 13

REVIEW

The Member States shall meet in order to review this Agreement on request or at the end of five years from the date of its entry into force, unless they notify the SAARC Secretariat, in writing, that no such review is necessary.

ARTICLE 14

AMENDMENTS

This Agreement may be amended by consensus. Any such amendment will become effective upon the deposit of instrument(s) of acceptance with the Secretary-General of SAARC by all Member States and issuance of notification thereof by the SAARC Secretariat. Such an amendment shall have effect in the Member States from the date of commencement of their respective fiscal year following the issuance of notification by the SAARC Secretariat.

ARTICLE 15

DEPOSITORY

This Agreement will be deposited with the Secretary General of SAARC, who will furnish a certified copy thereof to each Member State.

ARTICLE 16

ENTRY INTO FORCE

1. This Agreement shall enter into force on the thirtieth day after the notification issued by the SAARC Secretariat regarding completion of all formalities, including ratification, wherever applicable, by all Member States.

2. The provisions of this Agreement shall have effect :

- (i) In Bangladesh
 - (a) in respect of taxes withheld at source, in respect of amounts paid or credited on or after the first day of July next following the date upon which the Agreement enters into force;
 - (b) with regard to other taxes, in respect of tax years beginning on or after the first day of July next following the date upon which the Agreement enters into force;
- (ii) In Bhutan
 - (a) in respect of taxes withheld at source, in respect of amounts paid or credited on or after the first day of July next following the date upon which the Agreement enters into force;
 - (b) with regard to other taxes, in respect of tax years beginning on or after the first day of July next following the date upon which the Agreement enters into force;
- (iii) In India, in respect of income derived in any fiscal year on or after the first day of April next following the date upon which the Agreement enters into force;
- (iv) In Maldives in respect of income derived in any fiscal year on or after the first day of January next following the date upon which the Agreement enters into force;
- (v) In Nepal in respect of income arising in any year of income beginning on or after the first day of Nepalese fiscal year starting mid-July next following the date upon which the Agreement enters into force;
- (vi) In Pakistan :
 - (a) in respect of taxes withheld at source, in respect of amounts paid or credited on or after the first day of July next following the date upon which the Agreement enters into force;
 - (b) with regard to other taxes, in respect of tax years beginning on or after the first day of July next following the date upon which the Agreement enters into force; and
- (vii) In Sri Lanka in respect of income derived on or after the first day of April of the year next following the date upon which the Agreement enters into force.

ARTICLE 17

TERMINATION

This Agreement shall remain in force indefinitely until terminated by a Member State. A Member State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect :

- (i) In Bangladesh, in respect of income derived in any fiscal year on or after the first day of July next following the expiration of six months period from the date on which the written notice of termination is given;
- (ii) In Bhutan, in respect of income derived in any fiscal year on or after the first day of July next following the expiration of six months period from the date on which the written notice of termination is given;
- (iii) In India, in respect of income derived in any fiscal year on or after the first day of April next following the expiration of six months period from the date on which the written notice of termination is given;
- (iv) In Maldives, in respect of income derived in any fiscal year on or after the first day of January next following the expiration of six months period from the date on which the written notice of termination is given;
- (v) In Nepal, in respect of income derived in any fiscal year on or after the first day of mid-July next following the expiration of six months period from the date on which the written notice of termination is given;
- (vi) In Pakistan, in respect of income derived in any fiscal year on or after the first day of July next following the expiration of six months period from the date on which the written notice of termination is given; and
- (vii) In Sri Lanka, in respect of income derived on or after the first day of April of the year next following the expiration of six months period from the date on which the written notice of termination is given;

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

DONE at Dhaka, Bangladesh, On This The Thirteenth Day of November Two Thousand Five, In Nine Originals In English Language, All Texts Being Equally Authentic.

PROTOCOL

On formalization, this SAARC Limited Multilateral Agreement on Avoidance of Double Taxation and Mutual Administrative Assistance in Tax Matters shall be applicable only in the Member States where an adequate Direct Tax Structure is in place. Further, in case of a Member State where such a structure is not in place, this Agreement shall become effective from the date on which such a Member State introduces a proper Direct Tax Structure and notifies the SAARC Secretariat to this effect.

Further that in the event of a conflict between the provisions of this Limited Multilateral Agreement and that of any bilateral Double Taxation Avoidance Agreement between the Member States, the provisions of the Agreement signed or amended at a later date shall prevail.

DONE at Dhaka, Bangladesh, On This The Thirteenth Day of November Two Thousand Five, In Nine Originals In English Language, All Texts Being Equally Authentic.

SCHEDULE I**MEMBER STATES TO THE AGREEMENT**

1. The People's Republic of Bangladesh
2. Kingdom of Bhutan
3. Republic of India
4. Republic of Maldives
5. Kingdom of Nepal
6. Islamic Republic of Pakistan
7. Democratic Socialist Republic of Sri Lanka

SCHEDULE II**TAXES COVERED**

The existing taxes to which this Agreement shall apply :

1. In Bangladesh Taxes on income that is direct tax
2. In Bhutan Income-tax imposed under Income-tax Act, 2001 and the rules thereof
3. In India Income-tax, including any surcharge thereon
4. In Maldives Taxes on income that is direct tax
5. In Nepal Income-tax imposed under the Income-tax Act, 2058

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| 6. | In Pakistan | Taxes on Income |
| 7. | In Sri Lanka | Income-tax including the income-tax based on the turnover of enterprises licensed by the Board of Investment |

SCHEDULE III

COMPETENT AUTHORITY

The term "Competent Authority" means :

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| 1. | In Bangladesh | National Board of Revenue or its authorized representative |
| 2. | In Bhutan | The Ministry of Finance or its authorized representative |
| 3. | In India | The Finance Minister, Government of India, or its authorized representative |
| 4. | In Maldives | Department of Inland Revenue, Ministry of Finance and Treasury |
| 5. | In Nepal | His Majesty's Government of Nepal, Ministry of Finance or its authorized representative |
| 6. | In Pakistan | Central Board of Revenue or its authorized representative |
| 7. | In Sri Lanka | Commissioner General of Inland Revenue |

SCHEDULE IV

FISCAL YEAR

The term "fiscal year" means :

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| 1. | In case of Bangladesh | 1st July - 30th June |
| 2. | In case of Bhutan | 1st July - 30th June |
| 3. | In case of India | 1st April - 31st March |
| 4. | In case of Maldives | 1st January - 31st December |
| 5. | In case of Nepal | The fiscal year beginning mid-July |
| 6. | In case of Pakistan | 1st July - 30th June |
| 7. | In case of Sri Lanka | 1st April - 31st March |