

MINISTRY OF FINANCE**(Department of Revenue)****(FOREIGN TAX DIVISION)****NOTIFICATION**

New Delhi, the 7th February, 2001

INCOME TAX

G.S.R. 74(E).— Whereas the annexed Protocol amending the Agreement between the Government of the Republic of India and the Government of the Swiss Federal Council for the Avoidance of Double Taxation With Respect To Taxes on Income has come into force on 20th December, 2000, the date of the later of the notifications by both the Contracting States to each other, under Article 16 of the Protocol Amending the Agreement, of the satisfaction of all the legal requirements and procedures for giving effect to the said Protocol ,

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

[Notification No. 35/F, No. 501/7/73-FTD]

VIJAY MATHUR, Jt. Secy.

ANNEXURE

PROTOCOL

AMENDING THE AGREEMENT

BETWEEN

THE REPUBLIC OF INDIA

AND

THE SWISS CONFEDERATION

FOR THE AVOIDANCE OF DOUBLE TAXATION
WITH RESPECT TO TAXES ON INCOME

THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE SWISS
FEDERAL COUNCIL

DESIRING to amend the Agreement between the Republic of India and the Swiss Confederation for the avoidance of double taxation with respect to taxes on income, signed at New Delhi on 2 November 1994 (hereinafter referred to as "the Agreement"), have agreed as follows:

Article 1

Sub-paragraph a) of Paragraph 1 of Article 3 of the Agreement shall be replaced by the following:

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

Article 2

1. The first sentence of sub-paragraph l) of paragraph 2 of Article 5 of the Agreement shall be replaced by the following:

"l) the furnishing of technical services, other than services as defined in Article 12, within a Contracting State by an enterprise through employees or other personnel, but only if..."

2. In paragraph 3 of Article 5 of the Agreement the following sub-paragraph shall be inserted after sub-paragraph c):

"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 a preparatory or auxiliary character."

3. The following paragraph shall be inserted after paragraph 3 of Article 5 of the Agreement:

"4. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 6 applies."

4. The existing paragraphs 4 to 6 of Article 5 of the Agreement shall become paragraphs 5 to 7.

5. In the first sentence of paragraph 5 of Article 5 of the Agreement the words "...-other than an agent of an independent status to whom paragraph 5 applies -..." shall be replaced by the words "...-other than an agent of an independent status to whom paragraph 6 applies-..."

Article 3

Paragraph 1 of Article 6 of the Agreement shall be replaced by the following:

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

Article 4

1. Paragraph 1 of Article 8 of the Agreement shall be replaced by the following:

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

Article 5

1. Article 9 of the Agreement shall become paragraph 1 of Article 9.

2. The following paragraph shall be inserted after paragraph 1 of Article 9 of the Agreement:

"2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between

independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustments, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall, if necessary consult each other."

Article 6

1. The first sentence of paragraph 2 of Article 10 of the Agreement shall be replaced by the following:

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

2. Paragraph 4 of Article 10 of the Agreement shall be replaced by the following:

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

3. In paragraph 5 of Article 10 of the Agreement the words "or a fixed base" shall be inserted after the term "permanent establishment".

Article 7

1. Paragraph 2 of Article 11 of the Agreement shall be replaced by the following:

"2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting

State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest."

2. Paragraph 3 of Article 11 of the Agreement shall be deleted.

3. The existing paragraph 4 of Article 11 of the Agreement shall become paragraph 3.

4. Sub-paragraph a) of paragraph 3 of Article 11 of the Agreement shall be replaced by the following:

"3. Notwithstanding the provisions of paragraph 2:

a) interest arising in Switzerland and paid to a resident of India shall be taxable only in India if it is paid in respect of a loan made, guaranteed, or insured, or a credit extended, guaranteed or insured by the Government, a political subdivision, a statutory body or a local authority of India or the Export-Import Bank of India, the Reserve Bank of India, the Industrial Finance Corporation of India, the Industrial Development Bank of India, the National Housing Bank, the Small Industries Development Bank of India or by any institution specified and agreed in letters exchanged between the competent authorities of the Contracting States."

5. The existing paragraphs 5 to 8 of Article 11 of the Agreement shall become paragraphs 4 to 7.

6. Paragraph 5 and 6 of Article 11 of the Agreement shall be replaced by the following:

"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 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 a case the provisions of Article 7 or Article 14, 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 subdivision, 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 Contracting State in which the permanent establishment or fixed base is situated."

Article 8

1. The heading and paragraphs 1 to 7 of Article 12 of the Agreement shall be replaced by the following:

"Article 12

Royalties and Fees for Technical Services

1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State; but if the beneficial owner of the royalties or fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or the 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 a literary, artistic, or scientific work, including cinematograph films or work on film, tape or other means of reproduction for use in connection with 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, any industrial, commercial, or scientific

equipment, or for information concerning industrial, commercial or scientific experience.

4. For purposes of this Article the term "fees for technical services" means payments of any kind to any person in consideration for the rendering of any managerial, technical or consultancy services, including the provision of services by technical or other personnel.

5. Notwithstanding paragraph 4, "fees for technical services" does not include amounts paid:

- a) for teaching in or by educational institutions;
- b) for services covered by Article 14 or Article 15, as the case may be.

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

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

2. In paragraph 8 of Article 12 of the Agreement the term "included services" shall be replaced by the term "technical services".

Article 9

1. Paragraph 2 of Article 13 of the Agreement shall be replaced by the following:

"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 with the whole enterprise) or of such fixed base, may also be taxed in that other State."

2. Paragraph 5 of Article 13 shall be replaced by the following:-

"5. Gains from the alienation of shares other than those mentioned in Paragraph 4, of a company which is a resident of a Contracting State:

- (a) shall be taxable only in the Contracting State of which the alienator is a resident;
- (b) notwithstanding the provision of sub-paragraph (a), India may tax gains from the alienation of shares in a company which is a resident of India.

In this case the provisions of sub-paragraph (b) of paragraph 1, of Article 23 shall apply."

Article 10

1. The following Article 14 relating to Independent Personal Services shall be inserted after Article 13 relating to Capital Gains:

"Article 14**Independent Personal Services**

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State.

- a). if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or
- b) if his stay in the other State is for a period or periods aggregating 183 days or more in any 12-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

2. The existing Article 14 shall be renumbered as Article 15 and replaced by the following Article:

"Article 15**Dependent Personal Services**

- 1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that 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 any 12-month period commencing or ending in the fiscal year concerned, 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 in respect of an employment exercised aboard a ship or aircraft operated in international traffic, by an enterprise of a Contracting State may be taxed in that State."

3. Articles 15 to 20 of the Agreement shall become Articles 16 to 21.

Article 11

The following Article shall be inserted after Article 21 of the Agreement:

"Article 22

Other Income

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

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

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

3. Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in the form of lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any form or nature whatsoever, such income may be taxed in that other Contracting State."

Article 12

1. Article 21 of the Agreement shall become Article 23.
2. In sub-paragraph a) of paragraph 2 of renumbered Article 23 of the Agreement the reference made to sub-paragraph d) shall be deleted.
3. In sub-paragraph b) of paragraph 2 of renumbered Article 23 of the Agreement, the term "included services" shall be replaced by the term "technical services".
4. Sub-paragraph c) of paragraph 2 of renumbered Article 23 of the Agreement shall be deleted.
5. Sub-paragraph d) of paragraph 2 of renumbered Article 23 of the Agreement shall be replaced by the following:

"c) Where a resident of Switzerland derives interest dealt with in section 10(4), 10(4B), 10(15)(iv) and 80L of the Indian Income Tax Act of 1961 (43 of 1961) and referred to in sub-paragraph d) of paragraph 3 of Article 11, Switzerland shall allow, upon request, a relief to such resident of an amount equal to 10 per cent of the gross amount of the interest."

Article 13

1. Article 22 of the Agreement shall become Article 24.
2. Paragraph 1 of renumbered Article 24 of the Agreement shall be replaced by the following:

"1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith

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

3. The following paragraph shall be inserted after paragraph 2 of renumbered Article 24 of the Agreement:

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

4. The existing paragraphs 3 and 4 of renumbered Article 24 of the Agreement shall become paragraphs 4 and 5.

Article 14

Articles 23 to 27 of the Agreement shall become Articles 25 to 29.

Article 15

- A. In the first sub-paragraph of paragraph 1 of the Protocol to the Agreement the words "...in paragraph 2, sub-paragraph a) of Article 12." shall be replaced by the words "...in paragraph 2 of Article 12."
- B. In the third sub-paragraph of paragraph 1 of the Protocol to the Agreement the words "With respect to paragraph 4 of Article 5..." shall be replaced by the words "With respect to paragraph 5 of Article 5..."
- C. in the *Protocol* to the Agreement the following paragraph shall be inserted after paragraph 2 :

"3. With reference to paragraph 2 of Article 9

It is understood that Switzerland shall only make an appropriate adjustment after consultation with the competent authority of India and after reaching an agreement on the adjustments of profits in both Contracting States."

D. The existing paragraph 3 of the *Protocol* to the Agreement shall be replaced by the following:

"4. With reference to Articles 10, 11 and 12

If after the signature of the Protocol of 16th February, 2000 under any Convention, Agreement or Protocol between India and a third State which is a member of the OECD India should limit its taxation at source on dividends, interest, royalties or fees for technical services to a rate lower or a scope more restricted than the rate or scope provided for in this Agreement on the said items of income, then, Switzerland and India shall enter into negotiations without undue delay in order to provide the same treatment to Switzerland as that provided to the third State."

E. In the *Protocol* to the Agreement the following paragraph shall be inserted after paragraph 4:

"5. With reference to sub-paragraph b) of paragraph 5 of Article 13

It is understood that if at a later stage Switzerland shall introduce a capital gains tax on the alienation of shares of a Swiss company other than shares of a company mentioned in paragraph 4, paragraph 5 of Article 13 shall be replaced by the following:

"5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State."

In this case sub-paragraph b) of paragraph 1 of Article 23 of the Agreement shall be deleted.

F. The existing paragraph 4 of the *Protocol* to the Agreement shall become paragraph 6.

G. In the *Protocol* to the Agreement the following paragraph shall be inserted after paragraph 6:

"7. With reference to paragraph 4 of Article 24

It is understood that this provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Agreement.

H. The existing paragraph 5 of the *Protocol* to the Agreement shall become paragraph 8 and its heading shall be replaced by the following:

"8. With reference to Article 25"

Article 16

1. The Governments of the Contracting States shall notify each other through diplomatic channels that all legal requirements and procedures for giving effect to this Protocol have been satisfied.

2. The Protocol, which shall form an integral part of the Agreement, shall enter into force on the date of the later of the notifications referred to in paragraph 1 and its provisions shall have effect:

- a) in India, in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the Protocol entered into force; and
- b) in Switzerland, in respect of income arising in any fiscal year beginning on or after the first day of January next following the calendar year in which the Protocol entered into force.

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

DONE in duplicate at New Delhi this 16th day of February, 2000 in the German, Hindi and English languages, all the texts being equally authentic. In case of divergence of interpretation the English text shall prevail.

For the Government of
the Republic of India

(YASHWANT SINHA)

For the
Swiss Federal Council

(PASCAL COUCHEPIN)