MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

New Delhi, the 4th January, 2018

(INCOME TAX)

S.O. 93(E).—Whereas, the Protocol, amending the Convention and the Protocol between the Government of the Republic of India and the Government of the Federative Republic of Brazil for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed at New Delhi on the 26th April, 1988, was signed at Brasilia on the 15th day of October, 2013, as set out in the Annexure appended to this notification and hereinafter referred to as the said amending Protocol;

And whereas the said amending Protocol entered into force on the 6th day of August, 2017, being thirty days after the date of receipt of later of the notifications of the completion of the procedures required by laws of the Contracting States for bringing into force of the said amending 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 notifies that all the provisions of said amending protocol shall have effect in the Union of India with effect from the 6th day of August, 2017.

ANNEXURE

PROTOCOL AMENDING THE CONVENTION

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF INDIA

AND

THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL

FOR

THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF

FISCAL EVASION

WITH RESPECT TO TAXES ON INCOME,

SIGNED AT NEW DELHI ON 26 APRIL, 1988

PREAMBLE

The Government of the Republic of India and the Government of the Federative Republic of Brazil;

Desiring to amend the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at New Delhi on 26 April, 1988 (hereinafter referred to as " the Convention");

Have agreed as follows:

Article I

Article 26 of the Agreement shall be deleted and replaced by the following:

"ARTICLE 26

EXCHANGE OF INFORMATION

1. The competent authorities of the contracting States shall exchange such information as is foreseeable relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation there under is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2, but applies only to federal taxes in the case of Brazil.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in

paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such purposes under the laws of both States and the competent authority of the supplying State expressly authorizes such use in writing.

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

   A. to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

   B. to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contra cting 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).

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

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

Article II

Each Contracting State shall notify the other in writing, through the diplomatic channel, of the completion of the procedures required by its laws for the bringing into force of this Protocol. The Protocol shall enter into force 30 days after the date of receipt of the later of these notifications and its provisions shall have effect on that date.

Article III

This Protocol, which shall form an integral part of the Convention, shall remain in force as long as the Convention remains in force and shall apply as long as the Convention itself is applicable.

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

DONE in duplicate at Brasilia, this 15 day of October, 2013, in the Hindi, Portuguese and English languages, all three texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF INDIA

Sd/-

Ashok Tomar

Ambassador of India to Brazil

FOR THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL

Sd/-

Carlos Barreto

Secretary of the Federal Revenue of Brazil

[F. No. 500/101/2016 -FT&TR–V]

RAJAT BANSAL, Jt. Secy.

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