

MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

New Delhi, the 27th August, 2019

S.O. 3079(E).—Whereas, the Protocol, amending the Convention between the Government of the Republic of India and the Kingdom of Spain for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital which was signed at New Delhi on the 8th February, 1993, has been signed at New Delhi on 26th October 2012, as set out in the ANNEXURE appended to this notification (hereinafter referred to as the said amending Protocol);

And whereas, the date of entry into force of the said amending Protocol is the 29th December, 2014 being the two months after the receipt of later of the notifications of the completion of the internal procedures required by each Contracting State for giving effect to the said amending Protocol in accordance with Article 9 of the said amending Protocol;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that all the provisions of the said amending Protocol, as annexed hereto, shall be given effect in the Union of India.

[Notification No. 58/2019/F. No. 503/02/1986-FTD-I]

RASMI RANJAN DAS, Jt. Secy.

ANNEXURE

**PROTOCOL
BETWEEN
THE REPUBLIC OF INDIA
AND
THE KINGDOM OF SPAIN
AMENDING THE CONVENTION AND THE PROTOCOL BETWEEN THE
REPUBLIC OF INDIA AND THE KINGDOM OF SPAIN FOR THE AVOIDANCE OF DOUBLE
TAXATION AND THE PREVENTION OF FISCAL EVASION WITH
RESPECT TO TAXES ON INCOME AND ON CAPITAL, WHICH WAS SIGNED AT
NEW DELHI ON 8TH FEBRUARY, 1993.**

The Republic of India

and

The Kingdom of Spain;

Desiring to conclude a Protocol (hereinafter referred to as "Amending Protocol") to amend the Convention and Protocol between the Republic of India and the Kingdom of Spain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, which was signed at New Delhi on 8th February, 1993 and which entered into force on 12th January, 1995 (hereinafter referred to as "the Convention");

Have agreed as follows:

Article 1

Paragraph 3(a) of Article 2 (Taxes Covered) shall be deleted and replaced by the following:

"(a) in Spain :

1. the income tax on individuals;
2. the corporation tax;
3. the income tax on non residents; and
4. the capital tax;

(hereinafter referred to as "Spanish tax")."

Article 2

The paragraph of Article 10 (Associated Enterprises) shall be numbered as paragraph 1 and after this paragraph; the following paragraph shall be inserted:

"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 that other State agrees that 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 adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other."

Article 3

Article 28 (Exchange of Information) of the Convention shall be deleted and replaced by the following Article:

"ARTICLE 28

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information (including documents or certified copies of the documents) as is foreseeably relevant for carrying out the provisions of this Convention 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.

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 other purposes under the laws of both Contracting States.

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 (including documents or certified copies of the documents) 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 (*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 Contracting 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 4

After Article 28 (Exchange of Information), a new Article 28A shall be inserted as follows:

"ARTICLE 28A

Assistance in the collection of taxes

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting 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 of every kind and description imposed on behalf of the Contracting States, or of their political sub-divisions or local authorities, insofar as the taxation there under is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other 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 State.

4. When a revenue claim of a Contracting State is a claim in respect of which that 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 State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other 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 State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned 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 State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or

- (b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection, the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.
8. In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy (*ordre public*);
- (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- (d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State."

Article 5

After Article 28A (Assistance in the Collection of Taxes), a new Article 28 B shall be inserted as follows:

"ARTICLE 28B

Limitation of Benefit

1. The Contracting States declare that their domestic rules and procedures with respect to the abuses of law (including tax treaties) may be applied to the treatment of such abuses.
2. It is understood that the benefits under this Convention shall not be granted to a person, which is not the beneficial owner of the items of income derived from the other Contracting State.
3. This Convention does not prevent Contracting States to apply domestic Controlled Foreign Corporation (CFC) rules.
4. Benefits under this Convention shall not be available to a resident of a Contracting State, or with respect to any transaction undertaken by such a resident, if the main purpose or one of the main purposes of the creation, existence, incorporation, registration or presence of such a resident or of the transaction undertaken by him, was to obtain benefits under this Convention that would not otherwise be available."

Article 6

After Paragraph 10 of the Protocol, a new paragraph shall be inserted as follows:

"11. It is understood that Article 28 (exchange of information) allows that Contracting States may use other techniques to obtain information which may be relevant to both Contracting States such as simultaneous examination, tax examination abroad and industry-wide exchange of information

- (i) in accordance with the domestic laws and administrative procedures of each Contracting State and;
- (ii) provided that a procedure has been agreed upon by the competent authorities of both Contracting States in accordance with paragraph 3 of Article 27 of the Convention."

Article 7

After paragraph 11 of the Protocol, a new paragraph shall be inserted as follows:

"12. With respect to Article 28A

It is understood that paragraph 4 of Article 28A (Assistance in the collection of taxes) will include interim measures of conservancy by freezing the assets before a revenue claim is raised against a person in accordance with the laws of both Contracting States."

Article 8

After paragraph 12 of the Protocol, a new paragraph shall be inserted as follows:

"13. With respect to Article 28B

It is understood that the term 'transaction' referred to in paragraph 4 of Article 28B (Limitation of Benefit) includes the transaction of the creation, assignment or alienation of any shares, debt-claims, assets or other rights where

the main purpose or one of the main purposes of such creation, assignment or alienation was to take advantage of this Convention."

Article 9

1. The Government of the Contracting States shall notify to each other, through diplomatic channels, that the internal procedures required by each Contracting State for the entry into force of this Amending Protocol have been complied with.

2. The Amending Protocol shall enter into force two months after receipt of the later of the notifications referred to in paragraph 1 and shall have effect:

- (a) in the case of taxes withheld at source, in respect of amounts paid on or after the date this Amending Protocol enters into force;
- (b) in the case of other taxes, in respect of taxes levied for taxable years beginning on or after the date this Amending Protocol enters into force;
- (c) in all other cases, on or after the date on which the Amending Protocol enters into force.

3. Notwithstanding the provisions of this Article, the provisions of Article 3 of this Amending Protocol shall apply in respect of any information referred to in the Article even if such matters pre-date the entry into force of this Amending Protocol or the effective date of any of its provisions.

4. Notwithstanding the provisions of this Article, the provisions of Article 4 of this Amending Protocol shall not apply to revenue claims enforceable before the entering into force of this Amending Protocol. With respect to revenue claims issued after the entering into force of this Amending Protocol, it will apply only if the revenue claims are in respect of a tax year that commences after a date that is four years before the date on which this Amending Protocol enters into force.

Article 10

This Amending Protocol shall remain in force as long as the Convention remains in force.

Done in duplicate at New Delhi on the 26th October, 2012 in the Hindi, Spanish and English languages, all three texts being authentic. In case of divergence between any of the texts, it shall be resolved on the basis of the English text.

For the Republic of India

(P. Chidambaram)

Finance Minister

For the Kingdom of Spain

(Jose Manuel Garcia-Margallo y Marfil)

Minister for Foreign Affairs and Cooperation