

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE ARGENTINE REPUBLIC FOR THE EXCHANGE OF INFORMATION AND ASSISTANCE IN COLLECTION WITH RESPECT TO TAXES**

TREATY

India

## **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE ARGENTINE REPUBLIC FOR THE EXCHANGE OF INFORMATION AND ASSISTANCE IN COLLECTION WITH RESPECT TO TAXES**

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AGREEMENT FOR AVOIDANCE OF DOUBLE TAXATION AND PREVENTION OF FISCAL EVASION WITH ARGENTINA Whereas, an Agreement between the Government of the Republic of India and the Government of the Argentine Republic for the exchange of information and assistance in collection with respect to taxes was signed at Argentina on the 21st day of November, 2011 (hereinafter referred to as the Agreement); And whereas, the date of entry into force of the Agreement is the 28th day of January, 2013, being the date of the later of the notifications of completion of the procedures as required by the respective laws for entry into force of the Agreement, in accordance with paragraph 2 of Article 13 of the 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 notifies that all the provisions of the Agreement between the Government of the Republic of India and the Government of the Argentine Republic for the exchange of information and assistance in collection with respect to taxes, as set out in the Annexure hereto, shall be given effect to in the Union of India with effect from the 28th day of January, 2013, that is. the date of entry into force of the Agreement. The Government of the Republic of India and the Government of the Argentine Republic, desiring to facilitate the exchange of information and assistance in collection with respect to taxes have agreed as follows:

## **Article 1 OBJECT AND SCOPE OF THE AGREEMENT**

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement. The competent authorities shall also lend assistance to each other in the collection of tax claims. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party shall continue to be applicable. The requested Party shall do everything what is necessary in order not to unduly prevent or delay effective exchange of information or assistance in collection.

## **Article 2 JURISDICTION**

Information shall be exchanged to accordance with this Agreement without regard to whether the person to whom the information relates is, or whether the information is held by, a resident of a Contracting Parry. However, the requested Party is not obliged to provide information which is neither held by its authorities nor is in the possession or control of persons who are within its territorial jurisdiction.

## **Article 3 TAXES COVERED**

1. The taxes which are the subject of this Agreement are:(a) in India, taxes of every kind and description imposed by the Central Government or the Governments of political subdivisions or local authorities, irrespective of the manner in which they are levied;(b) in Argentina,(i) income tax;(ii) value added tax;(iii) personal assets tax (bienes personales);(iv) tax on presumptive minimum income (ganancias minima presunta);(v) excise tax; and(vi) tax on financial transactions.2. This Agreement shall also apply to any identical or substantially similar taxes imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures and assistance in collection measures which may affect the obligations of that Party pursuant to this Agreement.

## **Article 4 DEFINITIONS**

1. For the purposes of this Agreement, unless otherwise defined:(a) the term "India" means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Convention on the Law of the Sea;(b) the term, "Argentina" means the territory of Argentine Republic and includes the territorial sea and airspace above it, as well as any other maritime zone in which Argentina has sovereign rights, other

rights and jurisdiction, according to the Argentine law and in accordance with international law, including the U.N. Convention on the Law of the Sea;(c) the term "Contracting Party" means India or Argentina as the context requires;(d) the term "competent authority" means(i) in the case of India, the Finance Minister, Government of India, or his authorized representative;(ii) in the case of Argentina, "Administracion Federal de Ingresos Publicos" (the Federal Administration of Public Revenues);(e) 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 Contracting Parties;(f) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;(g) the term "publicly traded company" means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold "by the public" if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;(h) the term "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;(i) the term "recognised stock exchange" means(i) in India, the National Stock Exchange, the Bombay Stock Exchange, and any other stock exchange recognized' by the Central Government under section 4 of the Securities Contracts (Regulation) Act, 1956;(ii) in Argentina; "Bolsa de Comercio de Buenos Aires"(Stock Exchange of Buenos Aires), or the "Mercado de Valores de Buenos Aires Sociedad Anonima"; and(iii) any other stock exchange which the competent authorities agree to recognize for the purposes of this Agreement.(j) the term "collective investment fund or scheme" means any pooled investment vehicle, irrespective of legal form.(k) the term "public collective investment fund or scheme" means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed "by the public" if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;(l) the term "tax" means any tax to which this Agreement applies;(m) the term "requesting Party" means the Contracting Party-(i) submitting a request for information to, or(ii) having received information from, or(iii) submitting a request for assistance in collection of tax to, the requested Party.(n) the term "requested Party" means the Contracting Party-(i) which is requested to provide information, or(ii) which has provided information, or(iii) which is requested to provide assistance in collection of tax.(o) the term "information gathering measures" means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;(p) the term "assistance in collection measures" means laws and administrative or judicial procedures that enable a Contracting Party to collect and remit the requested tax claim;(q) the term "information" means any fact, statement, document or record in whatever form;2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 12 of this Agreement, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

## Article 5 EXCHANGE OF INFORMATION UPON REQUEST

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party. 2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the requesting Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes. 3. If specifically requested by the competent authority of the requesting Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses, and authenticated copies of original records. 4. Each Contracting Party shall ensure that its competent authority, for the purposes of this Agreement, has the authority to obtain and provide upon request: (a) information held by banks, other financial institutions, any other person acting in an agency or fiduciary capacity, including nominees and trustees of such banks, financial institutions or person; (b) information regarding the legal and beneficial ownership of companies, partnerships, collective investment funds or schemes, trusts, foundations and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of collective investment funds or schemes, information on shares, units and other interests; in the case of trusts, information on settlors, trustees, beneficiaries and other persons to whom the trust property title is transferred at the expiration of the trust, wherever applicable; in the case of foundations, information on founders, members of the foundation council and beneficiaries; and equivalent information in case of entities that are neither trusts nor foundations. 5. This Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties. 6. The competent authority of the requesting Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request: (a) the identity of the person under examination or investigation; (b) the period for which information is requested; (c) the nature of the information requested and the form in which the requesting Party would prefer to receive it; (d) the tax purpose for which the information is sought; (e) grounds for believing that the information requested is present in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party; (f) to the extent known, the name and address of any person believed to be in possession or control of the requested information; (g) a statement that the request is in conformity with the laws and administrative practices of the requesting Party, that if the requested information was within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement; (h) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties. 7. The competent authority of the requested Party shall forward the

requested information as promptly as possible to the requesting Party. To ensure a prompt response, the competent authority of the requested Party shall: (a) Confirm receipt of a request in writing to the competent authority of the requesting Party and shall notify the competent authority of the requesting Party of deficiencies in the request, if any, within 60 days of the receipt of the request; (b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

## **Article 6 TAX EXAMINATIONS ABROAD**

1. At the request of the competent authority of the requesting Party, the requested Party may allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its domestic laws, to interview individuals and examine records with the prior written consent of the individuals or other persons concerned. The competent authority of the requesting Party shall notify the competent authority of the requested Party of the time and place of the intended meeting with the individuals concerned. 2. At the request of the competent authority of the requesting Party, the requested Party may allow representatives of the competent authority of the requesting Party to be present at the appropriate part of a tax examination in the requested Party, in which case the competent authority of the requested Party conducting the examination shall, as soon as possible, notify the competent authority of the requesting Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

## **Article 7 POSSIBILITY OF DECLINING A REQUEST FOR INFORMATION**

1. The competent authority of the requested Party may decline to assist: (a) where the request is not made in conformity with this Agreement; or (b) where the requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or (c) where disclosure of the information would be contrary to public policy (ordre public) of the requested Party. 2. This Agreement shall not impose on a Contracting Party the obligation: (a) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information described in paragraph 4 of Article 5 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph; or (b) to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are: (i) produced for the purposes of seeking or providing legal advice; or (ii) produced for the purposes of use in existing or contemplated legal proceedings. 3. A request for information shall not be refused on the ground that the tax claim giving

rise to the request is disputed.<sup>4</sup> The requested Party shall not be required to obtain and provide information which the requesting Party would be unable to obtain in similar circumstances under its own laws for the purpose of the administration or enforcement of its own tax laws or in response to a valid request from the requested Party under this Agreement.<sup>5</sup> The requested Party shall not decline to provide information solely because the request does not include all the information required under Article 5 if the information can otherwise be provided according to the law of the requested Party.

## **Article 8 CONFIDENTIALITY**

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party 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 (including tax claims) by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction (including a foreign Government) without the express written consent of the competent authority of the requested Party.

## **Article 9 ADMINISTRATIVE COSTS**

1. Unless the competent authorities of the Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party, and, subject to the provisions of this Article, extraordinary costs incurred in providing assistance (including costs of engaging external advisors in connection with litigation or otherwise necessary to comply with the request) shall, if they exceed USD 500, be borne by the requesting Party.<sup>2</sup> The competent authorities will consult each other, in advance, in any particular case where extraordinary costs are likely to exceed USD 500 to determine whether the requesting party will continue to pursue the request and bear the cost.<sup>3</sup> The competent authorities shall consult from time to time with regard to this Article.

## **Article 10 ASSISTANCE IN THE COLLECTION OF TAX CLAIMS**

1. The Contracting Parties shall lend assistance to each other in the collection of tax claims.<sup>2</sup> The term "tax claim" as used in this Article means an amount owed in respect of taxes as mentioned in Article 3, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.<sup>3</sup> When a tax claim of a Contracting Party is enforceable under the laws of that Party and is owed by a person who, at that time, cannot, under the laws of that Party prevent its collection, that tax claim shall, at the request of the competent authority of that Party, be accepted for purposes of collection by the competent authority of the other Contracting Party. That tax claim shall be collected by that other Party in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the tax claim were a tax claim of that other Party.<sup>4</sup> When a tax claim of a Contracting Party is a claim in respect of which that Party may, under its law,

take measures of conservancy with a view to ensure its collection, that tax claim shall, at the request of the competent authority of that Party, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting Party. That other Party shall take measures of conservancy in respect of that tax claim in accordance with the provisions of its laws as if the tax claim were a tax claim of that other Party even if, at the time when such measures are applied, the tax claim is not enforceable in the first-mentioned Party or is owed by a person who has a right to prevent its collection.<sup>5</sup> When a Contracting Party, under its law, takes interim measures of conservancy by freezing of assets before a tax claim is raised against a person, the competent authority of the other Contracting Party if requested by the competent authority of the first-mentioned Contracting Party shall take measures for freezing the assets of that person in that Contracting Party in accordance with the provisions of its law.<sup>6</sup> Notwithstanding the provisions of paragraphs 3 and 4, a tax claim accepted by a Contracting Party for purposes of paragraph 3 or 4 shall not, in that Party, be subject to the time limits or accorded any priority applicable to a tax claim under the laws of that Party by reason of its nature as such. In addition, a tax claim accepted by a Contracting Party for the purposes of paragraph 3 or 4 shall not, in that Party, have any priority applicable to that tax claim under the laws of the other Contracting Party.<sup>7</sup> Proceedings with respect to the existence, validity or the amount of a tax claim of a Contracting Party shall only be brought before the courts or administrative bodies of that Party. 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 Contracting Party.<sup>8</sup> Where, at any time after a request has been made by a Contracting Party under paragraph 3 or 4 and before the other Contracting Party has collected and remitted the relevant tax claim to the first mentioned Party, the relevant tax claim ceases to be: (a) in the case of a request under paragraph 3, a tax claim of the first-mentioned Party that is enforceable under the laws of that Party and is owed by a person who, at that time, cannot, under the laws of that Party, prevent its collection, or (b) in the case of a request under paragraph 4, a tax claim of the first-mentioned Party in respect of which that Party may, under its laws, take measures of conservancy with a view to ensure its collection, the competent authority of the first-mentioned Party shall promptly notify the competent authority of the other Party of that fact and, at the option of the other Party, the first-mentioned Party shall either suspend or withdraw its request.<sup>9</sup> In no case shall the provisions of this Article be construed so as to impose on a Contracting Party the obligation: (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting Party; (b) to carry out measures which would be contrary to public policy (*ordre public*); (c) to provide assistance if the other Contracting Party has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice; to provide assistance in those cases where the administrative burden for that Party is clearly disproportionate to the benefit to be derived by the other Contracting Party.<sup>10</sup> The competent authority that submits a request of assistance in the collection of tax claims shall provide the following information: the identity of the person about whom assistance is requested, the nature of the tax claim, the constituting elements of such claims, and the assets which can be used for collection.<sup>11</sup> The request of assistance in the collection of tax claims shall be accompanied by the following documents: (a) a declaration stating that the tax claim corresponds to a tax covered by this Agreement; (b) an official copy of the instrument permitting enforcement in the State of the requesting competent authority; and (c) any other document required for recovery or for the measures referred to in paragraphs 4 and 5.<sup>12</sup> The instrument permitting enforcement in the State

of the requested competent authority shall, where appropriate and in accordance with the legal provisions in force in the State of the requested competent authority, be accepted, recognised, supplemented or replaced as soon as possible after the date of receipt of the request of assistance, by an instrument permitting enforcement in the State of the requested competent authority.

## **Article 11 IMPLEMENTATION LEGISLATION**

1. The Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of the Agreement.

## **Article 12 MUTUAL AGREEMENT PROCEDURE**

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of the Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement. In addition the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5, 6, 9 and 10 of this Agreement. 2. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reselling agreement under this Article.

## **Article 13 ENTRY INTO FORCE**

1. The Contracting Parties shall notify each other in writing, through diplomatic channels, of the completion of the procedures required by the respective laws for the entry into force of this Agreement. 2. This Agreement shall enter into force on the date of the later of the notifications referred to in paragraph 1 of this Article and shall thereupon have effect forthwith.

## **Article 14 TERMINATION**

1. This Agreement shall remain in force until terminated by either Contracting Party. 2. Either Contracting Party may terminate the Agreement by serving a written notice of termination to the other Contracting Party through diplomatic channels. 3. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the other Contracting Party. All requests received up to the effective date of termination shall be dealt with in accordance with the provisions of the Agreement. In witness whereof, the undersigned, being duly authorised thereto, have signed this Agreement. DONE in duplicate at Buenos Aires, this 21st day of November, 2011, each in the Hindi, Spanish and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.