

Agreement between the Government of the Republic of India and the Government of Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital

TREATY

India

Agreement between the Government of the Republic of India and the Government of Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital

Rule

AGREEMENT-BETWEEN-THE-GOVERNMENT-OF-THE-REPUBLIC-OF-INDIA-AND-THE-GOVERNMENT-OF-CANADA-FOR-THE-AVOIDANCE-OF-DOUBLE-TAXATION-AND-THE-PREVENTION-OF-FISCAL-EVASION-WITH-RESPECT-TO-TAXES-ON-INCOME-AND-ON-CAPITAL-1998

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Agreement between the Government of the Republic of India and the Government of Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Published vide Notification No. G.S.R. 28(E), dated 15th January, 1998 Ministry of Finance (Department of Revenue) G.S.R. 28(E). - Whereas the agreement between the Government of the Republic of India and the Government of Canada stated in Annexure below for the avoidance of double taxation and for prevention of fiscal evasion with respect to taxes on income and on capital has entered into force on the 6th May, 1997, after the notification by both the Contracting States of the completion of the procedures required under their laws for bringing with Article 29 of the said agreement; Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 44A of the Wealth-tax act, 1957 (27 of 1957), the Central Government hereby directs that all the provisions of the said agreement shall be given effect to in the Union of India. Annexure The Government of the Republic of India and the Government of Canada desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, have agreed as follows: I. Scope of

the AgreementArticle 1Personal ScopeThis Agreement shall apply to persons who are residents of one or both of the Contracting States.Article 2Taxes Covered

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of each Contracting State, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property.

3. The existing taxes to which the Agreement shall apply are in particular:

(a)in the case of Canada:the taxes imposed under the Income Tax Act of Canada(hereinafter referred to as "Canadian tax");(b)in the case of India:(i)the income tax including any surcharge thereon imposed under the Income Tax Act,(ii)the wealth tax imposed under the Wealth Tax Act,(hereinafter referred to as "Indian tax").

4. The Agreement shall apply also to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes.

5. At the end of each year, the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws which are the subject of this Agreement.

II. DefinitionsArticle 3General Definitions

1. In this Agreement, unless the context otherwise requires:

(a)the term "Canada", used in a geographical sense, means the territory of Canada, including any area beyond the territorial seas of Canada which, in accordance with international law and the laws of Canada, is an area within which Canada may exercise rights with respect to the seabed and subsoil and their natural resources;(b)the term "India", used in a geographical sense, means the territory of India, including any area beyond the territorial seas of India which, in accordance with international law and the laws of India, is an area within which India may exercise rights with respect to the seabed and subsoil and their natural resources;(c)the terms "a Contracting State" and "the other Contracting State" mean, as the context requires, Canada or India;(d)the term "person" includes an individual, a partnership, a company and any other entity (including a trust) which is treated as a taxable unit under the taxation laws of a Contracting State;(e)the term "company"

means any body corporate or any entity which is treated as a company or a body corporate under the taxation laws of a Contracting State;(f)the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;(g)the term "competent authority" means:(i)in the case of Canada, the Minister of National Revenue or his authorized representative,(ii)in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or its authorized representative;(h)the term "national" means:(i)any individual possessing the nationality of a Contracting State,(ii)any legal person, partnership and association deriving its status as such from the law in force in a Contracting State;(i)the term "tax" means Canadian tax or Indian tax, as the context requires, but shall not include any amount payable in respect of any default or omission in relation to the said taxes or which represent a penalty imposed relating to those taxes;(j)the term "international traffic" means any voyage of a ship or aircraft operated by an enterprise of a Contracting State, except where the principal purpose of the voyage is to transport passengers or goods between places in the other Contracting State.

2. As regards the application of the Agreement by a Contracting State, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the Agreement.

Article 4 Residence

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

(a)he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (hereinafter referred to as his centre of vital interests);(b)if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;(c)if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;(d)if he is a national of both States or of neither of them, the competent authorities of the Contracting 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 both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question. In the absence of such agreement, such person shall not be considered to be a resident of either Contracting State for the purposes of enjoying benefits under the Agreement.

Article 5 Permanent Establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

(a) a place of management; (b) a branch; (c) an office; (d) a factory; (e) a workshop; (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; (g) a warehouse, in relation to a person providing storage facilities for others; (h) a farm, plantation or other place where agriculture, forestry, plantation or related activities are carried on; (i) a store or premises used as a sales outlet; (j) an installation or structure used for the exploration or exploitation of natural resources, but only if so used for a period of more than 120 days in any twelve-month period; (k) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities (together with other such sites, projects or activities, if any) continue for a period of more than 120 days in any twelve-month period; (l) the furnishing of services, other than included services as defined in Article 12, within a Contracting State by an enterprise through employees or other personnel, and only if: (i) activities of that nature continue within that State for a period or periods aggregating more than 90 days within any twelve-month period, or (ii) the services are performed within that State for a related enterprise (within the meaning of paragraph 1 of Article 9).

3. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include any one or more of the following:

(a) the use of facilities solely for the purpose of storage, display, or occasional delivery of goods or merchandise belonging to the enterprise; (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display, or occasional delivery; (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise; (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise; (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for other activities which have a preparatory or auxiliary

character, for the enterprise.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status to whom paragraph 5 applies is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned State if:

(a) he has and habitually exercises in the first-mentioned State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business, would not make that fixed place of business a permanent establishment under the provisions of that paragraph; (b) he has no such authority but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise, and some additional activities conducted in that State on behalf of the enterprise have contributed to the sale of the goods or merchandise; or (c) he habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent, or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise and the transactions between the agent and the enterprise are not made under arm's length conditions, he shall not be considered an agent of independent status within the meaning of this paragraph.

6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

III. Taxation of Income Article 6 Income from Immovable Property

1. Income from immovable property (including income from agriculture or forestry) may be taxed in the Contracting State in which such property is situated.

2. For the purposes of this Agreement, the term "immovable property" shall be defined in accordance with the law and usage of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7 Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on or has carried on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to:

(a) that permanent establishment; and (b) sales of goods and merchandise of the same or similar kind as those sold, or from other business activities of the same or similar kind as those effected, through that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment. In any case, where the correct amount of profits attributable

to a permanent establishment is incapable of determination or the ascertainment thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on a reasonable basis provided that the result shall be in accordance with the principles laid down in this Article.

3. In the determination of the profits of a permanent establishment, there shall be allowed those deductible expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses, whether incurred in the State in which the permanent establishment is situated or elsewhere as are in accordance with the provisions of and subject to the limitations of the taxation laws of that State. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than as a reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Subject to the provisions of paragraph 3, insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the

principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8 Shipping and Air Transport

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

2. Notwithstanding the provisions of paragraph 1 and of Article 7, profits derived by an enterprise of a Contracting State from a voyage of a ship or aircraft where the principal purpose of the voyage is to transport passengers or property between places in the other Contracting State may be taxed in that other State.

3. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall mean profits derived by an enterprise described in paragraph 1 from the transportation by sea or air respectively of passengers, mail, livestock or goods carried on by owners or lessees or charterers of ships or aircraft including:

(a) the sale of tickets for such transportation on behalf of other enterprises; (b) other activity directly connected with such transportation; and (c) the rental of ships or aircraft incidental to any activity directly connected with such transportation.

4. Profits of an enterprise of a Contracting State described in paragraph 1 from the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) used in connection

with the operation of ships or aircraft in international traffic shall be taxable only in that State.

5. The provisions of paragraphs 1 and 4 shall also apply to profits from participation in a pool, a joint business, or an international operating agency.

6. For the purposes of this Article, interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, and the provisions of Article 11 shall not apply in relation to such interest.

7. The provisions of this Article shall not apply to a drilling rig or any vessel the principal function of which is the performance of activities other than the transportation of goods or passengers.

Article 9 Associated Enterprises

1. Where

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any income which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the income of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the income of an enterprise of that State - and taxes accordingly - income on which an enterprise of the other Contracting State has been charged to tax in that other State and the income so included is income 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 that income. In determining such adjustment, 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.

3. A Contracting State shall not change the income of an enterprise in the circumstances referred to in paragraph 1 after the expiry of the time limits provided in its national laws and, in any case, after five years from the end of the year in which the income which would be subject to such change would, but for the conditions referred to in paragraph 1, have accrued to that enterprise.

4. The provisions of paragraphs 2 and 3 shall not apply in the case of fraud, wilful default or neglect.

Article 10 Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

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 recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

(a) 15 per cent of the gross amount of the dividends if the beneficial owner is a company which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends; (b) 25 per cent of the gross amount of the dividends in all other cases.

3. The provisions of paragraphs 1 and 2 shall not affect the taxation of the company on the profits out of which the dividends are paid.

4. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident.

5. 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.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11Interest

1. Interest 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 interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2,

(a) interest arising in a Contracting State and paid to a resident of the other Contracting State shall be exempt from tax in the first-mentioned State if: (i) the payer of the interest is the Government of that Contracting State or of a political subdivision or local authority thereof, (ii) the beneficial owner of the interest is the central bank of the other Contracting State, or (iii) the interest is paid to an agency or instrumentality (including a financial institution) which may be agreed upon in letters exchanged between the competent authorities of the Contracting States; (b) (i) interest arising in India and paid to a resident of Canada shall be taxable only in Canada if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured by the Export Development Corporation, or (ii) interest arising in Canada 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 Export-Import Bank of India (Exim Bank).

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and in particular, income from government securities and income from bonds or debentures, including

premiums and prizes attaching to such securities, bonds or debentures, as well as income assimilated to income from money lent by the taxation law of the State in which the income arises. However, the term "interest" does not include income dealt with in Article 8 or in Article 10.

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 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 State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12 Royalties and Fees for Included Services

1. Royalties and fees for included 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 included 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 included services is a resident of the other Contracting State, the tax so charged shall not exceed:

(a)in the case of royalties referred to in sub-paragraph (a) of paragraph 3 and fees for included services as defined in this Article (other than services described in sub-paragraph (b) of this paragraph):(i)during the first five taxable years for which this Agreement has effect,(A)15 per cent of the gross amount of the royalties or fees for included services as defined in this Article, where the payer of the royalties or fees is the Government of that Contracting State, a political subdivision or a public sector company, and(B)20 per cent of the gross amount of the royalties or fees for included services in all other cases, and(ii)during the subsequent years, 15 per cent of the gross amount of the royalties or fees for included services; and(b)in the case of royalties referred to in sub-paragraph (b) of paragraph 3 and fees for included services as defined in this Article that are ancillary and subsidiary to the enjoyment of the property for which payment is received under paragraph 3(b) of this Article, 10 per cent of the gross amount of the royalties or fees for included services.

3. The term "royalties" as used in this Article means:

(a)payment 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 information concerning industrial, commercial or scientific experience, including gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof; and(b)payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial, or scientific equipment, other than payments derived by an enterprise described in paragraph 1 of Article 8 from activities described in paragraph 3(c) or 4 of Article 8.

4. For the purposes of this Article, "fees for included services" means payments of any kind to any person in consideration for the rendering of any technical or consultancy services (including through the provision of services of technical or other personnel) if such services:

(a)are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 3 is received; or(b)make available technical knowledge, experience, skill, know-how, or processes or consist of the development and transfer of a technical

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

(a)for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property other than a sale described in paragraph 3(a);(b)for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships or aircraft in international traffic;(c)for teaching in or by educational institutions;(d)for services for the personal use of the individual or individuals making the payment; or(e)to an employee of the person making the payments or to any individual or firm of individuals (other than a company) for professional services as defined in Article 14.

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for included services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or the fees for included 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 right, property or contract in respect of which the royalties or fees for included services are 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.

7. Royalties and fees for included 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 the fees for included 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 obligation to pay the royalties or the fees for included services was incurred, and such royalties or fees for included services are borne by that permanent establishment or fixed base, then such royalties or fees for included services shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

8. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties or fees for included services, having regard to the

use, right, information or services for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13Capital Gains

1. Gains from the alienation of ships or aircraft operated in international traffic by an enterprise of a Contracting State and movable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.

2. Gains from the alienation of any property, other than those referred to in paragraph 1, may be taxed in both Contracting States.

Article 14Independent Personal Services

1. Income derived by an individual or a firm of individuals (other than a company) who is a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State. However, in the following circumstances such income may be taxed in the other Contracting State, that is to say:

(a)if he has or had 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 Contracting State; or(b)if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant fiscal year; or(c)if the remuneration for the services in the other Contracting State is either derived from residents of that other Contracting State or is borne by a permanent establishment which a person not resident in that other Contracting State has in that other Contracting State and such remuneration exceeds two thousand five hundred Canadian dollars (\$2,500) or its equivalent in Indian currency in the relevant fiscal year.

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

Article 15 Dependent Personal Services

1. Subject to the provisions of Articles 16, 18 and 19, 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 Contracting State for a period or periods not exceeding in the aggregate 183 days in the relevant fiscal year; (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 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.

Article 16 Directors' Fees Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or a similar organ of a company which is a resident of the other Contracting State may be taxed in that other State. Article 17 Artistes and Athletes

1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste or a musician, or an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised in a Contracting State by an entertainer or an athlete accrues not to the entertainer or athlete himself but to another person which provides the activities in that State, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in that Contracting State unless the entertainer, athlete, or other

person establishes that neither the entertainer or athlete nor persons related thereto participate directly or indirectly in the profits of that other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions, or other distributions.

3. The provisions of paragraphs 1 and 2 shall not apply if the visit to a Contracting State of the entertainer or the athlete is directly or indirectly supported, wholly or substantially, from the public funds of the other Contracting State, including any political subdivision, local authority or statutory body of that other State.

Article 18 Pensions

1. Pensions arising in a Contracting State shall be taxable only in that State.

2. Pensions 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.

Article 19 Government Service

1. (a) Salaries, wages and similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority, in any other State (including the other Contracting State) shall be taxable only in the first-mentioned State.

(b) However, such salaries, wages or similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that other State who: (i) is a national of that other State; or (ii) did not become a resident of that other State solely for the purpose of rendering the services.

2. The provisions of paragraph 1 shall not apply to salaries, wages and similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20 Students and Apprentices Payments which a student, apprentice or business trainee who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training

receives for the purpose of his maintenance, education or training shall not be taxed in the first-mentioned State, provided that such payments are made to him from sources outside that State. Article 21 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 paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles, and arising in the other Contracting State, may be taxed in that other State. However, in the case of income derived from an estate or a trust (other than a trust to which contributions were deductible for tax purposes), the tax so charged shall, provided that the income is taxable in the Contracting State in which the beneficiary is a resident, not exceed 15 per cent of the gross amount of the income.

IV. Taxation of Capital Article 22 Capital

1. Capital represented by ships and aircraft operated by a resident of a Contracting State in international traffic and by movable property pertaining to the operation of such ships and aircraft shall be taxable only in that State.

2. All other elements of capital of a resident of a Contracting State may be taxed in both Contracting States.

V. Methods for Prevention of Double Taxation Article 23 Elimination of Double Taxation

1. The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Agreement.

2. In the case of Canada, double taxation shall be avoided as follows:

(a) Subject to the existing provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions which shall not affect the general principle hereof and unless a greater deduction or relief is provided under the laws of Canada, tax payable in India on profits, income or gains arising in India shall be deducted from any Canadian tax payable in respect of such profits, income or gains. (b) Subject to the existing provisions of the law of Canada regarding the determination of the exempt surplus of a foreign affiliate and to any subsequent modification of those provisions which shall not affect the general principle hereof for the purpose of computing Canadian tax, a company which is a resident of Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate which is a resident of India. (c) Where a resident of Canada owns capital which, in accordance with the provisions of the Agreement may be taxed in India, Canada shall allow as a deduction from the tax on capital of that resident an amount equal to the capital tax paid in India. Such deduction shall not, however, exceed that part of the capital tax (as computed before the deduction is given) which is attributable to the capital which may be taxed in India. (d) Where in accordance with any provision of the Agreement income derived or capital owned by a resident of Canada is exempt from tax in Canada, Canada may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

3. In the case of India, double taxation shall be avoided as follows:

(a) The amount of Canadian tax paid, under the laws of Canada and in accordance with the provisions of the Agreement, whether directly or by deduction, by a resident of India, in respect of income from sources within Canada which has been subjected to tax both in India and Canada shall be allowed as a credit against the Indian tax payable in respect of such income but in an amount not exceeding that proportion of Indian tax which such income bears to the entire income chargeable to Indian tax. (b) Where a resident of India owns capital, which, in accordance with the provisions of the Agreement, may be taxed in Canada, India shall allow as a deduction from the tax on the capital of that resident an amount equal to the capital tax paid in Canada. Such deduction shall not, however, exceed that part of the capital tax (as computed before the deduction is given) which is attributable to the capital which may be taxed in Canada. Provided that income which in accordance with the provisions of the Agreement is not to be subjected to tax may be taken into account in calculating the rate of tax imposed.

4. For the purposes of paragraph 2(a), the term "tax payable in India" shall, with respect to a company which is a resident of Canada, be deemed to include any amount which would have been payable as Indian tax but for a deduction allowed in computing the taxable income or an exemption or reduction of tax granted for that year under:

(a)sections 10(15)(iv), 10A, 32A (but not the part dealing with ships and aircraft), 80HH, 80HHD and 80IA (but not the part dealing with ships) of the Income Tax Act, 1961, as amended, so far as they were in force on and have not been modified since the date of signature of the Agreement, or have been modified only in minor respects so as not to affect their general character; or(b)any other provision which may subsequently be made granting an exemption or reduction from tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character. Provided that relief from Canadian tax shall not be given by virtue of this paragraph in respect of income from any source if the income relates to a period starting more than ten fiscal years after the exemption from, or reduction of, Indian tax is first granted to the resident of Canada, in respect of that source.

5. For the purposes of this Article, profits, income or gains of a resident of a Contracting State which are taxed in the other Contracting State in accordance with the Agreement shall be deemed to arise from sources in that other State.

VI. Special ProvisionsArticle 24Non-Discrimination

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 are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

3. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. (a) Nothing in this Agreement shall be construed as preventing Canada from imposing on the earnings of a company, which is a resident of India, attributable to a permanent establishment in Canada, a tax in addition to the tax which would be chargeable on the earnings of a company which is a national of Canada, provided that any additional tax so imposed shall not exceed the rate specified in subparagraph 2(a) of Article 10 of the amount of such earnings which have not been subjected to such additional tax in previous taxation years. For the purpose of this provision, the term "earnings" means the profits attributable to a permanent establishment in Canada in a year and previous years after deducting therefrom all taxes, other than the additional tax referred to herein, imposed on such profits by Canada.

The provisions of this subparagraph shall also apply with respect to earnings from the disposition of immovable property situated in Canada by a company carrying on a trade in immovable property without a permanent establishment in Canada but only insofar as these earnings may be taxed in Canada under the provisions of Article 6 or paragraph 1 of Article 13.(b)A company which is a resident of Canada may be subject to tax in India at a rate higher than that applicable to Indian domestic companies. The difference in tax rate shall not, however, exceed 15 percentage points.

5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.

6. In this Article, the term "taxation" means taxes which are the subject of this Agreement.

Article 25 Mutual Agreement Procedure

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case in writing to the competent authority of the Contracting State of which he is a

resident. The case must be presented within two years from the first notification of the action which gives rise to taxation not in accordance with the Agreement.

2. The competent authority referred to in paragraph 1 shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement.

4. The competent authorities of the Contracting States may consult together for the elimination of double taxation in cases not provided for in the Agreement.

Article 26 Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement or of the domestic laws of the Contracting States (including the provisions thereof dealing with the prevention of fiscal evasion or fraud) concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received 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) involved in the assessment or collection of, the enforcement 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 Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and the 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 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).

3. If information is requested by a Contracting State in accordance with the provisions of this Article, the other Contracting State shall endeavour to obtain the information to which the request relates in the same way as if its own taxation was involved notwithstanding the fact that the other State does not, at that time, need such information. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall endeavour to provide information under this Article in the form requested, such as depositions of witnesses and copies of unedited original documents (including books, papers, statements, records, accounts or writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of that other State with respect to its own taxes.

Article 27 Diplomatic Agents and Consular Officers Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements. Article 28 Miscellaneous Rules

1. The provisions of this Agreement shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit or other allowance now or hereafter accorded by the laws of a Contracting State in the determination of the tax imposed by that State.

2. The competent authorities of the Contracting States may communicate with each other directly for the purpose of applying the Agreement.

3. With respect to paragraph 3 of Article XXII of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure relating to a tax to which any provision of this Agreement applies falls within the scope of this Agreement may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States.

VII. Final ProvisionsArticle 29Entry into Force

1. The Governments of the Contracting States shall notify each other that the constitutional requirements for the entry into force of this Agreement have been complied with.

2. The Agreement shall enter into force upon the date of the later of the notifications referred to in paragraph 1 and its provisions shall have effect:

(a)in Canada:(i)in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January in the calendar year next following that in which the Agreement enters into force, and(ii)in respect of other Canadian tax for taxation years beginning on or after the first day of January in the calendar year next following that in which the Agreement enters into force;(b)in India:(i)in respect of income arising in any taxable year beginning on or after the first day of April in the calendar year next following that in which the Agreement enters into force, and(ii)in respect of capital which is held at the end of any fiscal year beginning on or after the first day of April in the calendar year next following that in which the Agreement enters into force.

3. The provisions of the Agreement between the Government of India and the Government of Canada for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed at New Delhi on the 30th day of October, 1985 (hereinafter referred to as "the 1985 Agreement") shall cease to have effect with respect to taxes to which this Agreement applies in accordance with the provisions of paragraph 2.

4. The 1985 Agreement shall terminate on the last day on which it has effect in accordance with the foregoing provisions of this Article.

Article 30TerminationThis Agreement shall continue in effect indefinitely but either Contracting State may, on or before June 30 in any calendar year after the expiry of five years from the year in which it enters into force, give notice of termination to the other Contracting State and in such event, the Agreement shall cease to have effect:(a)in Canada:(i)in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January in the next following calendar year, and(ii)in respect of other Canadian tax for taxation years beginning on or after the first day of January in the next following calendar year;(b)in India:(i)in respect of income arising in any taxable year beginning on or after the first day of April in the next following calendar year, and(ii)in respect of capital which is held at the end of any fiscal year beginning on or after the first day of April in the next following calendar year.In Witness Whereof the undersigned, duly authorized to that effect, have signed this Agreement.Done in duplicate at Delhi, this 11th day of January 1996, in the English, French and Hindi languages, each version being equally authentic.

For the Government of the Republic of India

For the Government of
Canada

ProtocolAt the signing of the Agreement between the Government of Canada and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, the undersigned have agreed upon the following provisions which shall be an integral part of the Agreement:

- 1. It is understood that the term "fiscal year" in relation to Indian tax, means "previous year" as defined in the Income Tax Act, 1961.**
- 2. It is understood that the provisions of paragraph 1 of Article 6 also apply to income, other than capital gains, derived from the alienation of immovable property.**
- 3. It is understood that where an enterprise of a Contracting State has a permanent establishment in the other Contracting State in accordance with the provisions of paragraphs 2(j), 2(k) or 2(l) of Article 5, and the time period referred to in that paragraph extends over two taxable years, a permanent establishment shall not be deemed to exist in a year, if any, in which the use, site, project or activity, as the case may be, continues for a period or periods aggregating less than 30 days in that taxable year. A permanent establishment will exist in the other taxable year, and the enterprise will be subject to tax in that other Contracting State in accordance with the provisions of Article 7, but only on income arising during that other taxable year.**
- 4. With reference to Article 13, it is understood that the term "alienation" includes a "transfer" within the meaning of Indian taxation laws.**
- 5. It is understood that nothing in the Agreement shall be construed as preventing a Contracting State from imposing a tax on amounts included in the income of a resident of that Contracting State with respect to a partnership, trust, or controlled foreign affiliate, in which he has an interest.**

In Witness Whereof the undersigned, duly authorized to that effect, have signed this Protocol. Done in duplicate at Delhi, this 11th day of January 1996, in the English, French and Hindi languages, each version being equally authentic.

For the Government of the Republic of India

For the Government of

Canada