

# DOUBLE TAXATION AVOIDANCE AGREEMENT

ALL AGREEMENTS OF NEPAL WITH OTHER  
NATIONS IN RELATION TO DOUBLE TAXATION

RUPESH BHANDARI

Book: Double Taxation Avoidance Agreement

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## **PREAMBLE**

The Governments of the SAARC (South Asian Association for Regional Cooperation) Member States comprising the People's Republic of Bangladesh, the Kingdom of Bhutan, the Republic of India, the Republic of Maldives, the State of Nepal, the Islamic Republic of Pakistan and the Democratic Socialist Republic of Sri Lanka;

**Desiring** to conclude an Agreement on Avoidance of Double Taxation and Mutual Administrative Assistance in tax matters with a view to promoting economic cooperation amongst the SAARC Member States

**Have agreed as follows:**

### **Article 1**

#### **GENERAL DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires:
  - (a) the term "Member State" means one of the States as per **Schedule-I**;
  - (b) 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 Member States;
  - (c) the term "tax" means, tax (es) covered as per **Schedule-II**, as the context requires;
  - (d) the term "Competent Authority" means Competent Authority as per **Schedule III**;
  - (e) the term "national" means any individual possessing the nationality of a Member State; and
  - (f) the term "fiscal year" means the year as defined in **Schedule IV**.
2. As regards the application of the Agreement at any time by a Member State any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Member State for the purposes of the taxes to which the Agreement applies and any meaning under the applicable tax laws of that Member State prevailing over a meaning given to the term under other laws of that Member State.

### **Article 2**

#### **PERSONS COVERED**

This Agreement shall apply to persons who are residents of one or more of the Member States, in respect of which it has entered into force in accordance with Article 16.

## **Article 3**

### **TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed by or on behalf of the Member States.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid or deemed to be paid by enterprises.
3. The existing taxes to which the Agreement shall apply are listed in **Schedule-II**.
4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The Competent Authorities of the Member States shall notify the SAARC Secretariat of any significant changes that have been made in their respective taxation laws.

## **Article 4**

### **RESIDENT**

1. For the purposes of this Agreement, the term “resident of a Member State” means any person who, under the laws of that Member State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that Member State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that Member State in respect only of income from sources in that Member State.
2. Where, by reason of the provisions of paragraph 1, an individual is a resident of more than one Member State, his/her status shall be determined as follows:
  - a) he/she shall be deemed to be a resident only of the Member State in which he/she has a permanent home available to him/her; if he/she has a permanent home available to him/her in more than one Member State, he/she shall be deemed to be a resident only of the Member State with which his/her personal and economic relations are closer (centre of vital interests);
  - b) if the Member State in which he/she has his/her centre of vital interests cannot be determined, or if he/she has not a permanent home available to him/her in any Member State, he/she shall be deemed to be a resident only of the Member State in which he/she has an habitual abode;
  - c) if he/she has an habitual abode in more than one Member State or in neither of them, he/she shall be deemed to be a resident only of the Member State of which he/she is a national;

- d) if he/she is a national of more than one Member State or of none of them, the Competent Authorities of the concerned Member 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 more than one Member State, it shall be deemed to be a resident only of the Member State in which its place of effective management is situated. If the Member State in which its place of effective management is situated cannot be determined, then the Competent Authorities of the concerned Member States shall settle the question by mutual agreement.

## **Article 5**

### **EXCHANGE OF INFORMATION**

1. The Competent Authorities of the Member States shall exchange such information, including documents and public documents or certified copies thereof, as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Member States concerning taxes covered by this agreement insofar as the taxation thereunder is not contrary to the Agreement. Any information received by a Member State shall be treated as secret in the same manner as information obtained under the domestic laws of that Member 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, 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 Member State the obligation:
  - (a) to carry out administrative measures at variance with the laws and administrative practices of that or of the other Member State;
  - (b) to supply information, including documents and public documents or certified copies thereof, which are not obtainable under the laws or in the normal course of the administration of that or of the other Member 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).

## **Article 6**

### **ASSISTANCE IN THE COLLECTION OF TAXES**

1. The Member States shall lend assistance to each other in the collection of revenue

- claims. The Competent Authorities of the Member 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 covered by the Agreement together with interest, penalties and costs of collection or conservancy related to such amount.
  3. When a revenue claim of a Member State is enforceable under the laws of that Member State and is owed by a person who, at that time, cannot, under the laws of that Member State, prevent its collection, that revenue claim shall, at the request of the Competent Authority of that Member State, be accepted for purposes of collection by the Competent Authority of the other Member State, and that revenue claim shall be collected by that other Member 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 Member State.
  4. When a revenue claim of a Member State is a claim in respect of which that Member 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 Member State, be accepted for purposes of taking measures of conservancy by the Competent Authority of the other Member State. That other Member 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 Member State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned Member State or is owed by a person who has a right to prevent its collection.
  5. The provisions of this Article shall be invoked on request of a Member State only after all permissible measures of recovery under the domestic laws of that Member State have been exhausted.
  6. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Member State for purposes of paragraph 3 or 4 shall not, in that Member State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that Member State by reason of its nature as such. In addition, a revenue claim accepted by a Member State for the purposes of paragraph 3 or 4 shall not, in that Member State, have any priority applicable to that revenue claim under the laws of the other Member State.
  7. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Member State shall only be brought before the courts or administrative bodies of that Member State. 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 Member State.
  8. Where, at any time after a request has been made by a Member State under paragraph 3

or 4 and before the other Member State has collected and remitted the relevant revenue claim to the first-mentioned Member 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 Member State that is enforceable under the laws of that Member State and is owed by a person who, at that time, cannot, under the laws of that Member State, prevent its collection, or
- (b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned Member State in respect of which that Member State may, under its laws, take measures of conservancy with a view to ensure its collection. The Competent Authority of the first-mentioned Member State shall promptly notify the Competent Authority of the other Member State of that fact and, at the option of the other Member State, the first-mentioned Member State shall either suspend or withdraw its request.

9. In no case shall the provisions of this Article be construed so as to impose on a Member State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Member State;
- (b) to carry out measures which would be contrary to public policy (ordre public);
- (c) to provide assistance if the other Member State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practices;
- (d) to provide assistance in those cases where the administrative burden for that Member State is clearly disproportionate to the benefit to be derived by the other Member State.

## **Article 7**

### **SERVICE OF DOCUMENTS**

- 1. At the request of the applicant Member State the requested Member State shall serve upon the addressee, documents and public documents including those relating to judicial decisions, which emanate from the applicant Member State and which relate to a tax covered by this Agreement.
- 2. The requested Member State shall effect service of documents, including public documents:
  - (a) by a method prescribed by its domestic laws for the service of documents of a substantially similar nature;
  - (b) to the extent possible, by a particular method requested by the applicant Member State or the closest to such method available under its own laws.

3. A Member State may effect service of documents directly through the post on a person in another Member State.
4. Nothing in the Agreement shall be construed as invalidating any service of documents by a Member State in accordance with its laws.
5. When a document is served in accordance with this Article and it is not in English language, the same should be accompanied by a translation into English.

## **Article 8**

### **PROFESSORS, TEACHERS AND RESEARCH SCHOLARS**

1. A professor, teacher or research scholar who is or was a resident of the Member State immediately before visiting the other Member State for the purpose of teaching or engaging in research, or both, at a university, college or other similar approved institution in that other Member State shall be exempt from tax in that other Member State on any remuneration for such teaching or research for a period not exceeding two years from the date of his/her arrival in that other Member State.
2. For the purposes of this Article, an individual shall be deemed to be a resident of a Member State if he/she is resident in that Member State in the fiscal year in which he/she visits the other Member State or in the immediately preceding fiscal year.
3. For the purposes of paragraph 1 “approved institution” means an institution which has been approved in this regard by the Government of the concerned Member State.

## **Article 9**

### **STUDENTS**

1. A student who is or was a resident of one of the Member States immediately before visiting the other Member State and who is present in that other Member State solely for the purpose of his/her education or training shall, besides grants, loans and scholarships and any payments received from sources outside that State for the purpose of his/her maintenance, education or training, be exempt from tax in that other Member State on remuneration which he/she derives from an employment which he/she exercises in the other Member State if the employment is directly related to his/her studies.
2. The exemption available under paragraph 1 above in respect of remuneration from employment shall not exceed an amount equal to US\$ 3000/- per annum.
3. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article, for more than six consecutive years from the date of his/her first arrival in that other Member State.

## **Article 10**

### **TRAINING**

1. The Member States shall endeavour to hold and organise training programmes, seminars and workshops for the tax administrators with the objective of:
  - (i) providing a common forum for senior tax administrators to meet and discuss problems of common concern;
  - (ii) enhancing the technical and administrative knowledge and skills of tax administrators; and
  - (iii) evolving strategies to combat common tax problems like tax avoidance/evasion in the SAARC region.

## **Article 11**

### **SHARING OF TAX POLICY**

1. Each Member State shall endeavour to bring out a yearly report on changes made in its tax laws. This may also cover introduction of new systems or techniques for circulation among the Member States.
2. A Member State may, on request, make available its pool of talented experts to other Member States for the purposes of drafting and organising legislation, tax procedures, operational management, on-the-job training programmes, information system and technology etc.

## **Article 12**

### **IMPLEMENTATION**

The Member States shall hold periodic consultations, as appropriate, of Competent Authorities, with a view to facilitating the effective implementation of this Agreement.

## **Article 13**

### **REVIEW**

The Member States shall meet in order to review this Agreement on request or at the end of five years from the date of its entry into force, unless they notify the SAARC Secretariat, in writing, that no such review is necessary.

## **Article 14**

### **AMENDMENTS**

This Agreement may be amended by consensus. Any such amendment will become

effective upon the deposit of instrument(s) of acceptance with the Secretary-General of SAARC by all Member States and issuance of notification thereof by the SAARC Secretariat. Such an amendment shall have effect in the Member States from the date of commencement of their respective fiscal year following the issuance of notification by the SAARC Secretariat.

## **Article 15**

### **DEPOSITORY**

This Agreement will be deposited with the Secretary General of SAARC, who will furnish a certified copy thereof to each Member State.

## **ARTICLE 16**

### **ENTRY INTO FORCE**

1. This Agreement shall enter into force on the thirtieth day after the notification issued by the SAARC Secretariat regarding completion of all formalities, including ratification, wherever applicable, by all Member States.
2. The provisions of this Agreement shall have effect:

(i) **In Bangladesh**

- (a) in respect of taxes withheld at source, in respect of amounts paid or credited on or after the first day of July next following the date upon which the Agreement enters into force;
- (b) with regard to other taxes, in respect of tax years beginning on or after the first day of July next following the date upon which the Agreement enters into force;

(ii) **In Bhutan**

- (a) in respect of taxes withheld at source, in respect of amounts paid or credited on or after the first day of July next following the date upon which the Agreement enters into force;
- (b) with regard to other taxes, in respect of tax years beginning on or after the first day of July next following the date upon which the Agreement enters into force

(ii) In India, in respect of income derived in any fiscal year on or after the first day of April next following the date upon which the Agreement enters into force;

(iv) **In Maldives** in respect of income derived in any fiscal year on or after the first day of January next following the date upon which the Agreement enters into force;

- (v) **In Nepal** in respect of income arising in any year of income beginning on or after the first day of Nepalese fiscal year starting mid-July next following the date upon which the Agreement enters into force;
- (vi) **In Pakistan:**
  - (a) in respect of taxes withheld at source, in respect of amounts paid or credited on or after the first day of July next following the date upon which the Agreement enters into force;
  - (b) with regard to other taxes, in respect of tax years beginning on or after the first day of July next following the date upon which the Agreement enters into force; and
- (vii) **In Sri Lanka** in respect of income derived on or after the first day of April of the year next following the date upon which the Agreement enters into force;

## Article 17

### TERMINATION

This Agreement shall remain in force indefinitely until terminated by a Member State. A Member State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect:

- (i) **In Bangladesh**, in respect of income derived in any fiscal year on or after the first day of July next following the expiration of six months period from the date on which the written notice of termination is given;
- (ii) **In Bhutan**, in respect of income derived in any fiscal year on or after the first day of July next following the expiration of six months period from the date on which the written notice of termination is given;
- (iii) **In India**, in respect of income derived in any fiscal year on or after the first day of April next following the expiration of six months period from the date on which the written notice of termination is given;
- (iv) **In Maldives**, in respect of income derived in any fiscal year on or after the first day of January next following the expiration of six months period from the date on which the written notice of termination is given;
- (v) **In Nepal**, in respect of income derived in any fiscal year on or after the first day of mid-July next following the expiration of six months period from the date on which the written notice of termination is given;
- (vi) **In Pakistan**, in respect of income derived in any fiscal year on or after the first day of July next following the expiration of six months period from

the date on which the written notice of termination is given; and

- (vii) **In Sri Lanka**, in respect of income derived on or after the first day of April of the year next following the expiration of six months period from the date on which the written notice of termination is given;

**IN WITNESS WHEREOF**, the undersigned, duly authorized thereto, have signed this Agreement.

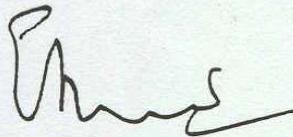
**DONE at Dhaka, Bangladesh, On This The Thirteenth Day of November Two Thousand Five, In Nine Originals In English Language, All Texts Being Equally Authentic.**



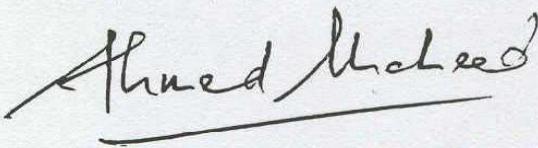
**M. MORSHED KHAN, M.P.**  
Minister of Foreign Affairs  
People's Republic of Bangladesh



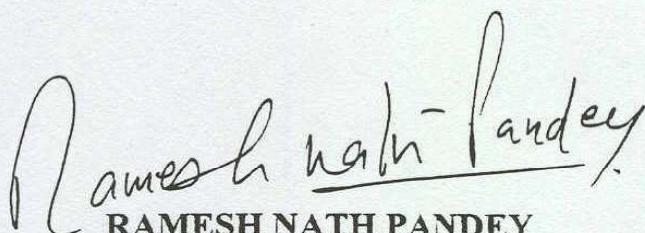
**KHANDU WANGCHUK**  
Minister for Foreign Affairs  
Kingdom of Bhutan



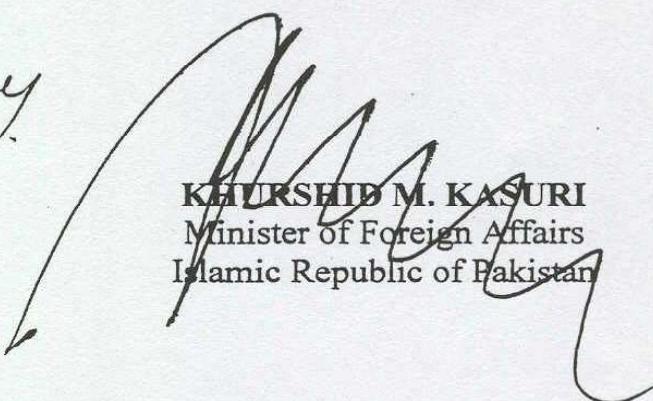
**E. AHAMED**  
Minister of State for External Affairs  
Republic of India



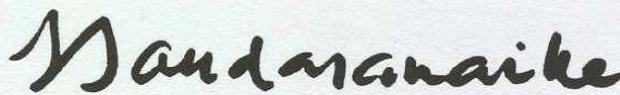
**DR. AHMED SHAHEED**  
Minister of Foreign Affairs  
Republic of Maldives



**RAMESH NATH PANDEY**  
Minister for Foreign Affairs  
Nepal



**KHURSHID M. KASURI**  
Minister of Foreign Affairs  
Islamic Republic of Pakistan



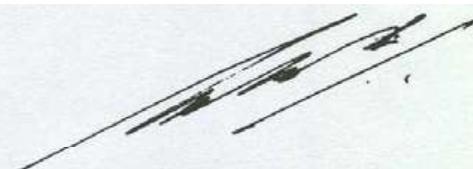
**ANURA BANDARANAIKE, M.P.**  
Minister of Foreign Affairs  
Democratic Socialist Republic of Sri Lanka

## PROTOCOL

On formalization, this SAARC Limited Multilateral Agreement on Avoidance of Double Taxation and Mutual Administrative Assistance in Tax Matters shall be applicable only in the Member States where an adequate Direct Tax Structure is in place. Further, in case of a Member State where such a structure is not in place, this Agreement shall become effective from the date on which such a Member State introduces a proper Direct Tax Structure and notifies the SAARC Secretariat to this effect.

Further that in the event of a conflict between the provisions of this Limited Multilateral Agreement and that of any bilateral Double Taxation Avoidance Agreement between the Member States, the provisions of the Agreement signed or amended at a later date shall prevail. -

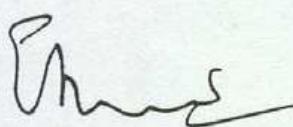
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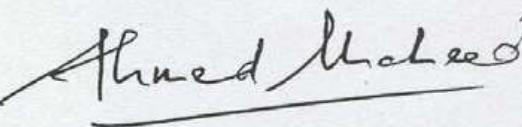
**M. MORSHED KHAN, M.P.**  
Minister of Foreign Affairs  
People's Republic of Bangladesh



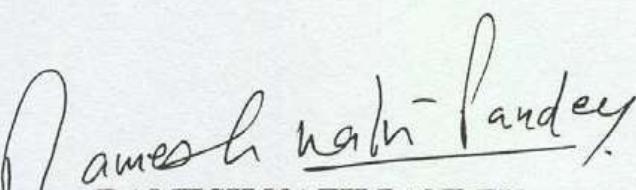
**KHANDU WANGCHUK**  
Minister for Foreign Affairs  
Kingdom of Bhutan



**E. AHAMED**  
Minister of State for External Affairs  
Republic of India



**DR. AHMED SHAHEED**  
Minister of Foreign Affairs  
Republic of Maldives



**RAMESH NATH PANDEY**  
Minister for Foreign Affairs  
Nepal



**KHURSHID M. KASURI**  
Minister of Foreign Affairs  
Islamic Republic of Pakistan



**ANURA BANDARANAIKE, M.P.**  
Minister of Foreign Affairs  
Democratic Socialist Republic of Sri Lanka

## **Schedule I**

### **MEMBER STATES TO THE AGREEMENT**

1. The People's Republic of Bangladesh
2. Kingdom of Bhutan
3. Republic of India
4. Republic of Maldives
5. State of Nepal
6. Islamic Republic of Pakistan
7. Democratic Socialist Republic of Sri Lanka

## **Schedule II**

### **TAXES COVERED**

The existing taxes to which this Agreement shall apply:

- |    |               |  |
|----|---------------|--|
| 1. | In Bangladesh | Taxes on income that is direct tax   |
| 2. | In Bhutan     | Income Tax imposed under Income Tax Act 2001 and the rules thereof   |
| 3. | In India      | Income Tax, including any surcharge thereon  |
| 4. | In Maldives   | Taxes on income that is direct tax   |
| 5. | In Nepal      | Income Tax imposed under the Income Tax Act, 2058  |
| 6. | In Pakistan   | Taxes on Income  |
| 7. | In Sri Lanka  | Income tax including the income tax based on the turnover of enterprises licensed by the Board of Investment |

## **Schedule III**

### **COMPETENT AUTHORITY**

The term “Competent Authority” means :

1.	In Bangladesh	National Board of Revenue or its authorized representative
2.	In Bhutan	The Ministry of Finance or its authorized representative
3.	In India	The Finance Minister, Government of India, or its authorized representative
4.	In Maldives	Department of Inland Revenue, Ministry of Finance and Treasury
5.	In Nepal	The Government of Nepal, Ministry of Finance or its authorized representative
6.	In Pakistan	Central Board of Revenue or its authorized representative
7.	In Sri Lanka	Commissioner General of Inland Revenue

#### **Schedule IV**

#### **FISCAL YEAR**

The term “fiscal year” means:

1.	In case of Bangladesh	1 <sup>st</sup> July – 30 <sup>th</sup> June
2.	In case of Bhutan	1 <sup>st</sup> July – 30 <sup>th</sup> June
3.	In case of India	1 <sup>st</sup> April – 31 <sup>st</sup> March
4.	In case of Maldives	1 <sup>st</sup> January – 31 <sup>st</sup> December
5.	In case of Nepal	The fiscal year beginning mid-July
6.	In case of Pakistan	1 <sup>st</sup> July – 30 <sup>th</sup> June
7.	In case of Sri Lanka	1 <sup>st</sup> April – 31 <sup>st</sup> March

2. The Islamic Republic of Afghanistan, pursuant to its solemn agreement to do so, shall subscribe or accede, as the case may be, to the SAARC Charter, all SAARC Declarations, all legal instruments of SAARC, all Agreements and Decisions of SAARC.

DONE ad New Delhi on the Third Day of April in the Year Two Thousand and Seven,  
In Ten Originals In The English Language All Texts Being Equally Authentic.

**Hamid Karzai**  
President of the  
Islamic Republic of Afghanistan

**Dr. Fakhruddin Ahmen**  
Chief Adviser  
(Head of the Government)  
Government of the  
People's Republic of Bangladesh

**Lyonpo Khandu Wangchuk**  
Prime Minister of the  
Kingdom of Bhutan

**Dr. Manmohan Singh**  
Prime Minister of the  
Republic of India

**Maumoon Abdul Gayoom**  
President of the  
Republic of Maldives

**Girija Prasad Koirala**  
Prime Minister of Nepal

**Shaukat Aziz**  
Prime Minister of the  
Islamic Republic of Pakistan

**Mahinda Rajapaksa**  
President of the Democratic  
Socialist Republic of Sri Lanka

**THE GOVERNMENT OF NEPAL and THE GOVERNMENT OF THE KINGDOM OF NORWAY** 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:

## **Article 1**

### **PERSONAL SCOPE**

This Agreement shall apply to persons who are residents of one or both of the contracting States.

## **Article 2**

### **TAXES COVERED**

1. This Agreement shall apply to taxes on income and on capital imposed by a Contracting State.
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 the amounts of wages or salaries paid by enterprises as well as taxes on capital appreciation.
3. The existing taxes to which the Agreement shall apply are in particular:
  - a) in Norway:
    - i) the national tax on income ( inntektsskatt til staten);
    - ii) the county municipal tax on income (inntektsskatt til fylkeskommunen) ;
    - iii) the municipal tax on income (inntektsskatt til kommunen ) ;
    - iv) the national contributions to the Tax Equalisation Fund (fellesskatt til Skattefordelingsfondet );
    - v) the national tax on capital (formuesskatt til staten);
    - vi) the municipal tax on capital (formuesskatt til kommunen); and
    - vii) the national dues on remuneration to non-resident artistes ( avgift til staten av honorarer som tilfaller kunstnere bosatt i utlandet );  
(hereinafter referred to as " Norwegian tax");
  - b) in Nepal ;
    - i) Income tax imposed under The Income tax Act ; and
    - ii) Property tax imposed under The property tax Act ;

(hereinafter referred to as " Nepalese 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 the Agreement in addition to, or in place of, the existing taxes.

## **Article 3**

### **GENERAL DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires:
  - a) the term "Norway" means the Kingdom of Norway, the term does not comprise svalbard, Jan Mayen and the Norwegian dependencies ("biland");
  - b) the term "Nepal" means the Territory of Nepal;
  - c) the term "nationals" means:
    - (i) all individuals possessing the nationality of a Contracting State;
    - (ii) all legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State;
  - d) the term "person" includes an individual, a company and any other body of persons;
  - e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
  - f) the terms "a Contracting State" and "the other Contracting State" mean Norway (excluding dependencies ) or Nepal as context requires;
  - g) 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;
  - h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
  - i) the "competent authority" means:
    - (i) in Norway, the Minister of Finance and Customs or his authorised representative;
    - (ii) in Nepal, Minister of Finance or his authorised representative.
2. As regards the application of the Agreement by a Contracting State any

term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies.

## **Article 4**

### **RESIDENT**

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. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.
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 as follows:
  - 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 ( centre of vital interest );
  - 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 provision of paragraph 1, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

## **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" includes 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, and
- b) a warehouse.
3. A building site, a construction, assembly or installation project or a supervisory or consultancy activity connected therewith constitutes a permanent establishment only if such site, project or activity lasts for a period of more than 6 months.
4. The term "permanent establishment" also includes the furnishing of services by an enterprise through employees or other personnel, where activities continue within the country for a period or periods aggregating more than 183 days in any period of twelve-months.
5. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
- a) the use of facilities solely for the purpose of storage or display 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 or display;
  - 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 carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
  - f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub- paragraphs a)to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
6. Notwithstanding the provisions of paragraph 1 and 2, where a person other than

- an agent of an independent status to whom paragraph 8 applies is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 5 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
7. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 8 applies.
  8. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that 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.
  9. 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.

## **Article 6**

### **INCOME FROM IMMOVABLE PROPERTY**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under the law 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 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 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.
3.
  - a. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses allowed under the provisions of domestic law which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the state in which the permanent establishment is situated or elsewhere.
  - b. However, no such deduction shall be allowed in respect of amounts, if any, paid (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 or other rights or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on monies 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 any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on monies lent to the head office of the enterprise or any of its other offices.
4. 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, AIR TRANSPORT AND CONTAINERS**

1. Profits from the operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State shall be taxable only in that Contracting State.
2. The profits of an enterprise of a Contracting State from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise shall be taxable only in that Contracting State, except insofar as those containers or trailers and related equipment are used for transport solely between places within the other Contracting State.
3. The provisions of paragraphs 1 and 2 shall also apply to profits derived from the participation in a pool, a joint business or in an international operating agency.
4. The provisions of paragraphs 1,2 and 3 shall apply to profits derived by the joint Norwegian, Danish and Swedish air transport consortium Scandinavian Airlines System (SAS), but only insofar as profits derived by Det Norske Luftfartsselskap A/S (DNL), the Norwegian partner of the Scandinavian Airline System (SAS), are in proportion to its share in that organisation.

## **Article 9**

### **ASSOCIATED ENTERPRISES**

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 profits which would, but for those conditions, have accrued to one of the enterprises, but, by reasons of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

## **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) 5 percent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 percent of the shares of the company paying the dividends;
  - b) 10 percent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 percent of the shares of the company paying the dividends;
  - c) 15 percent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other contracting State, of which the company paying the dividends is 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.

5. Where a company which is 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 11**

### **INTEREST**

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 laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 15 percent of the gross amount of the interest.

Provided, however, that where the interest is paid to a bank carrying on bona fide banking business, which is resident of the other Contracting State and is the beneficial owner of the interest, the tax charged in the Contracting State in which the interest arises shall not exceed 10 percent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2,
  - a) interest arising in Nepal shall be taxable only in Norway if the interest is paid to:
    - (i) the state of Norway, a political sub-division, a local authority or a statutory body there of;
    - (ii) the Central Bank of Norway;
    - (iii) the Norwegian Guarantee Institute for Export Credits;
    - (iv) A/S Eksportfinans; or
    - (v) any other institution , similar to those mentioned in subdivision (iii)-(iv), as may be agreed from time to time between the competent authorities of the Contracting States;
  - b) interest arising in Norway shall be taxable only in Nepal if the interest is paid to:

- i) the state of Nepal, a political subdivision, a local authority or a statutory body thereof ;
  - ii) Central Bank of Nepal;
  - iii) any organisation established in the State of Nepal after the date of signature of this Agreement and which is of a similar nature as any organisation established in Norway and referred to in subdivision a)(iii) -
  - (iv) ( the competent authorities of the Contracting States shall by mutual agreement determine whether such organisations are of a similar nature); or
  - iv) any institution similar to any of those referred to in subdivision a) (v), as may be agreed from time to time between the competent authorities of the Contracting States;
- c) interest arising in a Contracting State on a loan guaranteed by any of the bodies mentioned or referred to in sub- paragraph a) or sub-paragraph b) and paid to a resident of the other Contracting State shall be taxable only in that other State.
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. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
5. The provisions of paragraph 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 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 laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **Article 12**

### **ROYALTIES**

1. Royalties 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, may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 15 percent of the gross amount of the royalties. For the purposes of this paragraph, if a lower rate of Nepalese tax is agreed upon with any other State than Norway after the entry into force of this Agreement such rates shall be applied.
3. The term "royalties" as used in this Article means payments of any kind received as Consideration for the use of or the right to use, any copyright of literary, artistic or scientific work including cinematography films, or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraph 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties 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 or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provision of Article 7 or Article 14, as the case may be shall apply.
5. Royalties 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, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. 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 royalties, having regard to

the use, right or information 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 such case, the excess part of the payments shall remain taxable according to laws of each Contracting State, due regard being had to the other provisions of the Agreement.

## **Article 13**

### **CAPITAL GAINS**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the profits of the enterprise are taxable according to Article 8 of this Agreement.
4. Gains derived by an enterprise of a Contracting State from the alienation of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise shall be taxable only in that Contracting State, except insofar as those containers or trailers and related equipment are used for transport solely between places within the other Contracting State.
5. Gains from the alienation of any property other than those referred to in the preceding paragraphs shall be taxable only in the Contracting State of which the alienator is a resident.

## **Article 14**

### **INDEPENDENT PERSONAL SERVICES**

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State. However, such income may also be taxed in the other Contracting State if:

- a) the individual is present in the other State for a period or periods exceeding in the aggregate 183 days in any period of twelve months; or
  - b) the individual has a fixed base regularly available to him in that other State for the purpose of performing his activities;
- but only so much thereof as is attributable to services performed in that other State.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

## **Article 15**

### **DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 16,17,18 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 that other State for a period or periods not exceeding in the aggregate 183 days in any period of twelve months; and
  - b) the remuneration is paid by, or on behalf of, an employer who is a resident of the State of which the recipient is a resident, and whose activity does not consist of the hiring out of labour; and
  - c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in that other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the profits of the enterprise are taxable according to Article 8 of this Agreement. However, where remuneration is derived in respect of an employment exercised aboard a ship registered in the Norwegian international Ships' register (N.I.S.), such remuneration shall be taxable only in the Contracting State of which the recipient is a resident.
4. Where a resident of Norway derives remuneration in respect of an employment exercised aboard an aircraft operated in international traffic by the Scandinavian Airlines System (SAS) consortium, such remuneration shall be taxable only in Norway.

## **Article 16**

### **DIRECTORS FEES**

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or of 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 SPORTSMEN**

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theater, motion picture, radio or television artists, or a musician, or as a sportsman , from his personal activities as much exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by a entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Article 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.
3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by entertainers or sportsmen if the visit to that State is substantially supported by public funds of the other Contracting State or a political subdivision or local authority thereof. In such a case the income shall be taxable only in the State of which the entertainers or sportsman is a resident.

## **Article 18**

### **PENSIONS, ANNUITIES AND PAYMENTS UNDER A SOCIAL SECURITY SYSTEM**

Pensions (including Government pensions and payments under a social security system ) and annuities paid to a resident of a Contracting State shall be taxable only in that State.

## **Article 19**

### **GOVERNMENT SERVICE**

1. a) 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 shall be taxable only in that State.  
b) However, such remuneration shall be taxable only in the other Contracting State if the

- services are rendered in that State and the individual is a resident of that State who:
- (i) is a national of that State; or
  - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. The provisions of Articles 15 and 16 shall apply to remuneration other than pensions 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**

1. Payments which a student or business apprentice 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 arise from sources outside that State.
2. In respect of grants, scholarships and remuneration from employment not covered by paragraph 1, a student or business apprentice described in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respects of taxes available to residents of the State which he is visiting. However, if such exemption, relief or reduction is subject to limitations under domestic law based on the length of the stay, these limitations shall apply.

## **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 in 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.

## **Article 22**

### **CAPITAL**

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State may be taxed in that other State.
2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other state.
3. Capital represented by ships or aircraft operated in international traffic, and by movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the profits of the enterprise are taxable according to Article 8 of this agreement.
4. Capital of an enterprise of a Contracting State represented by containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise shall be taxable only in that Contracting State, except insofar as those containers or trailers and related equipment are used for transport solely between places within the other Contracting State.
5. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

## **Article 23**

### **ELIMINATION OF DOUBLE TAXATION**

1. In Norway double taxation shall be avoided as follows:
  - a) Subject to the provisions of the laws of Norway regarding the allowance as credit against Norwegian tax of tax payable in a territory outside Norway (which shall not affect the general principle hereof).

Where a resident of Norway derives income or owns elements of capital which, in accordance with the provisions of this Agreement, may be taxed in Nepal, Norway shall allow:

    - (i) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Nepal;
    - (ii) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in Nepal on elements of capital;

Such deduction in either case shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is giving , which is attributable, as the case may be, to the income or the same elements of capital which may be taxed in Nepal.

- b) Where in accordance with any provision of the Agreement income derived or capital owned by a resident of Norway is exempt from tax in Norway, Norway may nevertheless, in calculating the amount of tax on the remaining income or capital or such resident, take into account the exempted income or capital.
- c) Where exemption from or reduction of Nepalese tax, payable in accordance with the provisions of Article 7 in respect of profits derived by a Norwegian enterprise from a permanent establishment situated in Nepal, has been granted under Nepalese law designed to extend time limited tax incentive to promote foreign investment for the purpose of the economic development of Nepal, then, for the purposes of subparagraph a) (i) deduction from Norwegian tax for Nepalese tax shall be allowed as if no such exemption or reduction had been granted, provided that the permanent establishment is engaged in business activities (other than business activities in the financial sector) and that no more than 25 percent of such profits consist of interest and gains from the alienation of shares or bonds, or consist of profits derived from third states. The provisions of this sub-paragraph shall apply for the first 10 years for which the Agreement is effective. The competent authorities shall consult each other in order to determine whether this period shall be extended.
- d) In case Nepal introduces a withholding tax on dividends to which the provisions of Article 10 apply, then the provisions of subparagraph c) shall be applied correspondingly to any exemption or reduction of Nepalese withholding tax on such dividends below the rates stated in paragraph 2 of Article 10.

2. In Nepal double taxation shall be avoided as follows:

- a) Subject to the provisions of the law of Nepal regarding the allowance as a credit against Nepalese tax of tax payable in a territory outside Nepal ( which shall not affect the general principle hereof ) Norwegian tax payable under the law of Norway and in accordance with the provisions of this Agreement, whether directly or by deduction, on income from sources within Norway shall be allowed as a credit against any Nepalese tax computed by reference to the same items of income by reference to which the Norwegian tax is computed.
- b) Where under the Agreement a resident of Nepal is exempt from tax in Nepal in respect of income derived from Norway, then Nepal may, in calculating tax on the remaining income of that person, apply the rate of tax which would have been applicable if the income exempted from tax in accordance with the Agreement had not been so exempted.

## **Article 24**

### **NON- 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. This provision shall, notwithstanding the provisions of Article 1 , also apply to persons who are not residents of one or both of the Contracting States.
2. Stateless persons who are residents 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.
3. 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. This provision shall not 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. Except where the provisions of Article 9, paragraph 7 of Article 11 or paragraph 6 of Article 12 apply, interest , royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first -mentioned State.
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 are or may be subjected.
6. The provisions of this Article shall apply to taxes covered by the Agreement.

## **Article 25**

### **MUTUAL AGREEMENT PROCEDURE**

1. Where a person 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 to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the receipt of the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority 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. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
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. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a commission consisting of representatives of the Contracting States.

## **Article 26**

### **EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is relevant for carrying out the provisions of this Agreement and of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as 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 or

- prosecution 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 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).

## **Article 27**

### **DIPLOMATIC AND CONSULAR OFFICERS**

Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officers under the general rules of international law or under the provisions of special agreements.

## **Article 28**

### **ENTRY INTO FORCE**

1. Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement.
2. The Agreement shall enter into force on the date of receipt of the later of these notifications and shall thereupon have effect in respect of taxes on income or on capital relating to the fiscal year ( including accounting periods beginning in any such year ) next following that in which the Agreement enters into force and subsequent years.

## **Article 29**

### **TERMINATION**

This Agreement shall remain in force indefinitely, but either of the Contracting States may, on or before 30th. June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through the diplomatic channels, written notice of termination. In such event, the Agreement shall cease to have effect in respect of taxes on income or on capital relating to the fiscal year (including accounting periods beginning in such year) next following that in which the notice is given.

In witness whereof the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Kathmandu, Nepal this 13th day of May 1996. in the English language.

For The Government  
of Nepal.

For the Government of  
the Kingdom of Norway.

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**Mr. Chin Kaji Shrestha**  
Assistant Minister For Finance,  
Ministry of Finance,  
The Government of Nepal.

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**Mr. Asbjorn Mathisen**  
Deputy Minister For Development Cooperation  
Royal Ministry of Foreign Affairs, Norway.

THE GOVERNMENT OF NEPAL AND THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRILANKA DESIRING TO CONCLUDE AN AGREEMENT FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME,

HAVE AGREED AS FOLLOWS :

## **Article 1**

### **PERSONAL SCOPE**

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

## **Article 2**

### **TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property.
3. The existing taxes to which the Agreement shall apply are;
  - (a) in Sri Lanka;  
the income tax , including the income tax based on the turnover of enterprises licensed by the Board of Investment,  
(hereinafter referred to as "Sri Lanka tax")
  - (b) in Nepal  
(i) Income tax imposed under The Income Tax Act;  
hereinafter referred to as "Nepal tax"
4. This Agreement shall also apply to any identical or substantially similar taxes on income which are imposed after the date of signature of the Agreement in addition to, or in place of, those referred to in paragraph 3. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

## **Article 3**

### **GENERAL DEFINITIONS**

1. For the purpose of this Agreement, unless the context otherwise requires:

- a) (i) the term "Sri Lanka " means the territory which constitutes the Democratic Socialist Republic of Sri Lanka,
    - (ii) the term "Nepal" means the Territory of Nepal;
  - b) the terms "a Contracting State" and " the other Contracting State" means Sri Lanka or Nepal as the context requires;
  - c) the term "person" includes an individual, a company and any other body of persons;
  - d) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
  - e) 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 by a resident of the other Contracting State;
  - f) the term " international traffic " means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
  - g) the term "nationals" means;
    - i) all individuals possessing the nationality of a Contracting States;
    - ii) all legal persons, partnerships and associations deriving status as such from the laws in force in a Contracting States;
  - h) the term " competent authority " means
    - i) in the case of Sri Lanka, the Commissioner General of Inland Revenue;
    - ii) in the case of Nepal, the authorized representative of the Minister for Finance ;
2. As regards the application of the Agreement by a Contracting State, any term not defined therein 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 this Agreement.

## **Article 4**

### **RESIDENT**

- 1. For the purposes of this Agreement , the term "resident of a Contracting State" means any persons 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 reasons of the provisions of paragraph 1 an individual is a resident of

both Contracting States, then his status shall be determined as follows;

- 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 (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 Contracting 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, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

## **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" includes 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;
  - h) a farm or plantation;
3. The term " permanent establishment" likewise encompasses;

- a) a building site, construction, assembly or installation project, or an installation or drilling rig or ship used for the exploration or development of natural resources, including supervisory activities in connection therewith, but only if that site, project, use lasts or those activities last more than 90 days;
  - b) the furnishing of services, including technical, managerial or consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than 90 days within any twelve month period.
4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include;
- a) the use of facilities solely for the purpose of storage or display 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 or display;
  - 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 carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person- other than an agent of an independent status to whom paragraph 7 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person;
- a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business would not make this fix place of business, a permanent establishment under the provisions of that paragraph; or
  - b) has no such authority , but habitually maintains in the first mentioned State a stock of goods or merchandise from which he delivers goods or merchandise on behalf of the enterprise; or

- c) habitually secures orders in the first- mentioned State for the enterprise and other enterprises which are controlled by it or have a controlling interest in it;
- 6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except with regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies;
- 7. 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 State through a broker, general commission agent or any other agent of an independent Status, where such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or principally on behalf of that enterprise, he shall not be considered an agent of an independent status within the meaning of this paragraph, if it is shown that the transactions between the agent and the enterprise were not made under arm's length conditions.
- 8. 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.

## **Article 6**

### **INCOME FROM IMMOVABLE PROPERTY**

- 1. Income from immovable property may be taxed in the Contracting State in which such property is situated.
- 2. The term "immovable property" shall have the meaning which it has under the law 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, boats and aircraft shall not be regarded as immovable property.
- 3. The provisions of paragraph 1 shall also apply to income derived from the direct use, letting, or use in any other form of immovable property.
- 4. The provisions of paragraph 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 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; (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or (c) other business activities carried on in that other State 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.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions, expenses allowable under the provisions of the domestic law and which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (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 or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on monies 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 or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on monies lent to the head office of the enterprise or any of its other offices.
4. 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. 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.
6. 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 in a Contracting State by an enterprise of the other Contracting State from the operation of ships in international traffic may be taxed in the first-mentioned State, but the tax so charged shall be reduced by an amount equal to 50 percent thereof.
2. Profits from the operation of aircraft in international traffic shall be taxable only in the contracting State of which the enterprise operating the aircraft is a resident.
3. The provisions of paragraph 1 and 2 shall also apply to profits from participation in a pool, a joint business or an international operating agency.

## **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 profits 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 profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State-and taxes accordingly -profits on which an enterprise of the other contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first- mentioned State if the

conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of the Agreement and the competent authorities of the Contracting States shall, if necessary, consult each other.

## **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 15 percent of the gross amount of the dividends.

The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. 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 from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State; of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article-7 or Article-14, as the case may be, shall apply.
5. 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 11**

### **INTEREST**

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 laws of that State, but if the recipient is the beneficial owner of Interest the tax so charged shall not exceed 15 percent of the gross amount of the interest. Provided, however, that where the interest is paid to a bank carrying on bonafide banking business, which is resident of the other Contracting State and is the beneficial owner of the interest, the tax charged in the Contracting State in which the interest arises shall not exceed 10 percent of the gross amount of interest.
3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived by the Government of the other Contracting State, including a local authority thereof, the Central Bank or any financial institution controlled by that Government, shall be exempt from tax in the first- mentioned State.
4. For the purposes of paragraph 3, the terms "the Central Bank" and "financial institution controlled by that Government" mean;
  - (a) In the case of Sri Lanka;
    - (i) the Central Bank of Sri Lanka;
    - (ii) such other financial institution, the capital of which is wholly owned by the Government of Democratic Socialist Republic of Sri Lanka, as may be agreed upon from time to time between the competent authorities of the two Contracting States;
  - (b) In the case of Nepal;
    - (i) Nepal Rastra Bank (Central bank of Nepal);
    - (ii) such other financial institutions, the capital of which is wholly owned by The Government of Nepal, as may be agreed upon from time to time between the competent authorities of the two Contracting States;
5. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by a mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this article.
6. 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 (a) such permanent establishment or fixed base, or with (b) business activities referred to under (c) of paragraph 1 of Article 7. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, 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.
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 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 laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **Article 12**

### **ROYALTIES**

1. Royalties 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, may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 15 percent of the gross amount of the royalties.
3. The term " royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties 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 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.
5. Royalties 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 whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
  6. 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, having regard to the use, right or information 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 to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **Article 13**

### **CAPITAL GAINS**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.
4. Gains from the alienation of stocks and shares of a company representing a participation of 25 percent or more may be taxed in the Contracting State in which they have been issued.

5. Gains from the alienation of any property other than that referred to in the preceding paragraphs shall be taxable only in the Contracting State of which the alienator is a resident.
6. The term "alienation" means the sale, exchange, transfer, or relinquishment of the property or the extinguishment of any rights therein or the compulsory acquisition thereof under any law in force in the respective Contracting States.

## **Article 14**

### **INDEPENDENT PERSONAL SERVICES**

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities or he is present in that other State for a period or periods exceeding in the aggregate 90 days in any twelve month period. If he has such a fixed base or is present in that other State for the aforesaid period or periods, the income, may be taxed in that other State but only so much of it as is attributable to that fixed base or is derived in that other State during the aforesaid period or periods.
2. The term " professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, 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 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 that other State for a period or periods not exceeding in the aggregate 90 days within any twelve month period; and
  - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that State.

## **Article 16**

### **DIRECTORS' FEES**

1. 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 any other similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.
2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.

## **Article 17**

### **ARTISTES AND SPORTSMEN**

1. Notwithstanding the provisions of Articles 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 as a sportsman, 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 by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.
3. Notwithstanding the provisions of paragraphs 1 and 2, income derived from activities referred to in paragraph 1 performed under a cultural agreement or arrangement between the Contracting States shall be exempt from tax in the Contracting State in which the activities are exercised if the visit to that State is wholly or substantially supported by funds of either Contracting State, a local authority or public institution thereof;

## **Article 18**

### **PENSIONS & SOCIAL SECURITY PAYMENTS**

1. Subject to the provisions of paragraph 2 of Article 19, any pensions or other similar remuneration paid to a resident of one of the Contracting States from a source in

the other Contracting State in consideration of past employment or services in that other Contracting State and any annuity paid to such a resident from such a source may be taxed in that other State.

2. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.
3. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is part of the social security systems of a Contracting State shall be taxable only in that State.

## **Article 19**

### **GOVERNMENT SERVICE**

1. (a) Remuneration, other than a pension, paid by the Government or a local authority of a Contracting State, to an individual in respect of services rendered to that State or authority shall be taxable only in that State.  
(b) However, such 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 State who;
  - (i) is a national of that State; or
  - (ii) did not become a resident of that State solely for the purpose of rendering such services;
2. Any pension paid by, or out of funds created by a Contracting State or a local authority thereof to an individual in respect of services rendered to that State or authority shall be taxable only in that State.
3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof.
4. For the purpose of this Article, the term "Government" shall include any State Government or local authority of either Contracting State, and the Central Bank of either Contracting State.

## **Article 20**

### **TEACHERS AND RESEARCHERS**

1. A professor, teacher or researcher who makes a temporary visit to a Contracting State for the purpose of teaching or conducting research at a university, college, school or other recognized educational institution and who is, or immediately

- before such visit was, a resident of the other Contracting State shall be exempted from tax in the first-mentioned State for a period not exceeding two years in respect of remuneration for such teaching or research.
2. This Article shall not apply to remuneration which a professor or teacher receives for conducting research if the research is undertaken primarily for the private benefit of a specific person or persons.

## **Article 21**

### **STUDENTS AND TRAINEES**

1. 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 for the purpose of his education or training receives for the purpose of his maintenance, education, training shall not be taxed in that State, provided that such payments arise from sources outside that State.
2. An individual who is a resident of one of the Contracting States at the time he becomes temporarily present in the other Contracting State and who is temporarily present in the other Contracting State as an employee of, or under contract with, a resident of the first-mentioned State, or as a participant in a programme sponsored by the Government of the other State or by any international organization for the primary purpose of;
- (a) acquiring technical, professional, or business experience from a person other than that resident of the first-mentioned State or other than a person related to such resident; or
  - (b) studying at a university or other recognized educational institution in that other State,

Shall be exempt from tax by that other State for a period not exceeding one year with respect to his income from personal services if the aggregate amount is not in excess of. US \$ 3000 or its equivalent in Sri Lanka rupees or Nepalese rupees.

## **Article 22**

### **OTHER INCOME**

The laws in force in either of the States shall continue to govern the taxation of income except when express provisions to the contrary are made in this Agreement.

## **Article 23**

### **ELIMINATION OF DOUBLE TAXATION**

1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting States. When income is subject

to tax in both Contracting States, relief from double taxation shall be given in accordance with the following paragraphs of this Article.

2. Where a resident of Nepal derives income from Sri Lanka which in accordance with the provisions of this Agreement, may be taxed in Sri Lanka the amount of Sri Lanka tax payable in respect of that income, shall be allowed as a credit against the Nepal tax imposed on that resident in respect of that income. The credit shall not, however, exceed that part of the Nepal tax which is attributable to such income.
3. Where a resident of Sri Lanka derives income from Nepal which in accordance with the provisions of this Agreement may be taxed, in Nepal, the amount of Nepal tax payable in respect of that income shall be allowed as a credit against the Sri Lanka tax imposed on that resident in respect of that income. The credit shall not, however, exceed that part of the Sri Lanka tax which is attributable to such income.
4. For the purpose of allowance as a credit in a Contracting State, the tax paid in the other, Contracting State shall be deemed to include the tax which is otherwise payable in that other State but has been reduced or waived by that State under its legal provisions for tax incentives.

## **Article 24**

### **NON-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 of 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. This provision shall not 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.
3. Enterprise 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 are or may be subjected.
4. 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 to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority 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 this 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. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an Agreement in the sense of the preceding paragraphs. The competent authorities, through consultations, shall develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual Agreement procedure provided for in this Article.

## **Article 26**

### **EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement, insofar as the taxation thereunder is not contrary to the Agreement, as well as to prevent fiscal evasion in relation to such taxes. 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 or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Agreement. Such persons or authorities shall use their information only for such purposes but 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 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).

## **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**

### **ENTRY INTO FORCE**

1. Each Contracting State shall notify the other of the completion of the procedures required by its law for the entering into force of this Agreement. The Agreement shall enter into force on the later of the notifications.
2. The provisions of this Agreement shall apply:
  - (a) in Sri Lanka, in respect of income derived on or after the first day of April of the year next following that of the entry into force of the Agreement; and
  - (b) in Nepal, in respect of income derived on or after the first day of Nepalese fiscal year next following that of the entry into force of the Agreement.

## **Article 29**

### **TERMINATION**

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving written notice of termination on or before the thirtieth day of June of any calendar year following after the period of five years from the year in which the Agreement enters into force. In such case, the Agreement shall cease to have effect;

- (a) in Sri Lanka;

in respect of income derived on or after the first day of April of the year next following that in which the notice of termination is given.

(b) in Nepal;

in respect of income derived on or after the first day of the Nepalese fiscal year next following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Agreement.

DONE in duplicate at Kathmandu this 6<sup>th</sup> day of July 1999 in the Nepali, Sinhala, and English Languages, all texts being equally authentic. In case of divergence in interpretation, the English text shall prevail.

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For The Government of Nepal

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For the Government of the Democratic  
Socialist Republic of Sri Lanka

**THE GOVERNMENT OF NEPAL AND THE REPUBLIC OF AUSTRIA  
DESIRING TO CONCLUDE AN AGREEMENT FOR THE AVOIDANCE OF  
DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH  
RESPECT TO TAXES ON INCOME**

HAVE AGREED AS FOLLOWS:

**Article 1  
PERSONS COVERED**

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

**Article 2  
TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Agreement shall apply are in particular:
  - a) in Austria :
    - i) the income tax (die Einkommensteuer) :
    - ii) the corporation tax (die Koerperschaftsteuer)  
(hereinafter referred to as "Austrian Tax")
  - b) in Nepal:  
the Income Tax imposed under the Income Tax Act and  
the Finance Act. (hereinafter referred to as "Nepal Tax")
4. The Agreement shall apply also to any identical or substantially similar taxes on income which are imposed after the date of signature of the Agreement in addition to, or in place of, those referred to in paragraph 3. The competent authorities of the Contracting States shall notify each other of any substantial changes, which have been made in their respective taxation laws.

**Article 3  
GENERAL DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires:

- a) i) the term "Austria" means the Republic of Austria;  
ii) the term "Nepal" means the Territory of Nepal;
  - b) the term "a Contracting State" and "the other Contracting State" mean Nepal or Austria, as the context requires;
  - c) the term "person" includes an individual, a company and any other body of persons;
  - d) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
  - e) 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;
  - f) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State except, when the ship or aircraft is operated solely between places in the other Contracting State;
  - g) the term "competent authority" means
    - i) in Austria: the Federal Minister of Finance or his authorized representative; ii) in Nepal: the Minister of Finance or his authorized representative;
  - h) the term "national" means:
    - i) any individual possessing the nationality of a Contracting State;
    - ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.
2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

## **Article 4**

### **RESIDENT**

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, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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 as follows:
  - a) he shall be deemed to be a resident only 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 only of the State with which his personal and economic relations are closer (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 only 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 only 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 endeavor to 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, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

## **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" includes 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, and
  - b) a farm or plantation.
3. The term "permanent establishment" likewise encompasses:
  - a) a building site, construction, assembly or installation project, or an installation or

- drilling rig or ship used for the exploration or development of natural resources, including supervisory activities in connection therewith, but only if that site, project, or use lasts or those activities last more than six months;
- b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than 183 days within any twelve month period.
4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
- the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
  - the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
  - the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
  - the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provision of paragraphs 1 and 2, where a person - other than agent of an independent status to whom paragraph 7 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:
- has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
  - has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he delivers goods or merchandise on behalf of the enterprise.
6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of

- a Contracting State shall, except with regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.
7. 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 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 principally on behalf of that enterprise, he shall not be considered an agent of an independent status within the meaning of this paragraph, if it is shown that the transactions between the agent and the enterprise were not made under arm's length conditions.
  8. 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.

## **Article 6**

### **INCOME FROM IMMOVABLE PROPERTY**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under the law 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, boats 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 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 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 condition and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions, expenses allowable under the provisions of the domestic law and which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (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 or other rights, or by way of commission, 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 or other rights, or by way of commission 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. 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 from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.
3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

## **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 profits 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 profits of that enterprise and taxed accordingly.
2. Where a Contracting State includes in the profits of an enterprise of that State-and taxes accordingly-profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such 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.

## **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) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the shares of the company paying the dividends;
  - b) 10 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the shares of the company paying the dividends;
  - c) 15 per cent of the gross amount of dividends in all other cases.

The competent authorities of the Contracting States shall, by mutual agreement, settle the mode of application of these limitations.

The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. 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 11**

### **INTEREST**

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 laws of that State, but if the recipient is the beneficial owner of interest the tax so charged shall not exceed 15 per cent of the gross amount of the interest. Provided, however, that where the interest is paid to a bank carrying on banking business, which is a resident of the other Contracting State and is the beneficial owner of the interest, the tax charged in the Contracting State in which the interest arises shall not exceed 10 per cent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived by the Government of the other Contracting State, including a local authority thereof, the Central Bank or any financial institution controlled by that Government, shall be exempt from tax in the first-mentioned State.
4. For the purpose of paragraph 3, the terms "the Central Bank" and "Financial institution controlled by the Government" mean;
  - a) In the case of Austria:
    - i) the Oesterreichische Nationalbank (Central Bank of Austria), and
    - ii) the Oesterreichische Kontrollbank AG;
  - b) In the case of Nepal:
    - i) Nepal Rastra Bank (Central Bank of Nepal);
    - ii) any organisation established in Nepal after the date of signature of this Agreement which is of a similar nature as the organisation established in Austria and referred to in sub-subparagraph ii) of subparagraph a). The competent authorities shall by mutual agreement determine whether such organisations are of a similar nature;
    - iii) any other financial institution, the capital of which is wholly owned by The Government of Nepal, as may be agreed upon from time to time between the competent authorities of the Contracting States.
5. Interest arising in a Contracting State on a loan guaranteed by any of the bodies mentioned or referred to in paragraph 4, subparagraph a) or subparagraph b) and paid

to a resident of the other Contracting State shall be taxable only in that other State.

6. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
7. The provisions of paragraph 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 cases, the provisions of Article 7 or Article 14, as the case may be, shall apply.
8. 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.
9. 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 laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **Article 12**

### **ROYALTIES**

1. Royalties 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 may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 15 per cent of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments of any kind received as

- a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films or films or tapes used for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties 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 are paid is effectively connected with such permanent establishment or fixed base. In such cases the provisions of Article 7 or Article 14, as the case may be, shall apply.
  5. Royalties 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 whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties, are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
  6. 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, having regard to the use, right or information for which they are paid, exceeds the amount which would have been paid in the absence of such relationship, the provisions of this Article shall apply to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **Article 13**

### **CAPITAL GAINS**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or of movable

property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the Contracting State of which the alienator is a resident.

## **Article 14**

### **INDEPENDENT PERSONAL SERVICES**

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities or he is present in that other State for a period or periods exceeding in the aggregate 183 days in any twelve month period. If he has a fixed base or is present in that other State for the aforesaid period or periods the income may be taxed in that other State but only so much of it as is attributable to that fixed base or is derived in that other State during the aforesaid period or periods.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

## **Article 15**

### **DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
  - a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days within any twelve month period, and
  - b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
  - c) the remuneration is not borne by a permanent establishment or a fixed base, which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in

respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

## **Article 16**

### **DIRECTORS' FEES**

Director's 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 any other 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 SPORTSMEN**

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 as a sportsman, 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 by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.
3. Notwithstanding the provisions of paragraphs 1 and 2 income derived from activities referred to in paragraph 1 performed under a cultural agreement or arrangement between the Contracting States, shall be exempt from tax in the Contracting State in which the activities are exercised if the visit to that State is wholly or substantially supported by funds of either Contracting State, a local authority or public institution thereof.

## **Article 18**

### **PENSIONS AND SOCIAL SECURITY PAYMENTS**

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment may be taxed in that State.
2. However, such pensions and other similar remuneration may also be taxed in the other Contracting State if the payment is made by a resident of that other State or a permanent establishment situated therein.
3. Notwithstanding the provisions of paragraphs 1 and 2, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or political subdivision or a local authority thereof shall be taxable only in that State.

## **Article 19**

### **GOVERNMENT SERVICE**

1. a) Salaries, wages and other 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 shall be taxable only in that State.  
b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
  - i) is a national of that State; or
  - ii) did not become a resident of that State solely for the purpose of rendering the services.
2. a) Any pension paid by, or out of funds created 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 shall be taxable only in that State.  
b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration, and to pensions, 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 TRAINEES**

An individual who, immediately before visiting a Contracting State, was a resident of the other Contracting State and whose visit to the first mentioned Contracting State is solely for the purpose of:

- a) studying at a university, college or school or other recognised educational institution, or
- b) securing training to qualify him to practice a profession or trade, or
- c) studying or carrying out research as a recipient of a grant, allowance or award from a governmental, religious, charitable, scientific, literary or educational organisation, shall be exempt from tax in the first-mentioned State on:
  - i) remittance from abroad for the purpose of this maintenance, education, study, research, or training;
  - ii) the grant, allowance or award; and

- iv) income which he derives from an employment which he exercises in this State for the purposes of practical training for not longer than a total of six months in any taxable year.

## **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 of this Agreement and arising in the other Contracting State may also be taxed in that other State.
4. Income derived by a resident of a Contracting State from the other Contracting State under a legal claim to maintenance may not be taxed in the first-mentioned State if such income would be exempt from tax according to the laws of the other Contracting State.

## **Article 22**

### **ELIMINATION OF DOUBLE TAXATION**

1. In the case of Austria double taxation shall be eliminated as follows:
  - a) Where a resident of Austria derives income which, in accordance with the provisions of this Agreement may be taxed in Nepal, Austria shall, subject to the provisions of subparagraphs b) and c) exempt such income from tax.
  - b) Where a resident of Austria derives items of income which in accordance with the provisions of paragraphs 2 of Articles 10, 11, 12 and 18 and paragraph 3 of Article 21 may be taxed in Nepal, Austria shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Nepal. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from Nepal.
  - c) Where in accordance with any provision of the Agreement income derived by a resident of Austria is exempt from tax in Austria, Austria may nevertheless,

in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

2. In the case of Nepal double taxation shall be eliminated as follows:

Where a resident of Nepal derives income from Austria which in accordance with the provisions of this Agreement, may be taxed in Austria the amount of Austrian tax payable in respect of that income, shall be allowed as a credit against the Nepal tax imposed on that resident in respect of that income. The credit shall not, however, exceed that part of the Nepal tax, which is attributable to such income.

3. For the purposes of this Article, the term "tax" means Nepal tax or Austrian tax, as the context requires, but shall not include any amount which is payable in respect of any default or omissions in relation to the taxes to which this Agreement applies or which represents a penalty imposed relating to these taxes.
4. For the purpose of allowance as credit in a Contracting State, the tax paid in the other Contracting State shall be deemed to include the tax which is otherwise payable in that other State but has been reduced or waived by that State under its legal provisions for tax incentives.

## **Article 23**

### **NON-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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation of a permanent establishment, which an enterprise of a Contracting State has in the other Contracting State, shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, relief and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 9 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
4. 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 in the taxation and connected requirements to which other similar enterprise of the first-mentioned State are or may be subjected.

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

## **Article 24**

### **MUTUAL AGREEMENT PROCEDURE**

1. Where a person 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 to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.
2. The competent authority shall endeavor, 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 this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities, through consultations, shall develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article.

## **Article 25**

### **EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this 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 or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of this Agreement. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings, or in judicial decisions. Even in such cases the confidentiality of person-related data may be waived only insofar as this is necessary to safeguard predominant and legitimate interests of another person or predominant public interests.
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 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) or to the basic rights granted by a State, in particular in the area of data protection.
  3. Notwithstanding the provisions of paragraph 1 any exchange of information as is necessary for carrying out the provisions of the domestic laws of the Contracting States concerning taxes covered by this Agreement can be carried out only if an administrative arrangement between the Ministers of Finance is concluded which will also settle the mode of application of such exchange of information.

## **Article 26**

### **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 27**

### **ENTRY INTO FORCE**

1. Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the entering into force of this Agreement. This Agreement shall enter into force on the first day of the third month next following that in which the later of these notifications took place.
2. This Agreement shall have effect:
  - a) in Austria:

in respect of the taxes levied for any fiscal year following the calendar year in which the Agreement enters into force;

b) in Nepal:

in respect of income derived on or after the first day of Nepalese fiscal year next following that to the entry into force of the Agreement.

## **Article 28**

### **TERMINATION**

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving written notice of termination on or before the thirtieth day of June of any calendar year following after the period of five years from the year in which the Agreement enters into force. In such case, the Agreement shall cease to have effect;

(a) in Austria:

in respect of the taxes levied for any fiscal year beginning after December 31 in the calendar year in which the notice of termination has been given;

(b) in Nepal:

in respect of income derived on or after the first day of the Nepalese fiscal year next following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned duly authorised thereto, have signed this Agreement.

DONE in duplicate in Kathmandu on the 15<sup>th</sup> day of December 2000 in the English language.

For The Government of Nepal.

For the Republic of Austria.

.....

Dr. Bimal Prasad Koirala

Secretary

Ministry of Finance

The Government of Nepal.

.....

Dr. Johann DEMEL

Ambassador

Ministry of Foreign Affairs

Republic of Austria.

## **PROTOCOL**

At the moment of signing the Agreement between the Republic of Austria and the Government of Nepal for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to Taxes on Income the undersigned have agreed that the following provisions shall form an integral part of the Agreement.

### **1. Referring to the interpretation of the Agreement**

It is understood that provisions of the Agreement which are drafted according to the corresponding provisions of the OECD-Model Convention on Income and on Capital or the United Nations Model Double Taxation Convention between Developed and Developing Countries with respect to Taxes on Income shall generally be expected to have the same meaning as expressed in the OECD or UN Commentary thereon. The understanding in the preceding sentence will not apply with respect to any contrary interpretation agreed to by the competent authorities after the entry into force of the Agreement.

The Commentaries-as they may be revised from time to time-constitute a means of interpretation in the sense of the Vienna Convention of 23rd May 1969 on the Law of Treaties. In case of any divergence in the interpretation as expressed in the commentaries of the OECD and the UN Model, a common interpretation would have to be sought by mutual agreement according to Article 24, if necessary.

### **2. Referring to Article 5, paragraph 2, subparagraph h):**

It is understood that this provision only refers to activities which are treated as business income in the sense of Article 7 of this Agreement.

### **3. Referring to Article 7:**

It is understood that the term "profits" as used in this Article includes the profits derived by any partner from his participation in a partnership and in any other body of persons which is treated in the same way for tax purposes, and in the case of Austria, from a participation in a sleeping partnership (Stille Gesellschaft) created under Austrian law.

### **4. Referring to Article 22 paragraph 4:**

It is understood that paragraph 4 of Article 22 will not apply if the form of a transaction giving rise for the application of those provisions was mainly chosen with a view to avoid taxes.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed the present Protocol.

DONE in duplicate in Kathmandu this 15<sup>th</sup> day of December 2000 in the English language.

For The Government of Nepal.

For the Republic of Austria.

.....

Dr. Bimal Prasad Koirala  
Secretary  
Ministry of Finance  
The Government of Nepal.

.....

Dr. Johann DEMEL  
Ambassador  
Ministry of Foreign Affairs  
Republic of Austria.

The Government of Nepal and the Government of the People's Republic of China,  
Desiring to conclude an Agreement for the avoidance of double taxation and the prevention  
of fiscal evasion with respect to taxes on income;

Have agreed as follows:

## **Article 1**

### **PERSONAL SCOPE**

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

## **Article 2**

### **TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.
3. The existing taxes to which the Agreement shall apply are in particular:
  - a) in Nepal:  
income tax imposed under the Income Tax Act;  
(hereinafter referred to as "Nepal Tax")
  - b) in China:
    - (i) the individual income tax;
    - (ii) the income tax for enterprises with foreign investment and foreign enterprises;  
(hereinafter referred to as "Chinese Tax")
4. The Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

## **Article 3**

### **GENERAL DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires:
  - a) the term "Nepal" means the Territory of Nepal;

- b) the term "China" means the People's Republic of China; when used in geographical sense, means all the territory of the People's Republic of China, including its territorial sea, in which the Chinese laws relating to taxation apply, and any area beyond its territorial sea, within which the People's Republic of China has sovereign rights of exploration for and exploitation of resources of the sea-bed and its sub-soil and superjacent water resources in accordance with international law;
  - c) the terms "a Contracting State" and "the other Contracting State" mean Nepal or China as the context requires;
  - d) the term "tax" means Nepal tax or Chinese tax as the context requires;
  - e) the term "person" includes an individual, a company and any other body of persons;
  - f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
  - g) 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;
  - h) the term "national" means:
    - (i) any individual possessing the nationality of a Contracting State;
    - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
  - i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
  - j) the term "competent authority" means:
    - (i) in the case of Nepal, the authorized representative of the Minister for Finance; and
    - (ii) in the case of China, the State Administration of Taxation or its authorized representative.
2. As regards the application of the Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State concerning the taxes to which the Agreement applies.

## **Article 4**

### **RESIDENT**

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 head office, place of effective 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 as follows:
  - 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 (center of vital interests);
  - b) if the State in which he has his center 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, then the competent authorities of the Contracting States shall determine that the person is a resident of a Contracting State for the purposes of this Agreement by mutual 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" includes 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; and
  - h) a farm or plantation.

3. The term "permanent establishment" likewise encompasses:
  - a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than 183 days;
  - b) the furnishing of services, including consultancy services, by a resident of one of the Contracting States through employees or other personnel, provided activities of that nature continue (for the same or a connected project) within the other Contracting State for a period or periods aggregating more than 183 days within any twelve-month period.
4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
  - a) the use of facilities solely for the purpose of storage, display or 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 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 carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
  - f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person—other than an agent of an independent status to whom paragraph 6 applies—is acting in a Contracting State on behalf of an enterprise of the other Contracting State, has and habitually exercises an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other

than an agent of an independent status to whom paragraph 7 applies.

7. 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, he will not be considered an agent of an independent status within the meaning of this paragraph.
8. 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.

## **Article 6**

### **INCOME FROM IMMOVABLE PROPERTY**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under the law 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 also apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraph 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 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 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.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions, expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

However, no such deduction shall be allowed in respect of the amounts, if any, paid (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 or other rights, or by way of commission, 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 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 or other rights, or by way of commission 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. 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 from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of head office or of effective management of the enterprise is situated.
2. The provisions of paragraph 1 shall also apply to profits from participation in a pool, a joint business or an international operating agency.

## **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 profits 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 profits of that enterprise and taxed accordingly.
2. Where a Contracting State includes in the profits of an enterprise of that State— and taxes accordingly—profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such 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.

## **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 10 per cent of the gross amount of the dividends.

3. The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
3. 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 from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. 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 profit or income arising in such other State.

## **Article 11** **INTEREST**

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 laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived by the Government of the other Contracting State, a local authority and the Central Bank thereof or any financial institution wholly owned by the Government of that other State, or by any other resident of that other State with respect to debt-claims indirectly financed by the Government of that other State, a local authority and the

Central Bank thereof or any financial institution wholly owned by the Government of that other State, shall be exempt from tax in the first-mentioned State.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
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 the Government of that State, a local authority thereof 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 laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **Article 12** **ROYALTIES**

1. Royalties 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 may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 15 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematography films, or films or tapes for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties 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 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.
5. Royalties shall be deemed to arise in a Contracting State when the payer is the Government of that Contracting State, a local authority thereof or a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. 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, having regard to the use, right or information 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 such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **Article 13**

### **CAPITAL GAINS**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation

of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of head office or of effective management of the enterprise is situated.
4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that Contracting State.
5. Gains from the alienation of shares other than those mentioned in paragraph 4 representing a participation of at least 25 per cent in a company which is a resident of a Contracting State may be taxed in that State.
6. Gains from the alienation of any property other than that referred to in paragraphs 1 to 5, shall be taxable only in the Contracting State of which the alienator is a resident.

## **Article 14**

### **INDEPENDENT PERSONAL SERVICES**

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in one of the following circumstances, when such income may also be taxed in the other Contracting State:
  - a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State;
  - 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 any twelve-month period, in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

## **Article 15**

### **DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in

- the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
    - a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days within any twelve-month period; and
    - b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
    - c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
  3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, shall be taxable only in the Contracting State in which the place of head office or of effective management of the enterprise is situated.

## **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 of a company which is a resident of the other Contracting State may be taxed in that other State.

## **Article 17**

### **ARTISTES AND SPORTSMEN**

1. Notwithstanding the provisions of Articles 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 as a sportsman, 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 by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.
3. Notwithstanding the preceding provisions of this Article, income derived by entertainers or sportsmen who are residents of a Contracting State from the activities exercised in the other Contracting State under a plan of cultural exchange between the Governments of both Contracting States shall be exempt from tax in that other State.

## **Article 18**

### **PENSIONS AND SOCIAL SECURITY PAYMENTS**

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.
2. Notwithstanding the provisions of paragraph 1, pensions paid and other similar payments made by the Government of a Contracting State or a local authority thereof under a public welfare scheme of the social security system of that State shall be taxable only in that State.

## **Article 19**

### **GOVERNMENT SERVICE**

1. a) Remuneration, other than a pension, paid by the Government of a Contracting State or a local authority thereof to an individual in respect of services rendered to the Government of that State or a local authority thereof, in the discharge of functions of a governmental nature, shall be taxable only in that State.  
b) However, such 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 State; or
  - ii) did not become a resident of that State solely for the purpose of rendering the services.
2. a) Any pension paid by, or out of funds to which contributions are made by the Government of a Contracting State or a local authority thereof to an individual in respect of services rendered to the Government of that State or a local authority thereof shall be taxable only in that State.  
b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other State.
3. The provisions of Articles 15, 16, 17 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by the Government of a Contracting State or a local authority thereof .

## **Article 20**

### **TEACHERS AND RESEARCHERS**

1. Remuneration which an individual 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 for the primary purpose of teaching, giving lectures or

conducting research at a university, college, school or educational institution or scientific research institution recognized by the Government of the first-mentioned State derives for the purpose of such teaching, lectures or research shall not be taxed in the first-mentioned State, for a period of two years from the date of his first arrival in the first-mentioned State.

2. The provisions of paragraph 1 of this Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

## **Article 21**

### **STUDENTS AND TRAINEES**

1. Payments which a student, business apprentice or 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 that State, provided that such payments arise from sources outside that State.
2. In respect of grants, scholarships and remuneration from employment not covered by paragraph 1, a student, business apprentice or trainee described in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the State which he is visiting.

## **Article 22**

### **OTHER INCOME**

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may also be taxed in that other State.

## **Article 23**

### **METHODS FOR THE ELIMINATION OF DOUBLE TAXATION**

1. In China, double taxation shall be eliminated at follows:

where a resident of China derives income from Nepal the amount of tax on that income payable in Nepal in accordance with the provisions of this Agreement, may be credited against the Chinese tax imposed on that resident. The amount of the credit, however, shall not exceed the amount of the Chinese tax on that income computed in accordance with the taxation laws and regulations of China.

2. In Nepal, double taxation shall be eliminated as follows:

where a resident of Nepal derives income from China the amount of tax on that income payable in China in accordance with the provisions of this Agreement, may be credited against the Nepal tax imposed on that resident. The amount of the credit, however, shall not exceed the amount of the Nepal tax on that income computed in accordance with the taxation laws and regulations of Nepal.

3. For the purpose of allowance as credit in a Contracting State, the tax paid in the other Contracting State shall be deemed to include the tax which is otherwise payable in that other State but has been reduced or waived by that State under its legal provisions for tax incentives.

## **Article 24**

### **NON-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 favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not 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.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
4. 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 are or may be subjected.

## **Article 25**

### **MUTUAL AGREEMENT PROCEDURE**

1. Where a person 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 to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority shall endeavor, 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. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities shall through consultations develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article.

## **Article 26**

### **EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting State concerning taxes covered by the Agreement, insofar as the taxation thereunder is not contrary to the Agreement, in particular for the prevention of evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret and shall be

- disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution 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 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;
    - b) 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).

## **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**

### **ENTRY INTO FORCE**

1. This Agreement shall enter into force on the thirtieth day after the date on which diplomatic notes indicating the completion of internal legal procedures necessary in each country for the entry into force of this Agreement have been exchanged. This Agreement shall have effect:
  - a) in Nepal, in respect of income arising on or after the first day of the Nepalese fiscal year next following that of the entry into force of the Agreement;
  - b) in China, in respect of income arising in any taxable year beginning on or after the first day of January next following the calendar year in which this Agreement enters into force.

## **Article 29**

### **TERMINATION**

This Agreement shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the

expiration of a period of five years from the date of its entry into force, give written notice of termination to the other Contracting State through the diplomatic channels. In such event this Agreement shall cease to have effect:

- a) in Nepal, in respect of income arising on or after the first day of the Nepalese fiscal year next following that in which the notice of termination is given;
- b) in China, in respect of income arising in any taxable year beginning on or after the first day of January next following the calendar year in which the notice of termination is given.

IN WITNESS whereof the undersigned, duly authorized thereto, have signed this Agreement.

Done at Kathmandu on the 14<sup>th</sup> day of the month of May 2001, in duplicate in the Nepali, Chinese and English Languages, all three texts being equally authentic. In case of any divergence, the English text shall prevail.

.....  
For The Government of Nepal

.....  
For the Government of  
The People's Republic of  
China

**PROTOCOL TO THE AGREEMENT BETWEEN THE GOVERNMENT OF NEPAL AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME**

On signing the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income between The Government of Nepal and the Government of the People's Republic of China, the undersigned have agreed that the following provisions shall form an integral part of the said Agreement:

With reference to Paragraph 2 of Article 12, there shall be immediately substituted for the rate of 15 per cent as specified in Paragraph 2 of Article 12 such lower rate as may be agreed upon between The Government of Nepal and other country in any agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income concluded between The Government of Nepal and that country subsequent to this Agreement.

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

Done at Kathmandu on the 14<sup>th</sup> day of May 2001, in duplicate in the Nepali, Chinese and English Languages, all three texts being equally authentic. In case of any divergence, the English text shall prevail.

.....  
For The Government  
of Nepal

.....  
For the Government of The People's  
Republic of China

The Government of Nepal and The Government of the Republic of Mauritius

Desiring to conclude an agreement for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on Income,

Have agreed as follows:

## **Article 1**

### **PERSONAL SCOPE**

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

## **Article 2**

### **TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income.
3. The existing taxes to which this Agreement shall apply are in particular
  - (a) in Nepal, the income tax imposed under the Income Tax Act, (hereinafter referred to as "Nepal tax");
  - (b) in Mauritius, the income tax,  
(hereinafter referred to as "Mauritius tax").
4. This Agreement shall also apply to any other taxes of a substantially similar character 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. The competent authorities of the Contracting States shall notify each other of changes which have been made in their respective taxation laws, and if it seems desirable to amend any Article of this Agreement, without affecting the general principles thereof, the necessary amendments may be made by mutual consent by means of an Exchange of Notes.

## **Article 3**

### **GENERAL DEFINITIONS**

1. In this Agreement, unless the context otherwise requires:
  - (a) the term "Nepal" means the Territory of Nepal;

- (b) the term "Mauritius" means the State of Mauritius as defined in the laws of Mauritius;
  - (b) the terms "a Contracting State" and "the other Contracting State" mean Mauritius or Nepal, as the context requires;
  - (d) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes;
  - (e) the term "competent authority" means:
    - (i) in Nepal, the Minister of Finance or his authorised representative; and
    - (ii) in Mauritius, the Minister of Finance or his authorised representative;
  - (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 "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
  - (h) the term "national" means any individual having the citizenship or nationality of a Contracting State and any legal person, partnership (societe) or association deriving its status as such from the laws in force in a Contracting State;
  - (i) the term "person" includes an individual, a company, a trust and any other body of persons which is treated as an entity for tax purposes; and
  - (j) the term "tax" means Nepal tax or Mauritius tax, as the context requires .
2. As regards the application of the Agreement by a Contracting State, any term not defined therein 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 this Agreement.

## **Article 4**

### **RESIDENT**

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 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 (center of vital interests);
  - (b) if the State in which he has his center of vital interests cannot be determined, or if he does not have 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, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

## **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:
  - (a) a place of management ;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop;
  - (f) a warehouse;
  - (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
  - (h) an installation or structure used for the exploration of natural resources; and
  - (i) a farm or plantation.
3. The term " permanent establishment" likewise encompasses:

- (a) a building site, construction or assembly or installation project, or an installation or drilling rig or ship used for the exploration or development of natural resources, including supervisory activities in connection therewith, but only if that site, project, use or activities last more than 183 days;
  - (b) the furnishing of services, including technical, professional or consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than 183 days within any twelve-month period.
4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
- (a) the use of facilities solely for the purpose of storage or display 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 or display;
  - (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 for 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 similar activities which have a preparatory or auxiliary character, for the enterprise; and
  - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person, other than an agent of an independent status to whom paragraph 6 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:
- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business would not make this fixed place of business, a permanent establishment under the provisions of that paragraph; or

- (b) has no such authority, but habitually maintains in the first - mentioned State a stock of goods or merchandise from which he delivers goods or merchandise on behalf of the enterprise; or
  - (c) habitually secures orders in the first- mentioned State for the enterprise and other enterprises which are controlled by it or have a controlling interest in it.
6. 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 principally on behalf of that enterprise, he shall not be considered an agent of an independent status within the meaning of this paragraph.
7. For the avoidance of any doubt, an insurance enterprise of a Contracting State shall, except with regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 6 applies.
8. 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.

## **Article 6**

### **INCOME FROM IMMOVABLE PROPERTY**

1. Income derived by a resident of a Contracting State from immovable property, including income from agriculture or forestry, is taxable in the Contracting State in which such property is situated.
2. The term "immovable property" shall have the meaning which it has under the law 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, boats 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 paragraph 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 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; (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or (c) other business activities carried on in that other State 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.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions, expenses allowable under the provisions of the domestic law and which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (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 or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on money 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 or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on money lent to the head office of the enterprise or any of its other offices.

4. In so far 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 of an enterprise from the operation or rental of ships or aircraft in international traffic and the rental of containers and related equipment which is incidental to the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. If the place of effective management of a shipping enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.
3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

## **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 profits 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 profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State-and taxes accordingly-profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such 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.

## **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) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 15 per cent of the capital of the company paying the dividends;
  - (b) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 per cent of the capital of the company paying the dividends;
  - (c) 15 per cent of the gross amount of the dividends in all other cases.

The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. 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 from other corporate rights which is subjected to the same taxation treatment as income from

- shares by the laws of the Contracting State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
  5. 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, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

## **Article 11**

### **INTEREST**

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 laws of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed:
  - (a) 10 per cent of the gross amount of the interest if the beneficial owner is a financial institution, an insurance company or an investment company receiving income from financial investments;
  - (b) 15 per cent of the gross amount of the interest in all other cases.
3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived by the Government of the other Contracting State, including a local authority thereof, the central bank, a bank or any financial institution controlled by that Government, shall be exempt from tax in the first- mentioned State.
4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty

charges for late payment shall not be regarded as interest for the purpose of this Article. The term "interest" shall not include any item which is treated as a dividend for the purposes of Article 10 of this Agreement.

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 (a) such permanent establishment or fixed base, or with (b) business activities referred to under (c) of paragraph 1 of Article 7. 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, 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 a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **Article 12** **ROYALTIES**

1. Royalties 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 may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 15 percent of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial,

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

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties 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 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.
5. Royalties 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, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. 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 paid exceeds the amount which would have been paid in the absence of such relationship, the provisions of this Article shall apply to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **Article 13**

### **CAPITAL GAINS**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management

- of the enterprise is situated.
4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3 shall be taxable only in the Contracting State of which the alienator is a resident.

## **Article 14**

### **INDEPENDENT PERSONAL SERVICES**

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities or he is present in that other State for a period or periods exceeding in the aggregate 183 days in any twelve-month period. If he has such a fixed base or is present in that other State for the aforesaid period or periods, the income, may be taxed in that other State but only so much of it as is attributable to that fixed base or is derived in that other State during the aforesaid period or periods.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, 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 State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; and
  - (b) the remuneration is paid by, or on behalf of an employer who is not a resident of the other State; and
  - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived

in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

## **Article 16**

### **DIRECTORS' FEES**

1. 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 any other similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.
2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.

## **Article 17**

### **ENTERTAINERS AND SPORTSMEN**

1. Notwithstanding the provisions of Articles 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 as a sportsman, 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 by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.
3. Notwithstanding the provisions of paragraph 1 and 2, income derived from activities, referred to in paragraph 1, performed under a cultural agreement or arrangement between the Contracting States shall be exempt from tax in the Contracting State in which the activities are exercised if the visit to that State is wholly or substantially supported by funds of either Contracting State, a local authority or public institution thereof.

## **Article 18**

### **PENSIONS**

1. Subject to the provisions of paragraph 2 of Article 19, pension and other similar payments arising in a Contracting State and paid in consideration of past employment to a resident of the other Contracting State, shall be taxable only in that other State.
2. Notwithstanding the provisions of paragraph 1, pensions paid and other payments

made under a public scheme which is part of the social security system of a Contracting State thereof shall be taxable only in that State.

## **Article 19**

### **GOVERNMENT SERVICE**

1. (a) Salaries, wages, and other similar remuneration , other than a pension, paid by a Contracting State, local authority or statutory body thereof to an individual in respect of services rendered to that State, authority or body shall be taxable only in that State.  
(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
  - (i) is a national of that State; or
  - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. (a) Any pension paid by, or out of funds created by, a Contracting State, local authority or statutory body thereof to an individual in respect of services rendered to that State authority or body shall be taxable only in that State.  
(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of , and a national of, that State.
3. The provision of Articles 15,16,17 and 18 shall apply to salaries, wages and other similar remuneration, and to pension in respect of services rendered in connection with a business carried on by a Contracting State, local authority or statutory body thereof.

## **Article 20**

### **PROFESSORS, TEACHERS AND RESEARCHERS**

1. Notwithstanding the provisions of Article 15, a professor, teacher or researcher who makes a temporary visit to one of the Contracting States for a period not exceeding two years for the purpose of teaching or carrying out research at a university, college, school or other educational institution in that State and who is, or immediately before such visit was, a resident of the other Contracting State shall, in respect of remuneration for such teaching or research, be exempt from tax in the first- mentioned State, provided that such remuneration is derived by him from outside that State.
2. This Article shall not apply to remuneration which a professor, teacher or researcher receives for conducting research if the research is undertaken primarily for the private benefit of a specific person or persons.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or local authority or statutory body thereof.

## **Article 21**

### **STUDENTS AND BUSINESS APPRENTICES**

1. A student or business apprentice who is present in a Contracting State solely for the purpose of his education or training and who is, or immediately before being so present was, a resident of the other Contracting State, shall be exempt from tax in the first-mentioned State on payments received from outside that first-mentioned State for the purposes of his maintenance, education or training.
2. An individual who is a resident of one of the Contracting States at the time he becomes temporarily present in the other Contracting State and who is temporarily present in the other Contracting State as an employee of, or under contract with, a resident of the first-mentioned State, or as a participant in a programme sponsored by the Government of the other State or by any international organization for the primary purpose of:
  - (a) acquiring technical, professional, or business experience from a person other than that resident of the first-mentioned State or other than a person related to such resident; or
  - (b) studying at a university or other recognized educational institution in that other State shall be exempt from tax in that other State.

## **Article 22**

### **OTHER INCOME**

1. Subject to the provisions of paragraph 2 of this Article, 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 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 a right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be shall apply.
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 of this Agreement and arising in the other Contracting State may also be taxed in that other State.

## **Article 23**

### **ELIMINATION OF DOUBLE TAXATION**

Double taxation shall be eliminated as follows:

1. In the case of Nepal:
  - (a) Where a resident of Nepal derives income from Mauritius the amount of tax on that income payable in Mauritius in accordance with the provisions of this Agreement may be credited against the Nepal tax imposed on that resident;
  - (b) Where a company which is a resident of Mauritius pays a dividend to a resident of Nepal who controls, directly or indirectly at least 5% of the capital of the company paying the dividend, the credit shall take into account (in addition to any Mauritius tax for which credit may be allowed under the provisions of subparagraph (a) of this paragraph) the Mauritius tax payable by the first-mentioned company in respect of the profits out of which such dividend is paid;

Provided that any credit allowed under subparagraphs (a) and (b) shall not exceed the Nepal tax (as computed before allowing any such credit), which is appropriate to the profits or income derived from sources within Mauritius.

2. In the case of Mauritius :
  - (a) Where a resident of Mauritius derives income from Nepal the amount of tax on that income payable in Nepal in accordance with the provisions of this Agreement may be credited against the Mauritius tax imposed on that resident;
  - (b) Where a company which is a resident of Nepal pays a dividend to a resident of Mauritius who controls, directly or indirectly at least 5% of the capital of the company paying the dividend, the credit shall take into account (in addition to any Nepal tax for which credit may be allowed under the provisions of subparagraph (a) of this paragraph) the Nepal tax payable by the first-mentioned company in respect of the profits out of which such dividend is paid;

Provided that any credit allowed under subparagraphs (a) and (b) shall not exceed the Mauritius tax (as computed before allowing any such credit), which is appropriate to the profits or income derived from sources within Nepal.

3. For the purposes of allowance as a credit the tax payable in Mauritius or Nepal as the context requires, shall be deemed to include the tax which is otherwise payable in either of the two Contracting States but has been reduced or waived by either State in order to promote its economic development.

## **Article 24**

### **NON-DISCRIMINATION**

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation of 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 in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
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. 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 that first-mentioned State are or may be subjected.
4. 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 reduction for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
5. In this Article the term " taxation " means taxes which are the subject of this Agreement.

## **Article 25**

### **MUTUAL AGREEMENT PROCEDURE**

1. Where a person 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 to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement .
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate 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. Any agreement reached shall be implemented notwithstanding any

- time limits in the domestic law of the Contracting States.
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 this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.
  4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities, through consultations, may develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article.

## **Article 26**

### **EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by this Agreement in so far as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information so exchanged shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts or administrative bodies) 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 by this 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 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).

## **Article 27**

### **DIPLOMATIC AND CONSULAR OFFICERS**

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic or consular

officers under the general rules of international law or under the provisions of special agreements.

## **Article 28**

### **ENTRY INTO FORCE**

1. Each of the Contracting Parties shall notify to the other the completion of the procedures required by its law for the entering into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications.
2. The provisions of this Agreement shall apply:
  - (a) in Nepal, in respect of income derived on or after the first day of Nepalese fiscal year next following the date of the entry into force of the Agreement; and
  - (b) in Mauritius, on income for any income year beginning on or after the first day of July next following the date upon which this Agreement enters into force.

## **Article 29**

### **TERMINATION**

1. This Agreement shall remain in force indefinitely but either of the Contracting States may terminate the Agreement through diplomatic channels by giving to the other Contracting State written notice of termination not later than 30 June of any calendar year starting five years after the date on which the Agreement entered into force.
2. In such event the Agreement shall cease to have effect:
  - (a) in Nepal, in respect of income derived on or after the first day of the Nepalese fiscal year next following the date on which the notice of termination is given; and
  - (b) in Mauritius, on income for any income year beginning on or after the first day of July next following the date on which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Agreement.

DONE in duplicate at Kathmandu, this 3rd day of August of the year one thousand nine hundred and ninety nine in English Language.

For The Government of Nepal

.....  
Mr. Mahesh Acharya  
Minister of Finance.

For the Government of the  
Republic of Mauritius.

.....  
Dr. Vasant K. Bunwaree  
Minister of Finance.

## **PROTOCOL**

At the moment of signing the Agreement between The Government of Nepal and the Government of the Republic of Mauritius for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed upon the following which shall be an integral part of the Agreement:

### **Articles 10, 11 and 12**

There shall be substituted for the rate of 5, 10 or 15 per cent specified in paragraph 2 of Article 10, 10 or 15 per cent specified in paragraph 2 of Article 11 and 15 per cent specified in paragraph 2 of Article 12 such lower rate as may be agreed upon between Nepal and any other country in any Agreement for the avoidance of double taxation concluded between Nepal and that other country subsequent to this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed the present Protocol.

DONE in duplicate, at Kathmandu this 3rd day of August of the year 1999 in English language.

For The Government of Nepal.

.....  
Mr. Mahesh Acharya  
Minister of Finance.

For the Government of the  
Republic of Mauritius.

.....  
Dr. Vasant K. Bunwaree  
Minister of Finance.

Government of Nepal and the Government of the State of Qatar Desiring to conclude an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income,

Have agreed as follows:

## **Article 1**

### **PERSONS COVERED**

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

## **Article 2**

### **TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income, all taxes imposed on total income or on elements of income including tax on income on gain of movable and immovable property.
3. The existing taxes to which the Agreement shall apply are:
  - (a) in the case of Nepal:  
Income tax imposed under the Income Tax Act:  
(Hereinafter referred to as "Nepal Tax")
  - (b) in the case of the State of Qatar  
The Income Tax  
(Hereinafter referred to as "Qatari Tax")
4. The Agreement shall apply also to any identical or substantially similar taxes that are 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 States shall notify each other of any significant changes that have been made in their respective tax laws.

## **Article 3**

### **GENERAL DEFINITIONS**

1. For the purpose of this Agreement, unless the context otherwise requires:
  - (a) the term "Nepal" means the Territory of Nepal.
  - (b) the term "Qatar" means the State of Qatar its lands, internal waters, territorial sea including its bed and subsoil, the air space over them, the exclusive economic zone and the continental shelf, over which the State of Qatar

- exercises sovereign rights and jurisdiction in accordance with the provisions of International law and Qatar's national laws and regulations;
- (c) the term " a Contracting State" and " the other Contracting State" mean Nepal or Qatar as the context requires;
  - (d) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - (e) the term " competent authority" means;
    - 1) in the case of Nepal, Minister of Finance or his authorized representative;
    - 2) in the case of the State of Qatar, Minister of Finance or his authorized representative;
  - (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 "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
  - (h) the term "national" means;
    - 1) any individual possessing the nationality of a Contracting State;
    - 2) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
  - (i) the term "person" includes an individual, a company and any other body of persons which is treated as an entity for tax purposes; and also includes a Contracting State and any political subdivision or local authority thereof;
2. When implementing the provisions of this Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies.

## **Article 4**

### **RESIDENT**

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, and also includes that State and any political subdivision or local

authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources situated in that State.

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 as follows:
  - (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him, if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State in which his personal and economic relations are closer (Center of Vital Interests);
  - (b) if the Contracting State in which he has his center of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State of which he has a habitual abode;
  - (c) if he has an habitual abode in both Contracting States or in either of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
  - (d) if the residence status of an individual cannot be determined in accordance with the provisions of sub-paras (a), (b) and (c) above, then the competent authorities of the two Contracting States shall settle this 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, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

## **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” includes especially:
  - (a) a place of management;
  - (b) a branch ;
  - (c) an office ;
  - (d) a factory ;
  - (e) a workshop;
  - (f) a warehouse or a premises used as sales outlet;
  - (g) a farm or plantation;
  - (h) a mine, an oil or gas well, a quarry or any other place of extraction, exploitation

- or exploration of natural resources;
- (i) a building site, a construction, assembly or installation project or any supervisory activity in connection with such site or project, but only where such site, project or activity continues for a period of more than 183 days;
  - (j) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than 183 days within any twelve month period.
3. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:
- (a) the use of facilities solely for the purpose of storage or display 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 or display;
  - (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 carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; and
  - (f) The maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
4. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies– is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
5. Notwithstanding the preceding provisions of this Article, an insurance enterprise of

- a Contracting State except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums on the territory of that other Contracting State or insures risks situated therein through a person, other than an agent of an independent status to whom paragraph 6 applies.
6. 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 State through a broker, general commission agent or any other agent of an independent Status, where such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or principally on behalf of that enterprise, he shall not be considered an agent of an independent status within the meaning of this paragraph, if it is shown that the transactions between the agent and the enterprise were not made under arm's length conditions.

7. 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.

## **Article 6**

### **INCOME FROM IMMOVABLE PROPERTY**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under the law 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, usufructs 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, boats, and aircrafts 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 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; (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or (c) other business activities carried on in that other State of the same or similar kind as those affected 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.
3. In determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred whether in the State in which the permanent establishment is situated or elsewhere, as follows:
  - (a) However, no such deduction shall be allowed in respect of amounts, if any, paid (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 or other rights or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on money lent to the permanent establishment.
  - (b) 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 or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on money lent to the head office of the enterprise or any its other offices;
  - (c) Such deductions are also allowed under the provisions of the domestic law of the Contracting State in which the permanent establishment is situated.
4. In so far 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 from the operation of ships or aircrafts in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. The provisions of preceding paragraph shall also apply to profits from the participation in a pool, a joint business, or an international operating agency.

## **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 relation which differ from those which would be made between independent enterprises, then any profits 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 profits of that enterprise and taxed accordingly.
2. Where a Contracting State includes in the profits of an enterprise of that State and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits

which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State may 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 Agreement and the competent authorities of the Contracting States shall, if necessary, consult each other.

## **Article 10**

### **DIVIDENDS**

1. Dividends paid by a company which is 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 recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 (ten) percent of the gross amount of the dividends.

The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. 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 from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting States of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of the dividends are paid if 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.
5. 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 in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profit or income arising in such other State.

## **Article 11**

### **INTEREST**

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 laws of that State, but, if the recipient is the beneficial owner of Interest, the tax so charged shall not exceed 10 (ten) percent of the gross amount of the interest;
3. Notwithstanding the provision of paragraph 1 and 2 interest arising in a Contracting State and derived by the Government of the other Contracting State, including a local authority thereof, the Central Bank or any financial institution controlled by that Government, should be exempt from tax in the first-mentioned State.
4. For the purpose of paragraph 3, the terms "the Central Bank" and "Financial institution controlled by the Government" mean:
  - (a) In the case of Nepal;
    1. Nepal Rastra Bank (Central Bank of Nepal)
    2. Such other financial institution, the capital of which is wholly owned by the Government of Nepal, as may be agreed upon from time to time between the Governments of the Contracting States.
  - (b) In the case of Qatar;
    1. Qatar Central Bank
    2. Such other financial institution, the capital of which is wholly owned by the Government State of Qatar, as may be agreed upon from time to time between the Governments of the Contracting States.
5. The term "Interest" as used in this Article means income from debt-claims of every kind, whether or not secured by a mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
6. 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 effectively connected with (a) such permanent establishment or fixed base, or with (b) business activities referred to under (c) of paragraph 1 of Article 7. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, 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.
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 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**

1. Royalties 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 may also be taxed in the Contracting State in which they arise, according to the laws of that State, but if the recipient is the beneficial owner of the royalties, or fees for technical services, the tax so charged shall not exceed 15 (fifteen) percent of the gross amount of the royalties
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematography films or films or tapes used for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties 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, 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.
5. Royalties 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, whether he is a resident of a Contracting State or not, has in

a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. 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 paid exceeds the amount which would have been paid in the absence of such relationship, the provisions of this Article shall apply to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **Article 13**

### **CAPITAL GAINS**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State including such gains from the alienation of such permanent establishment (alone or with the whole enterprises) or of such fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircrafts operated in international traffic or movable property pertaining to the operation of such ships or aircrafts, shall be taxable only in the Contracting State in which the place of effective management is situated.
4. Gains from the alienation of stocks and shares of a company may be taxed in the Contracting State in which they have been issued.
5. Gains from the "alienation" means the sale, exchange, transfer, or relinquishment of the property or the extinguishment of any rights therein or the compulsory acquisition thereof under any law in force in the respective Contracting State.
6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident.

## **Article 14**

### **INDEPENDENT PERSONAL SERVICES**

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the

- purpose of performing his activities or he is present in that other State for a period or periods exceeding in the aggregate 183 days in any twelve month period. If he has a fixed base or is present in that other State for the aforesaid period or periods, the income, may be taxed in that other State but only so much of it as is attributable to that fixed base or is derived in that other State during the aforesaid period or periods.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational, or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, 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 there from 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 that other State for a period or periods not exceeding in the aggregate 183 days within any twelve- month period commencing or ending in the calendar years concerned;
  - (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, which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived from an employment exercised on board a ship or aircraft operated in international traffic may be taxed in the contracting State in which the place of effective management of the enterprise is situated.

## **Article 16**

### **DIRECTORS' FEES**

1. Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the Board of Directors of a company which is a resident of the other Contracting State may be taxed in that other State.

2. Salaries, wages, and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.

## **Article 17**

### **ARTISTES AND SPORTSPERSONS**

1. Notwithstanding the provisions of Articles 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 as a sportsperson, 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 by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportspersons themselves but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15 shall be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
3. Income derived by a resident of a Contracting State from activities exercised in the other Contracting State as envisaged in paragraphs 1 and 2 of this Article, shall be exempted from tax in that other State if the visit to that other State is supported wholly or substantially by funds of either Contracting State takes place under a cultural agreement or arrangement between the Governments of the Contracting States.

## **Article 18**

### **PENSIONS AND ANNUUITIES**

1. Subject to the provisions of paragraph 2 of Article 19 pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.
2. The term “annuity” means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money’s worth.
3. Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration derived by a resident of a Contracting State may be taxed in the other Contracting State if such payments are borne by enterprises of that other State or by a permanent establishment situated therein.

## **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 shall be taxable only in that State;  
(b) However, such salaries, wages and 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:
  - 1) is a national of that other State; or
  - 2) did not become a resident of that other State solely for the purpose of rendering the services.
2. (a) Any pension paid by, or out of funds created 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 shall be taxable only in that State;  
(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. The provisions of Articles 14, 15, 16, 17 and 18 shall apply to salaries, wages and similar remuneration, and to pensions 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**

### **TEACHERS AND RESEARCHERS**

1. An individual who is immediately before visiting a Contracting State a resident of the other Contracting State and who, at the invitation of the Government of the first-mentioned Contracting State or of a university, college, school, museum or other cultural institution in that first mentioned Contracting State or under an official programme of cultural exchange, is present in that Contracting State for a period not exceeding two consecutive years solely for the purpose of teaching, giving lectures or carrying out research at such institution shall be exempted from tax in that Contracting State on his remuneration for such activity, provided that payment of such remuneration is derived by him from outside that Contracting State.
2. The provisions of paragraph 1 of this Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

## **Article 21**

### **STUDENTS AND TRAINEES**

1. Payments which a student or business apprentice, or 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 Contracting State solely for the purpose of his education or training receives payment for the purpose of his maintenance, education or training shall not be taxed in that Contracting State, provided that such payments arise from sources outside that Contracting State.
2. An individual who is a resident of one of the Contracting States at the time he becomes temporarily present in the other Contracting State and who is temporarily present in the other Contracting State as an employee of or under contract with a resident of the first mentioned State, or as a participant in a program sponsored by the Government of the other State or by any international organization for the primary purpose of:
  - (a) acquiring technical, professional, or business experience from a person other than that resident of the first-mentioned State or other than a person related to such resident: or
  - (b) studying at a university or other recognized educational institution in that other State shall be exempt from tax in that other State for a period not exceeding three years with respect to his income from personal services if aggregate amount is not in excess of US \$ 4000 or its equivalent in Qatari Riyals or Nepalese Rupees.

## **Article 22**

### **OTHER INCOME**

1. Items or income of a resident of a Contracting State, wherever arising, not dealt within the foregoing Articles of this Agreement shall be taxable in only that State.
2. The provisions of paragraph 1 shall not apply to income derived by a resident of a Contracting State, if the recipient of such income carries on business in the Contracting State through a permanent establishment situated therein, or perform in that other State independent personal services from a fixed base situated therein, and the right in respect of which the income is paid is effectively connected with such permanent establishment. In such case, the provisions of Articles 7 or 14 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 of the Agreement and arising in the other Contracting State may also be taxed in that other State.

## **Article 23**

### **ELIMINATION OF DOUBLE TAXATION**

1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting State. When income is subject to tax in both Contracting States, relief from double taxation shall be given in accordance with the following paragraphs of this Article.
  - (a) In case of Nepal, derives income from Qatar which in accordance with the provisions of this Agreement, may be taxed in Qatar the amount of Qatari tax payable in respect of that income, shall be allowed as a credit against Nepal tax imposed on that resident in respect of that income. The credit shall not, however, exceed that part of Nepal tax, which is attributable to such income.
  - (b) In case of Qatar, derives income from Nepal which in accordance with the provisions of this Agreement may be taxed in Nepal, the amount of Nepal tax payable in respect of that income shall be allowed as a credit against Qatari tax imposed on that resident in respect of that income. The credit shall not, however, exceed that part of Qatari tax, which is attributable to such income.
2. For the purpose of allowance as credit as the case may be, in a Contracting State, the tax paid in the other Contracting State shall be deemed to include the tax which is otherwise payable in that other State but has been reduced or waived by that State under its legal provisions for tax incentives.

## **Article 24**

### **NON 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 of a permanent establishment, which an enterprise of a Contracting State has in the other Contracting State, shall not be less favorably levied in that other State than the taxation levied on the enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, relief and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. The enterprise 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 are or may be subjected.
4. Except where the provisions of paragraph 1 of Article 9, paragraph 8 of Article 11, or paragraph 6 of Article 12 apply, interest, royalty and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first- mentioned State.
  5. In this Article, the term "taxation" means taxes, which are the subjects of this Agreement.

## **Article 25**

### **MUTUAL AGREEMENT PROCEDURE**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24 to that of the Contracting State of which he is a national. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority shall endeavor, 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 endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
4. The competent authorities of the contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities, through consultations, shall develop appropriate bilateral procedures, conditions, methods, and techniques for the implementation of the mutual agreement procedure provided for in this Article.

## **Article 26**

### **EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws

of the Contracting States concerning taxes covered by the Agreement in so far as the taxation thereunder is not contrary to this Agreement, in particular for the prevention of fraud or evasion of such taxes. 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 law of that State. However, if the information is originally regarded as secret in the transmitting State it 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, 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 or 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).

## **Article 27**

### **MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS**

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic mission or consular posts under the general rules of international law or under the provisions of special Agreements.

## **Article 28**

### **ENTRY INTO FORCE**

Each Contracting State shall notify the other in writing through diplomatic channel the completion of the procedure required by its law for the bringing into force of this Agreement. This Agreement shall enter into force of the date of the letter of this notification and shall thereupon have effect as respects of income derived during the taxable year beginning on or after the first day of January in the calendar year following that in which the Agreement enters into force.

## **Article 29**

### **TERMINATION**

This Agreement shall remain in force until terminated by one of the Contracting States.

Either Contracting State may terminate the Agreement in writing through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year following after the period of five years from the date on which the Agreement enters into force. In such event, the Agreement shall cease to have effect as respects of income derived during the taxable year beginning on or after the first day of January in the calendar year following that in which the notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Agreement.

Done in duplicate **at Kathmandu on 15/10/2007** in Nepali, Arabic and English languages, all texts being equally authentic. In case of any divergence, the English text shall prevail.

**For the Government of  
Nepal**

**(Rameshore Prasad Khanal)**  
Secretary (Revenue)  
Ministry of Finance

**For the Government of  
the State of Qatar**

**(Moftah Jassim Al-Moftah)**  
Director of Public Revenue and Taxes  
Department  
Ministry of Finance

The Government of Nepal and the Government of the Islamic Republic of Pakistan, desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

## **Article 1**

### **PERSONS COVERED**

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

## **Article 2**

### **TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property.
3. The existing taxes to which the Agreement shall apply are:
  - (a) in Nepal:

Income tax imposed under the  
Income Tax Act;  
(hereinafter referred to as "Nepal tax").
  - (b) in Pakistan:
    - (i) the income tax;
    - (ii) the super tax; and
    - (iii) the surcharge;  
(hereinafter referred to as "Pakistan tax"); and
4. The Agreement shall also apply 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 taxes referred to paragraph 3. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

## **Article 3**

### **GENERAL DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires:

- (a) the term "Pakistan" when used in a geographical sense means Pakistan as defined in the Constitution of the Islamic Republic of Pakistan and includes any area outside the territorial waters of Pakistan which under the laws of Pakistan and international law is an area within which Pakistan exercises sovereign rights and exclusive jurisdiction with respect to the natural resources of the seabed, subsoil and superjacent waters;
  - (b) the term "Nepal" means the Territory of Nepal;
  - (c) the terms "a Contracting State" and "the other Contracting State" mean Pakistan or Nepal as the context requires;
  - (d) the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes;
  - (e) the term "competent authority" means:
    - (i) in Pakistan, the Central Board of Revenue or its authorized representative, and
    - (ii) in Nepal the authorized representative of the Minister for finance;
  - (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 "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
  - (h) the term "national" means:
    - (i) any individual possessing the citizenship or nationality of a Contracting State;
    - (ii) any legal person or association deriving its status as such from the laws in force in a Contracting State;
  - (i) the term "person" includes an individual, a company and any other body of persons which is treated as an entity for tax purposes; and
  - (j) the term "tax" means Pakistan tax or Nepal tax, as the context requires.
2. As regards the application of the Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to taxes which are the subject of this Agreement.

## **Article 4**

### **RESIDENT**

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 reasons 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 as follows:
  - (a) he shall be deemed to be a resident only 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 (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 only 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 only of the State of which he is a national;
  - (d) if he is a national of both Contracting 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, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

## **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" includes especially:
  - (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop;

- (f) a warehouse;
  - (g) a sales outlet;
  - (h) a farm or plantation; and
  - (i) a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources.
3. The term "permanent establishment" likewise encompasses:
- (a) a building site, a construction, assembly or installation project or any supervisory activities in connection with such site or project, but only where such site, project or activity continues for a period or periods aggregating 183 days within any twelve months period;
  - (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by an enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the Contracting State for a period or periods aggregating more than 183 days within any twelve months period.
4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
- (a) the use of facilities solely for the purpose of storage, or display 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, or display;
  - (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 carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; and
  - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status to whom paragraph 7 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

Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
  - (b) has no such authority, but habitually maintains in the first - mentioned State a stock of goods or merchandise from which he delivers goods or merchandise on behalf of the enterprise.
6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person than an agent of an independent status to whom paragraph 7 applies.
  7. 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 State through a broker, general commission agent or any other agent of an independent Status, where such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or principally on behalf of that enterprise, he shall not be considered an agent of an independent status within the meaning of this paragraph.
  8. 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.

## **Article 6**

### **INCOME FROM IMMOVABLE PROPERTY**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under the law 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, boats 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 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; (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or (c) other business activities carried on in that other State 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.
3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (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 or other rights, or by way of commission, 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 or other rights, or by way of commission for specific services performed or for management, or, except in the case of banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. 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 from the operation of ships and aircraft in international traffic shall be taxable only in the Contracting State of which the enterprise operating the ships or aircraft is a resident.
2. Notwithstanding the provisions of paragraph 1, the profits of an enterprise of a contracting state from operation of ships in international traffic from sources within the other contracting state may be taxed in the other state in accordance with domestic laws provided that the tax so charged shall be reduced by an amount equal to fifty percent thereof.
3. The provisions of paragraphs 1 and 2 shall also apply to profits from participation in a pool, a joint business or an international operating agency.

## **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 profits 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 profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such 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.

## **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 beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:
- (a) 10 percent of the gross amount of the dividends if the beneficial owner is a company which holds at least 10 percent of the capital of the company paying the dividends; or
- (b) 15 percent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall settle the mode of application of these limitations by mutual agreement.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in the Article means income from shares or other rights, not being debt-claims participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. 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 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 11** **INTEREST**

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 laws of that State, but if the recipient is the beneficial owner of interest the tax so charged shall not exceed:
  - (a) 10 per cent of the gross amount of the interest if the beneficial owner is a financial institution, an insurance company or an investment company receiving income from financial investments;
  - (b) 15 per cent of the gross amount of the interest in all other cases.
3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived by a Government of the other Contracting State, including a local authority thereof, the Central Bank or any financial institution controlled by that Government shall be exempt from tax in the first mentioned State.
4. For the purposes of paragraph 3 the terms "the Central Bank" and "Financial

Institution controlled by that Government" means:

- (a) in the case of Nepal:
    - (i) Nepal Rastra Bank (Central Bank of Nepal);
    - (ii) such other financial institution the capital of which is wholly owned by The Government of Nepal, as may be agreed upon from time to time between the Governments of the Contracting States.
  - (b) in the case of Pakistan:
    - (i) State Bank of Pakistan (Central Bank of Pakistan);
    - (ii) such other financial institution the capital of which is wholly owned by the Government of the Islamic Republic of Pakistan, as may be agreed upon from time to time between the Governments of the Contracting States.
5. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
  6. 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 (a) such permanent establishment or fixed base, or with (b) business activities referred to under (c) of paragraph 1 of Article 7. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
  7. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, 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.
  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 interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon 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 laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **Article 12**

### **ROYALTIES AND FEES FOR TECHNICAL SERVICES**

1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties or fees for technical services may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the royalties or fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed 15 percent of the gross amount of the royalties or fees for technical services.
3. The term "royalties" as used in this Article means any consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films and films, tape or discs used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.
4. The term "fees for technical services" as used in this Article means any consideration for the provision or rendering of any managerial, technical or consultancy services by a resident of a Contracting State in the other Contracting State but does not include consideration for any activities mentioned in paragraph 3 of Article 5, Article 14 or Article 15.
5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
6. Royalties or fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority, or a resident of that State. Where, however, the person paying the royalties or fee for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base with which the right, property or contract in respect of which the royalties or fees for technical

services are paid is effectively connected, and such royalties or fees or technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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 royalties or fees for technical services, having regard to the use, right or information 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 such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **Article 13**

### **CAPITAL GAINS**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.
4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.
5. Gains from the alienation of shares other than those mentioned in paragraph 4 representing a participation of 25 per cent or more in a company which is a resident of a Contracting State may be taxed in that State.
6. Gains from the alienation of any property other than that referred to in paragraph 1,2,3,4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

## **Article 14**

### **INDEPENDENT PERSONAL SERVICES**

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities or he is present in that other State for a period or periods exceeding in the aggregate 183 days in any twelve month period. If he has such a fixed base or is present in that other State for the aforesaid period or periods, the income, may be taxed in that other State but only so much of it as is attributable to that fixed base or is derived in that other State during the aforesaid period or periods.
2. Notwithstanding the provisions of paragraph 1, income derived by a resident of Contracting State in respect of professional services or other activities of an independent character performed in the other Contracting State, may be taxed in that other State if the remuneration for those services or activities is paid by a resident of that other State or is borne by permanent or a fixed base situated in that other State.
3. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

## **Article 15**

### **DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Article 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 State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period; and
  - (b) the remuneration is paid by or on behalf of an employer who is not a resident of the other State; and
  - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provision of this Article, remuneration derived in

respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

## **Article 16**

### **DIRECTORS' FEES**

1. Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or any other similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.
2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.

## **Article 17**

### **ENTERTAINERS AND SPORTS PERSONS**

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 theater, motion picture, radio or television artiste, or a musician, or as a sports person, 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 by an entertainer or a sports person in his capacity as such accrues not to the entertainer or sports person himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sports person are exercised.
3. Income derived by a resident of a Contracting State from activities exercised in the other Contracting State as envisaged in paragraphs 1 and 2 of this Article, shall be exempt from tax in that other state if the visit to that other State is supported wholly or mainly by public funds of the first mentioned Contracting State, a political subdivision or a local authority thereof, or takes place under a cultural agreement or arrangement between the Government of the Contracting State.

## **Article 18**

### **PENSIONS AND SOCIAL SECURITY PAYMENTS**

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of the other Contracting State in consideration of past employment shall be taxable only in that State.
2. Notwithstanding the provisions of paragraph 1, pension paid and other payments made

under a public scheme which is part of the social security system of a Contracting State or a political sub-division or a local authority thereof shall be taxable only in 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 shall be taxable only in that State.  
(b) However, such salaries, wages and similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
  - (i) is a national of that State; or
  - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. (a) Any pension paid by, or out of funds created 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 shall be taxable only in that State.  
(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and similar remuneration, and to pensions 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, APPRENTICES AND TRAINEES**

1. 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 for the purpose of his education or training receives from the purpose of his maintenance, education, training shall not be taxed in that State provided that such payments arise from sources outside that State.
2. An individual who is a resident of one of the Contracting States and is temporarily present in the other Contracting State as an employee of or under contract with a resident of the first-mentioned State or as a participant in a programme sponsored

by the Government of the other State or by any international organization for the primary purpose of:

- (a) acquiring technical, professional or business experience from a person other than that resident of the first mentioned State or other than a person related to such resident; or
- (b) studying at a university or other recognized educational institution in that other State;

Shall be exempt from tax in that other State for a period not exceeding one year with respect to his income from personal services if the aggregate amount is not in excess of US \$ 3000 or its equivalent in Pakistan rupees or Nepalese rupees, as the case may be.

## **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 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 of this Agreement and arising in the other Contracting State may also be taxed in that other State.

## **Article 22**

### **ELIMINATION OF DOUBLE TAXATION**

1. Double taxation shall be eliminated as follows:
  - (a) In Pakistan, where a resident of Pakistan derives income which, in accordance with the provisions of this Agreement, may be taxed in Nepal, Pakistan shall allow as a deduction from the tax on the income of that resident, an amount equal to the Nepal tax paid. Such deduction shall not, however, exceed that part of the tax on income, as computed before the deduction is given, which is attributable to the income which may be taxed in Nepal;

- (b) In Nepal, where a resident of Nepal derives income which, in accordance with the provisions of this Agreement, may be taxed in Pakistan, Nepal shall allow as a deduction from the tax on the income of that resident, an amount equal to the Pakistan tax paid. Such deduction shall not, however, exceed that part of the tax on income, as computed before the deduction is given, which is attributable to the income which may be taxed in Pakistan;
2. For the purposes of paragraph 1 of this Article, the terms "Pakistan tax paid" and "Nepal tax paid" shall be deemed to include the amount of tax which would have been paid in Pakistan or Nepal as the case may be, but for an exemption or reduction granted in accordance with laws designed to promote economic development in that Contracting State.
  3. A grant given by a Contracting State or a political subdivision thereof to a resident of the other Contracting State in accordance with laws designed to promote economic development in that first-mentioned State, shall not be taxable in the other State.

## **Article 23**

### **NON-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, in particular with respect to residence, are or may be subjected. This provision shall notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
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. This provision shall not 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.
3. 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 that first mentioned State are or may be subjected.
4. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11 or paragraph 7 of Article 12 apply, interest, royalties, fees for technical services

and other disbursement paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first mentioned State.

## **Article 24**

### **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 provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority shall endeavor, 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 this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities, through consultations, shall develop appropriate bilateral procedures, conditions, methods, and techniques for the implementation of the mutual agreement procedure provided for in this Article.

## **Article 25**

### **EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement in so far as the taxation thereunder is not contrary to the Agreement as well as to prevent fiscal evasion in relation to such taxes. 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 law 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, or the determination of appeals in relation to, the taxes covered by this 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 or 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*).

## Article 26

### **MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS**

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

## Article 27

### **ENTRY INTO FORCE**

1. Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of receipt of the later of these notifications:
2. The provisions of this Agreement shall apply:-
  - (a) in Nepal:  
in respect of income derived on or after the first day of Nepalese fiscal year next following the date upon which this Agreement enters into force.
  - (b) in Pakistan:
    - (i) with regard to taxed withheld at source, in respect of amounts paid or credited on or after the first day of July next following the date

- upon which this Agreement enters into force; and
- (ii) with regard to other taxes, in respect of taxable years beginning on or after the first day of July next following the date upon which this Agreement enters into force.

## **Article 28**

### **TERMINATION**

1. This Agreement shall remain in force indefinitely but either of the Contracting States may terminate the Agreement through the diplomatic channel, by giving to the other Contracting State written notice of termination not later than 30 June of any calendar year starting five years after the year in which the Agreement entered into force.
2. In such event, the Agreement shall cease to apply:
  - (a) In Nepal:  
in respect of income derived on or after the first day of the Nepalese fiscal year next following that in which the notice of termination is given.
  - (b) in Pakistan:
    - (i) with regard to taxes withheld at source, in respect of amounts paid or credited after the end of the calendar year in, which such notice is given; and
    - (ii) with regard to other taxes, in respect of taxable years beginning after the end of the calendar year in which such notice is given.

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

DONE in duplicate in Kathmandu on the 25<sup>th</sup> day of January 2001 in the English language.

For The Government of Nepal

For the Government of the  
Islamic Republic of Pakistan

.....  
Dr. Bimal Prasad Koirala  
Secretary  
Ministry of Finance

.....  
Mr. Riaz Hussain Naqvi  
Secretary Revenue Division  
Chairman Central Board of Revenue

The Government of Nepal and the Government of the Republic of India, desiring to conclude an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income and with a view to promoting economic cooperation between the two countries, have agreed as follows:

## **Article 1**

### **PERSONS COVERED**

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

## **Article 2**

### **TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which the Agreement shall apply are in particular:
  - (a) in Nepal, income tax imposed under the Income Tax Act, 2058 B.S. (2002 A.D.);  
(hereinafter referred to as “Nepalese tax”).
  - (b) in India, the income tax, including any surcharge thereon;  
(hereinafter referred to as “Indian tax”);
4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their tax laws.

## **Article 3**

### **GENERAL DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires:
  - (a) the term “Nepal” means the Territory of Nepal;
  - (b) 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;
- (c) 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 tax laws in force in the respective Contracting States;
- (d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) 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;
- (f) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (g) the term “competent authority” means:
- (i) in Nepal: the Minister of Finance or his authorized representative;
  - (ii) in India: the Finance Minister, Government of India, or his authorized representative;
- (h) the term “national” means:
- (i) any individual possessing the nationality of a Contracting State; and
  - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
- (i) the terms “Contracting State” and “the other Contracting State” mean Nepal or the Republic of India as the context requires;
- (j) the term “tax” means Nepalese tax or Indian tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty or fine imposed relating to those taxes;
- (k) The term “fiscal year” means:
- (i) in the case of Nepal: financial year beginning in mid July (corresponding to 1<sup>st</sup> day of Shrawan month of the Nepalese B.S.);
  - (ii) in the case of India: the financial year beginning on the 1<sup>st</sup> day of April.
2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning

that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies and any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

## **Article 4**

### **RESIDENT**

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, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.
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 as follows:
  - (a) he shall be deemed to be a resident only 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 only of the State with which his personal and economic relations are closer (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 only 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 only 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, then it shall be deemed to be a resident only of the State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual 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” includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a sales outlet;
- (g) a warehouse in relation to a person providing storage facilities for others;
- (h) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on; and
- (i) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term “permanent establishment” also encompasses:

- (a) A building site or construction, installation or assembly project or supervisory activities in connection therewith but only if such site, project or activities last more than 183 days.
- (b) The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or connected project) within the country for a period or periods aggregating more than 90 days within any 12-month period.

4. Notwithstanding the preceding provisions of this Article the term “permanent establishment” shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, or display 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, or display;
- (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 carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
  - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 7 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:
    - (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
    - (b) 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; or
    - (c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself.
  6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.
  7. 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, he will not be considered an agent of an independent status within the meaning of this paragraph.
  8. 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.

## **Article 6**

### **INCOME FROM IMMOVABLE PROPERTY**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term “immovable property” shall have the meaning which it has under the law 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, boats 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 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 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.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere,

in accordance with the provisions of and subject to the limitations of the tax laws of that State. However, no such deduction shall be allowed in respect of amounts, if any, paid (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 banking enterprises, 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 toward 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. 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 of ships or aircraft in international traffic shall be taxable only in that Contracting State.
2. Profits derived by a transportation enterprise which is a resident of a Contracting State from the use, maintenance, or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise in international traffic which is supplementary or incidental to operation of its ships or aircraft in international traffic shall be taxable only in that Contracting

State unless the containers are used solely within the other Contracting State.

3. For the purposes of this Article interest on investments directly 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 if they are integral to the carrying on of such business, and the provisions of Article 11 shall not apply in relation to such interest.
4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

## **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 profits 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 profits of that enterprise and taxed accordingly.
2. Where a Contracting State includes in the profits of an enterprise of that State-and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of the Agreement and the competent authorities of the Contracting States shall, if necessary, consult each other.

## **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 beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

- (a) 5 per cent of the gross amount of dividends if the beneficial owner is a company which owns at least 10 per cent of the shares of the company paying the dividends;
- (b) 10 per cent of the gross amount of dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

- 3. 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 from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.
- 4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of article 7 or article 14, as the case may be, shall apply.
- 5. 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 in so far as such dividends are paid to a resident of that other State or in so far 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 11** **INTEREST**

- 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 laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
- 3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State

shall be exempt from tax in that State, provided that it is derived and beneficially owned by:

(a) (i) in the case of Nepal, the Nepal Rastra Bank and,

(ii) in the case of India, the Reserve Bank of India; or

(b) the Government, a political sub-division or a local authority of the other Contracting State; or

(c) any other institution as may be agreed upon from time to time between the Competent authorities of the Contracting States through exchange of letters.

4. The term “interest” as used in this Article means income from debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
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 cases 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 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 laws of each Contracting State, due regard being had to the other provisions of this Agreement

## **Article 12**

### **ROYALTIES**

1. Royalties 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 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 is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the royalties.
3. The term “royalties” as used in this article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraph 1 and 2 shall not apply if the beneficial owner of the royalties being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties 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 or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such cases the provisions of article 7 or article 14, as the case may be, shall apply.
5. (a) Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State itself, a political sub-division, a local authority, or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.  
(b) Where under sub-paragraph (a) royalties do not arise in one of the Contracting States, and the royalties relate to the use of, or the right to use, the right or property, in one of the Contracting States, the royalties shall be deemed to arise in that Contracting State.
5. 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 having regard to the use, right or information 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 such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **Article 13**

### **CAPITAL GAINS**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State of which the alienator is a resident.
4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.
5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.
6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

## **Article 14**

### **INDEPENDENT PERSONAL SERVICES**

1. Income derived by an individual 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 except in the following circumstances when such income may also be taxed in the other Contracting State:
  - (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the

- income as is attributable to that fixed base may be taxed in that other State; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any period of 12 months; in that case only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.
2. The term “professional services” includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, surgeons, dentists and accountants.

## **Article 15**

### **DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived there from may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
  - (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned,
  - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
  - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, by an enterprise of a Contracting State may be taxed in that State.

## **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 of a company which is a resident of the other Contracting State may be taxed in that other State.

## **Article 17**

### **ARTISTES AND SPORTSPERSONS**

1. Notwithstanding the provisions of Articles 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 as a sportsperson, 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 by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
3. The provisions of paragraphs 1 and 2, shall not apply to income from activities performed in a Contracting State by entertainers or sportspersons if the activities are substantially supported by public funds of one or both of the Contracting States or of political subdivisions or local authorities thereof. In such a case, the income shall be taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

## **Article 18**

### **PENSIONS**

Subject to the provisions of paragraph 2 of article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

## **Article 19**

### **GOVERNMENT SERVICE**

1. (a) Salaries, wages and other 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 shall be taxable only in that State.  
  
(b) However, such salaries, wages and other 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 State who:
  - (i) is a national of that State; or
  - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. (a) Any pension paid by, or out of funds created 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 shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other State.

3. The provisions of articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration and to pensions 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**

### **PROFESSORS, TEACHERS AND RESEARCH SCHOLARS**

1. A professor, teacher or research scholar who is or was a resident of the Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college or other similar approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his first arrival in that other State.
2. This Article shall apply to income from research only if such research is undertaken by the individual in the public interest and not primarily for the benefit of some private person or persons.
3. For the purposes of this Article, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.
4. For the purpose of paragraph 1 “approved institution” means an institution which has been approved in this regard by the competent authority of the concerned Contracting State.

## **Article 21**

### **STUDENTS**

1. A student who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training shall, besides grants, loans and scholarships, be exempt from tax in that other contracting State on:
  - (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
  - (b) remuneration which he derives from an employment which he exercises in the other Contracting State if the employment is directly related to his studies.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article, for more than six consecutive years from the date of his first arrival for the purposes of his education or training in that other State.

## **Article 22**

### **OTHER INCOME**

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
3. Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in form of lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any nature whatsoever, such income may be taxed in the other Contracting State.

## **Article 23**

### **METHODS FOR ELIMINATION OF DOUBLE TAXATION**

1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Agreement. Where income is subject to tax in both Contracting States, relief from double taxation shall be given in accordance with the following paragraphs of this Article.
2. Double Taxation shall be eliminated as follows:
  - (i) in Nepal:
    - (a) Where a resident of Nepal derives income which, in accordance with the provisions of this Agreement, may be taxed in India, Nepal shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in India.

Such deduction shall not, however, exceed that portion of the tax as

computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in India.

- (b) Where in accordance with any provision of the Agreement, income derived by a resident of Nepal is exempt from tax in Nepal, Nepal may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.
- (ii) In India:
  - (a) Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Nepal, India shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in Nepal.

Such deduction shall not, however, exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in Nepal.

- (b) Where in accordance with any provision of the Agreement, income derived by a resident of India is exempt from tax in India, India may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

## **Article 24**

### **NON-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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not 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. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first mentioned State at a rate of tax which is higher than that imposed on the profits of

- a similar company of the first mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
  4. 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 are or may be subjected.
  5. The provisions of this Article shall apply to taxes covered by this Agreement.

## **Article 25**

### **MUTUAL AGREEMENT PROCEDURE**

1. Where a person 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 to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority 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. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
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. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves

or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities, through consultations, shall develop appropriate bilateral procedures, conditions, methods, and techniques for the implementation of the mutual agreement procedure provided for in this Article.

## **Article 26**

### **EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information, including documents or certified copies thereof, as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of domestic laws concerning taxes of every kind and description imposed on behalf of or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. 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 Contracting State and 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, or 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 States may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying Contracting States authorizes such use.
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 and certified copies thereof 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 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 27**

### **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 & 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 subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Agreement 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 or accorded any priority 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 only be brought before the courts or administrative bodies of that State. 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 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 28**

### **LIMITATION OF BENEFITS**

A resident of a Contracting State shall not be entitled to the benefits of this Agreement if its affairs were arranged in such a manner as if it was the main purpose or one of the main purposes to take the benefits of this Agreement. The case of legal entities not having bonafide business activities shall be covered by the provisions of this Article.

## **Article 29**

### **MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS**

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

## **Article 30**

### **ENTRY INTO FORCE**

1. The Contracting States 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.
3. The provisions of this Agreement shall have effect:
  - (a) In Nepal in respect of income derived in any fiscal year beginning on or after the mid July (corresponding to 1<sup>st</sup> day of Shrawan month of the Nepalese B.S.) next following the calendar year in which the Agreement enters into force; and
  - (b) In India, in respect of income derived in any fiscal year beginning on or after the first day of April next following the calendar year in which the Agreement enters into force.
2. The agreement between the Government of the Republic of India and Government of Nepal for the Avoidance of Double Taxation and Prevention of Fiscal

Evasion with respect to Taxes on Income signed at Kathmandu on the 8th day of January, 1987 shall cease to have effect when the provisions of this Agreement become effective in accordance with the provisions of paragraph 3, provided that any action or proceedings already initiated prior to the coming into force of this Agreement shall be dealt with in accordance with the Agreement for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income Signed at Kathmandu on January 8, 1987.

## **Article 31**

### **TERMINATION**

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect:

- (a) In Nepal, in respect of income derived in any fiscal year on or after the mid July (corresponding to 1<sup>st</sup> day of Shrawan month of the Nepalese B.S.) next following the calendar year in which the notice is given.
- (b) In India, in respect of income derived in any fiscal year on or after the first day of April next following the calendar year in which the notice is given;

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

DONE in duplicate at Kathmandu on this 27<sup>th</sup> day of November 2011, each in the Nepali, Hindi and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government of  
Nepal:

-----  
(BARSHA MAN PUN)  
MINISTER OF FINANCE

For the Government of the  
Republic of India:

-----  
(PRANAB MUKHERJEE)  
MINISTER OF FINANCE

## **PROTOCOL**

At the moment of signing of the Agreement this day concluded between the Government of Nepal 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, the undersigned have agreed upon the following provisions which shall be an integral part of the Agreement:

1. It is understood that if the domestic law of a Contracting State is more beneficial to a resident of the other Contracting State than the provisions of this Agreement, then the provisions of the domestic law of the first-mentioned State shall apply to the extent they are more beneficial to such a resident.
2. With reference to Article 12:

In respect to Article 12 (Royalties) if under any Agreement, Convention or

Protocol between Nepal and a third state, Nepal limits its taxation at source on royalties to a rate lower or a scope more restricted than the rate or scope provided for in this agreement on Royalties, then as from the date on which the relevant Nepal Agreement or Convention or Protocol enters into force, the same rate or scope as provided for in that Agreement or Convention or

Protocol on Royalties shall also apply under this Agreement.

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

DONE in duplicate at Kathmandu on this 27<sup>th</sup> day of November 2011, each in the Nepali, Hindi and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Government of  
Nepal:

For the Government of the  
Republic of India:

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(BARSHA MAN PUN)  
MINISTER OF FINANCE

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(PRANAB MUKHERJEE)  
MINISTER OF FINANCE

The Government of Nepal and The Government of the Kingdom of Thailand,

Desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows;

## **Article 1**

### **PERSONAL SCOPE**

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

## **Article 2**

### **TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Agreement shall apply are in particular:
  - (a) In the case of Thailand:
    - (i) the income tax; and
    - (ii) the petroleum income tax;  
(hereinafter referred to as "Thai tax")
  - (b) In the case of Nepal;  
the income tax imposed under  
the Income Tax Act; (hereinafter  
referred to as "Nepal tax")
4. The Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

## **Article 3**

### **GENERAL DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires:
  - (a) the term "Thailand" means the Kingdom of Thailand.;
  - (b) the term "Nepal" means the Territory of Nepal;
  - (c) the terms "a Contracting State" and "the other Contracting State" mean Thailand or Nepal as the context requires;
  - (d) the term "person" includes an individual, a company and any other body of persons as well as any entity treated as a taxable unit under the taxation laws in force in either Contracting State;
  - (e) the term "company " means any body corporate or any entity which is treated as a body corporate for tax purposes;
  - (f) the term " 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 "tax " means Thai tax or Nepal tax as the context requires, but shall not include any amount which is payable in respect of any default or omissions in relation to the taxes to which this Agreement applies or which represents a penalty imposed relating to these taxes;
  - (h) the term " national" means
    - (i) any individual possessing the nationality of a Contracting State;
    - (ii) any legal person, partnership, association and any other entity deriving its status as such from the laws in force in a Contracting State;
  - (i) the term "international traffic " means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State; and
  - (j) the term "competent authority" means, in the case of Thailand, the Minister of Finance or his authorized representative, and, in the case of Nepal the Minister of Finance or his authorized representative;
2. As regards the application of the Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that Contracting State concerning the taxes to which the Agreement applies.

## **Article 4**

### **RESIDENT**

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 incorporation, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.
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 as follows;
  - (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 (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 State shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, it shall be deemed to be a resident of the Contracting State in which it is incorporated or under the law of which it is deemed to be a resident, if the company under the forgoing criterion still is a resident of both Contracting States, then it shall be deemed to be a resident of Contracting State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual 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 " includes especially:
  - (a) a place of management;

- (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop;
  - (f) a mine, oil or gas well, quarry or any other place of extraction of natural resources;
  - (g) a farm or plantation;
  - (h) a warehouse, in relation to a person providing storage facilities for others;
  - (i) a building site, a construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities continue for a period of more than 183 days;
  - (j) the furnishing of services including consultancy services by a resident of one of the Contracting States through employees or other personnel, where activities of that nature continue for the same or a connected project within the other Contracting State for a period or periods aggregating more than 183 days within any twelve-month period.
3. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
- (a) the use of facilities solely for the purpose of storage or display 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 or display ;
  - (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 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 carrying on 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 6 applies - is acting in a Contracting State, on behalf of the enterprise of the other Contracting State, the enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State, in respect of any activities which that person undertakes for the enterprise, if such a person;

- (a) 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 the purchase of goods or merchandise for the enterprise;
  - (b) has no such authority, but habitually maintains in the first - mentioned State a stock of goods or merchandise belonging to the enterprise from which he fills orders or makes deliveries on behalf of the enterprise; or
  - (c) has no such authority, but habitually secures orders in the first-mentioned State wholly or almost wholly for the enterprise or for the enterprise and other enterprises which are controlled by it or have a Controlling interest in it.
5. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting state shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other State if it collects premiums in the territory of that other State or insures risks situated therein through an employee or through a representative who is not an agent of an independent status within the meaning of paragraph 6.
6. 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 or on behalf of that enterprise and other enterprises, which are controlled by it or have a controlling interest in it, he will not be considered an agent of independent status within the meaning of this paragraph.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is 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.

## Article 6

### INCOME FROM IMMOVABLE PROPERTY

- 1 Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under the law 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 rights to work, mineral deposits, sources and other natural resources; ships, boats 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 income or 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 business as aforesaid, the income or 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;
  - (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or
  - (c) other business activities carried on in that other State 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 income or 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 condition and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses under the provisions of domestic law which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (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 or other rights, or by way of commission, 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 a patents or other rights, or by way of commission 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. 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 a certain percentage of the gross receipt of the enterprise or of the permanent establishment or 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 a method as may be customary; the method adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No income or 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 income or 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 income or 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, AIR TRANSPORT AND CONTAINERS**

1. Income or profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in that Contracting State.
2. Income or profits derived by an enterprise of a Contracting State from the operation of ships in international traffic may be taxed in the other Contracting State, but the tax imposed in that other State shall be reduced by an amount equal to 50 percent thereof.
3. Income or profits of an enterprise of a Contracting State from the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) that are incidental to income from the operation of ships or aircraft in international traffic shall be treated for the purposes of paragraph 1 and 2 as income from the operation of ships or aircraft in international traffic.
4. The provisions of paragraphs 1, 2 and 3 shall also apply to income or profits from the participation in a pool, a joint business or an international operating agency.

## **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 or profits 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 or profits of that enterprise and taxed accordingly.
2. Where a Contracting State includes in the profits of an enterprise of that State and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of the Agreement and the competent authorities of the Contracting States shall, if necessary, consult each other.
3. A Contracting State shall not change the profits of an enterprise in the circumstances referred to in paragraph 2 after the expiry of the time limits provided in its national laws.

## **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 beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed;
  - a) 10 per cent of the gross amount of the dividends if the beneficial owner is

- a company which owns at least 10 per cent of the shares of the company paying the dividends;
- b) 15 percent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Where a company which is a resident of a Contracting State derives income or profits 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 income or profits arising in such other State. Nothing in this paragraph shall be construed as preventing a Contracting State from imposing income tax, according to the laws of that State, on the disposal of profits made by a permanent establishment situated therein.

## **Article 11**

### **INTEREST**

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 laws of that State, but if the recipient is the beneficial owner of the interest and is a company which is a resident of the other Contracting State, the tax so charged shall not exceed;

- (a) 10 per cent of the gross amount of the interest if it is received by any financial institution (including an insurance company );
- (b) 15 per cent of the gross amount of the interest in other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to the Government of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State.

For the purpose of this paragraph, the term "Government"

- (a) in the case of Thailand, means the Government of the Kingdom of Thailand and shall include;
    - (i) the Bank of Thailand;
    - (ii) Export -Import Bank of Thailand;
    - (iii) the local authority or a statutory body thereof;
    - (iv) such institutions, the capital of which is wholly owned by the Government of the Kingdom of Thailand or any local authorities as may be agreed from time to time between the competent authorities of the two Contracting States;
  - (b) in the case of Nepal, means The Government of Nepal and shall include;
    - (i) The local authority or a statutory body thereof;
    - (ii) Nepal Rastra Bank (Central Bank of Nepal);
    - (iii) such institutions, the capital of which is wholly owned by The Government of Nepal or any local authorities as may be agreed from time to time between the competent authorities of the two Contracting States.
4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, 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 Contracting state in which the income arises.
  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 (a) such permanent establishment or fixed base, or with (b) business activities referred to under (c) of paragraph 1 of Article 7. 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 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 laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **Article 12** **ROYALTIES**

1. Royalties 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 may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 15 per cent of the gross amount of the royalties.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the alienation of or the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematography films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information or technical services concerning industrial, commercial or scientific experience.

4. The provisions of paragraph 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties 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 or property in respect of which the royalties are paid is effectively connected with (a) such permanent establishment or fixed base, or with (b) business activities referred to under (c) of paragraph 1 of Article 7. In such cases the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. 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, having regard to the use, right or information 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 such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **Article 13**

### **CAPITAL GAINS**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.
3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the

operation of such ships or aircraft, shall be taxable only in that State.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3 of this Article and paragraph 3 of Article 12, shall be taxable only in the Contracting State of which the alienator is a resident. Nothing in this paragraph shall prevent either Contracting State from taxing the gains or income from the sale or transfer of shares or other securities.

## **Article 14**

### **INDEPENDENT PERSONAL SERVICES**

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:
  - (a) if he has a fixed base available to him in the other Contracting State for the purpose of performing his activities, for a period or periods amounting to or exceeding in the aggregate 183 days within, any twelve - month period; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or
  - (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days within any twelve- month period; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State; or
  - (c) if the remuneration for his activities in the other Contracting State is paid by a resident of that Contracting State or is borne by a permanent establishment or a fixed base situated in that Contracting State; in that case, only so much of the remuneration as is derived therefrom may be taxed in that other State.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, dentists, lawyers, engineers, architects 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 State for a period or periods not exceeding in the aggregate 183 days within any twelve-month period, and
  - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
  - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, by an enterprise of a Contracting State shall be taxable only in that State.

## **Article 16**

### **DIRECTORS' FEES**

1. Director's fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is resident of the other Contracting State may be taxed in that other State.
2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.

## **Article 17**

### **ARTISTES AND SPORTSMEN**

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artist, or a musician, or as a sportsman, 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 by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.
3. The provisions of paragraphs 1 and 2 shall not apply to remuneration or profits, salaries, wages and other similar income derived from activities performed in a Contracting State by an entertainer or a sportsman if the visit to that Contracting

- State is substantially supported by public funds of the other Contracting State, including any local authority or statutory body thereof.
4. Notwithstanding the provisions of Article 7, where the activities mentioned in paragraph 1 are provided in a Contracting State by an enterprise of the other Contracting State the profits derived from providing these activities by such an enterprise may be taxed in the first-mentioned Contracting State unless the enterprise is substantially supported from the public funds of the other Contracting State, including any local authority or statutory body thereof , in connection with the provisions of such activities.

## **Article 18** **PENSIONS**

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.
2. Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration derived by a resident of a Contracting State may be taxed in the other Contracting State if such payments are borne by an enterprise of that other State or by a permanent establishment situated therein.

## **Article 19** **GOVERNMENTAL FUNCTION**

1. (a) Remuneration, other than a pension, paid by a Contracting State or a local authority thereof to an individual in respect of services rendered to that State or authority shall be taxable only in that State.  
(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who;
  - (i) is a national of that State; or
  - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. (a) Any pension paid by, or out of funds created by, a Contracting State or a local authority thereof to an individual in respect of services rendered to that State or authority shall be taxable only in that State.  
(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions

in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof.

## **Article 20**

### **STUDENTS**

An individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State and whose visit to the first-mentioned Contracting State is solely for the purpose of;

- (a) studying at a university or other recognized educational institution; or
- (b) securing training to qualify him to practise a profession or trade; or
- (c) studying or carrying out research as a recipient of grant, allowance or award from a governmental, religious, charitable, scientific, literary or educational organization;

shall be exempt from tax in the first-mentioned State on:

- (i) remittances from abroad for the purposes of his maintenance, education, study, research or training;
- (ii) the grant, allowance or award; and
- (iii) income from personal services rendered in that State provided the income constitutes earnings reasonably necessary for his maintenance and education.

## **Article 21**

### **PROFESSORS, TEACHERS AND RESEARCHERS**

1. An individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State, and who at the invitation of any university, college, school or other similar educational institution which is recognized by the competent authority in the first-mentioned Contracting State, visits that first-mentioned Contracting State for a period not exceeding two years solely for the purpose of teaching or research or both at such educational institution shall be exempt from tax in that other Contracting State on any remuneration for such teaching or research.
2. The provisions of paragraph 1 shall not apply to income from research if such research is undertaken by the individual primarily for the private benefit of a specific person or persons.

## **Article 22**

### **OTHER INCOME**

Items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement may be taxed in the State where the income arises.

## **Article 23**

### **ELIMINATION OF DOUBLE TAXATION**

1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting States except when an express provision to the contrary is made in this Agreement. When income is subject to tax in both Contracting States, relief from double taxation shall be given in accordance with the following paragraphs of this Article.
2. Where a resident of Nepal derives income from Thailand which in accordance with the provisions of this Agreement, may be taxed in Thailand the amount of Thai tax payable in respect of that income, shall be allowed as a credit against the Nepal tax imposed on that resident in respect of that income. The credit shall not, however, exceed that part of the Nepal tax which is attributable to such income.
3. Where a resident of Thailand derives income from Nepal which in accordance with the provision of this Agreement may be taxed in Nepal, the amount of Nepal tax payable in respect of that income shall be allowed as a credit against the Thai tax imposed on that resident in respect of that income. The credit shall not, however, exceed that part of the Thai tax which is attributable to such income.
4. For the purpose of allowance as a credit in a Contracting State the tax paid in the other, Contracting State shall be deemed to include the tax which is otherwise payable in that other State but has been reduced or waived by that State under its special provisions for the promotion of its economic development.

## **Article 24**

### **NON-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 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. 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 are or may be subjected.
4. The provisions of this Article shall not 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.
5. The provisions of this Article shall only apply to the 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 this Agreement, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.
2. The competent authority 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. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
4. The competent authorities of the Contracting State may communicate with each other directly for the purposes of reaching an agreement in the sense of the preceding paragraphs. The competent authorities, through consultations, shall develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article.

## **Article 26**

### **EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting State shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. 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 or prosecution in respect of, or the determination of appeals in relation, 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 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).

## **Article 27**

### **MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS**

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic mission or consular posts under the general rules of international law or under the provisions of special agreements.

## **Article 28**

### **ENTRY INTO FORCE**

Each Contracting State shall notify the other Contracting States in writing through diplomatic channels the completion of its legal requirements for the entry into force of this Agreement. The Agreement shall enter into force upon the date of the letter notification of the said two notifications and its provisions shall have effect:

- (a) in Thailand

- (i) in respect of taxes withheld at the source, on amounts paid or remitted on or after first day of January next following that of the entry into force of the Agreement.
  - (ii) in respect of other taxes on income, for taxable years or accounting periods beginning on or after first day of January next following that of the entry into force of the Agreement.
- (b) in Nepal  
in respect of income derived on or after the first day of Nepalese fiscal year next following that of the entry into force of the Agreement.

## **Article 29**

### **TERMINATION**

This Agreement shall remain in force indefinitely, but either of the Contracting States may, on or before 30th June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through diplomatic channels, written notice of termination.

In such event the Agreement shall cease to have effect;

- (a) in Thailand
  - (i) in respect of taxes withheld at the source, on amounts paid or remitted on or after first day of January next following that of the entry into force of the Agreement.
  - (ii) in respect of other taxes on income, for taxable years or accounting periods beginning on or after first day of January next following that of the entry into force of the Agreement.
- (a) in Nepal  
in respect of income derived on or after the first day of Nepalese fiscal year next following that of the entry into force of the Agreement.

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

Done in duplicate in Bangkok on this 2nd day of February in the One thousand Nine hundred and Ninty-eighth Year of the Christian Era, in the English Language.

For The Government of Nepal

For the Government of  
the Kingdom of Thailand

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(Mr. Kamal Thapa)

Minister for Foreign Affairs

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(Mr. Surin Pitsuwan)

Minister for Foreign Affairs

The Government of Nepal and the Government of the Republic of Korea, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

## **Article 1**

### **PERSONS COVERED**

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

## **Article 2**

### **TAXES COVERED**

1. The existing taxes to which this Agreement shall apply are:
  - a) in Korea:
    - (i) the income tax;
    - (ii) the corporation tax;
    - (iii) the inhabitant tax, and
    - (iv) the special tax for rural development  
(hereinafter referred to as “Korean tax”);
  - b) in Nepal:
    - (i) income tax imposed under the Income Tax Act, and
    - (ii) any other taxes on income imposed by local bodies  
(hereinafter referred to as “Nepal Tax”).
  2. The Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

## **Article 3**

### **GENERAL DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires:
  - a) the term “Korea” means the Republic of Korea, and when used in a geographical sense, means the territory of the Republic of Korea, including its territorial sea, and any other area adjacent to the territorial sea of the Republic of Korea which,

in accordance with international law, has been or may hereafter be designated under the laws of the Republic of Korea as an area within which the sovereign rights or jurisdiction of the Republic of Korea with respect to the waters, the sea-bed and subsoil, and their natural resources may be exercised;

- b) the term "Nepal" means the Territory of Nepal;
  - c) the terms "a Contracting State" and "the other Contracting State" mean Korea or Nepal, as the context requires;
  - d) the term "tax" means Korean tax or Nepal tax, as the context requires;
  - e) the term "person" includes an individual, a company and any other body of persons;
  - f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
  - g) 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;
  - 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 laws in force in a Contracting State;
  - i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
  - j) the term "competent authority" means:
    - (i) in Korea, the Minister of Finance and Economy or his authorized representative;
    - (ii) in Nepal, the Minister of Finance or his authorized representative.
2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State for the purpose of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

## **Article 4**

### **RESIDENT**

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 head or main office, place of management, or any other criterion of a similar nature and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.
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 as follows:
    - a) he shall be deemed to be a resident only 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 only of the State with which his personal and economic relations are closer (center of vital interests);
    - b) if the State in which he has his center 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 only 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 only 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, then it shall be deemed to be a resident only of the State in which its place of effective management is situated. In case of doubts the competent authorities of the Contracting States shall settle the question by mutual 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" includes especially:
  - a) a place of management;
  - b) a branch;
  - c) an office;
  - d) a factory;
  - e) a workshop, and
  - f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or a construction, assembly or installation project, or supervisory or consultancy activities in connection therewith constitute a permanent establishment only if such site, project or activities continue for a period or periods aggregating more than 183 days within any twelve month period.
4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
  - a) the use of facilities solely for the purpose of storage, display or 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 delivery;
  - c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purposes 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 carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
  - f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 7 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting state shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other State if it collects premiums in the territory of that other State or insures risks situated therein through an employee or through a representative who is not an agent of an independent status within the meaning of paragraph 7.
7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that 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.

8. 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.

## **Article 6**

### **INCOME FROM IMMOVABLE PROPERTY**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under the law 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 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 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.
3. In determining the profits of a permanent establishment, there shall be allowed as

deductions expenses under the provisions of domestic law which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

4. 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.
5. 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.
6. 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 of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.
2. The provisions of paragraph 1 shall also apply to profits derived from the participation in a pool, a joint business or an international operating agency.

## **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 profits 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 profits of that enterprise and taxed accordingly.

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

made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall consult each other.

## **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) 5 percent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 percent of the shares of the company paying the dividends;
  - b) 10 percent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 percent of the shares of the company paying the dividends;
  - c) 15 percent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. 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 from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. 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 11**

### **INTEREST**

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 laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2, Interest arising in a Contracting State and derived by the Government of the other Contracting State including political subdivisions and local authorities thereof, the Central Bank of that other State or any financial institution performing functions of a governmental nature or by any resident of the other Contracting State with respect to debt-claim guaranteed or indirectly-financed by the Government of that other State including political subdivisions and local authorities thereof, the Central Bank of that other State or any financial institution performing functions of a governmental nature shall be exempt from tax in the first-mentioned Contracting State.
4. For the purposes of paragraph 3, the terms "the Central Bank and financial institution performing functions of a governmental nature" mean:
  - a) in Korea:
    - (i) the Bank of Korea;
    - (ii) the Korea Export- Import Bank;
    - (iii) the Korea Development Bank, and
    - (iv) such other financial institution performing functions of a governmental nature as may be specified and agreed upon in letters exchanged between the competent authorities of the Contracting States;
  - b) in Nepal:
    - (i) Nepal Rastra Bank (Central Bank of Nepal);
    - (ii) Nepal Industrial Development Corporation;
    - (iii) Agriculture Development Bank, and
    - (iv) such other financial institution performing functions of a governmental

nature as may be specified and agreed upon in letters exchanged between the competent authorities of the Contracting States.

5. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bond or debentures.
6. 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.
7. 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.
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 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 to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **Article 12** **ROYALTIES**

1. Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 15 percent of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments of any kind received as

a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraph 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties 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 or property in respect of which the royalties 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.
5. Royalties 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, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. 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, having regard to the use, right or information 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 such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **Article 13**

### **CAPITAL GAINS**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other state.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or

movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the enterprise is a resident.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.
5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident.

## **Article 14**

### **INDEPENDENT PERSONAL SERVICES**

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless:
  - a) he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; or
  - b) he is present in that other Contracting State for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned.

If he has such a fixed base or is present in that other Contracting State for aforesaid period or periods, the income may be taxed in the other Contracting State but only so much of the income as is attributable to that fixed base or is derived in that other Contracting State during the aforesaid period or periods.

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

## **Article 15**

### **DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by an individual who is 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 an individual who is a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned;
  - b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
  - c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that State.

## **Article 16**

### **DIRECTORS' FEES**

Directors' fees and other similar payments derived by an individual who is a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

## **Article 17**

### **ARTISTES AND SPORTSMEN**

1. Notwithstanding the provisions of Articles 14 and 15, income derived by an individual who is a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, 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 by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income derived by entertainers or sportsmen who are residents of a Contracting State from the activities exercised in the other Contracting State under a special program of cultural exchange agreed upon between the Governments of both Contracting States, shall be exempt from tax in that other State.

## **Article 18**

### **PENSIONS, ANNUITIES & SOCIAL SECURITY PAYMENTS**

1. Subject to the provisions of paragraph 2 of Article 19, pensions, annuities or and other

similar remuneration paid to an individual who is a resident of the Contracting State in consideration of past employment shall be taxable only in that State.

2. The term "annuities" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.
3. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is part of the social security systems of a Contracting State shall be taxable only in that State.

## **Article 19**

### **GOVERNMENT SERVICE**

1. a) 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 shall be taxable only in that State.
  - b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
    - (i) is a national of that other State; or
    - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. a) Any pension paid by, or out of funds created 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 shall be taxable only in that State.
  - b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. The provisions of Articles 15, 16, 17 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or local authority thereof.
4. The provision of paragraph 1 and 2 shall likewise apply in respect of remuneration or pensions paid by:
  - a) in Korea:
    - (i) the Bank of Korea;
    - (ii) the Korea Export-Import Bank;
    - (iii) the Korea Development Bank;
    - (iv) the Korea Trade-Investment Promotion Agency, and

- (v) other institution performing functions of a governmental nature as may be specified and agreed upon in letters exchanged between the competent authorities of the Contracting States;
- b) in Nepal:
  - (i) Nepal Rastra Bank (Central Bank of Nepal);
  - (ii) Nepal Industrial Development Corporation;
  - (iii) Agriculture Development Bank, and
  - (iv) such other financial institution performing functions of a governmental nature as may be specified and agreed upon in letters exchanged between the competent authorities of the Contracting States.

## **Article 20**

### **STUDENTS**

- 1. A student or business apprentice who is or was a resident of a Contracting State immediately before visiting the other Contracting State and who is present in that other State solely for the purpose of his education or training, shall be exempt from tax in that other State on:
  - a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
  - b) remuneration from employment in that other State, in an amount not exceeding 10,000 United States dollars or its equivalent in Korean currency or in Nepalese currency during any calendar year provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.
- 2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article for more than five consecutive years from the date of his first arrival in that other Contracting State.

## **Article 21**

### **TEACHERS AND RESEARCHERS**

- 1. A professor, teacher or researcher who makes a temporary visit to a Contracting State for the purpose of teaching or conducting research at a university, college, school or other recognized educational institution and who is, or immediately before such visit was, a resident of the other Contracting State shall be exempted from tax in the first-mentioned State for a period not exceeding two years in respect of remuneration for such teaching or research.
- 2. This Article shall not apply to remuneration which a professor or teacher receives for

conducting research if the research is undertaken primarily for the private benefit of a specific person or persons.

## **Article 22**

### **OTHER INCOME**

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

## **Article 23**

### **RELIEF FROM DOUBLE TAXATION**

1. Subject to the provisions of Korean tax law regarding the allowance as a credit against Korean tax of tax payable in any country other than Korea:
  - a) Where a resident of Korea derives income from Nepal, which may be taxed in Nepal in accordance with the provisions of this Agreement, Korea shall allow, subject to its laws, an amount equal to income tax paid or payable in Nepal as a credit from the tax on the income of that resident. The amount of credit shall not, however, exceed that part of income tax as computed before the credit is given, which is appropriate to that income taxed in Nepal.
  - b) Notwithstanding the provisions of sub-paragraph a), there shall be deemed to have been paid by the Korean resident the amount which would have been paid as Nepal tax under the laws of Nepal and in accordance with this Agreement if the Nepal tax had not been reduced or exempted in Nepal in accordance to any special incentive measures designed to promote economic development in Nepal, which are effective on the date of signature of this Agreement or which may be introduced in the future in laws relating to Nepal tax in place of, or in addition to, the existing measures, provided that an agreement is made between the competent authorities of the two Contracting States in respect of the scope of the benefit accorded to the taxpayer by the said measures.
  - c) Where a company which is a resident of Korea owns not less than 20 per cent of the total shares issued by a company which is a resident of Nepal, Korea shall take into account, in determining the tax to be paid in Korea, the tax paid

- or payable by the second-mentioned company in respect of the profits out of which the dividend is paid.
2. Subject to the provisions of Nepal tax law regarding the allowance as a credit against Nepal tax of tax payable in any country other than Nepal:
    - a) Where a resident of Nepal derives income from Korea, which may be taxed in Korea in accordance with the provisions of this Agreement, Nepal shall allow, subject to its laws, an amount equal to income tax paid or payable in Korea as a credit from the tax on the income of that resident. The amount of credit shall not, however, exceed that part of income tax as computed before the credit is given, which is appropriate to that income taxed in Korea.
    - b) Where a company which is a resident of Nepal owns not less than 20 per cent of the total shares issued by a company which is a resident of Korea, Nepal shall take into account, in determining the tax to be paid in Nepal, the tax paid or payable by the second-mentioned company in respect of the profits out of which the dividend is paid.

## **Article 24**

### **NON-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 or connected requirements to which nationals of that other State in the same circumstances, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment or a fixed base which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reduction for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 8 of Article 11, or paragraph 4 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible, under the same conditions as if they had been paid to a resident of the first-mentioned State are or may be subjected.
4. 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 requirements connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The provision of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

## **Article 25**

### **MUTUAL AGREEMENT PROCEDURE**

1. Where a person 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 to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority shall endeavor, 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 endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

## **Article 26**

### **EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States 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) 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 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 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 (order public).

## **Article 27**

### **MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS**

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

## **Article 28**

### **ENTRY INTO FORCE**

1. Each Contracting State shall notify the other of the completion of the procedures required by its law for the entering into force of this Agreement. The Agreement shall enter into force on the later of the notifications.
2. The provisions of this Agreement shall have effect:
  - a) in Korea:
    - (i) in respect of taxes withheld at source, for amounts payable on or after the first day of January in the first calendar year following that in which this Agreement enters into force;
    - (ii) in respect of other taxes, for the taxable year beginning on or after the first day of January in the first calendar year following that in which this Agreement enters into force;
  - b) in Nepal:

- (i) in respect of taxes withheld at source or advance tax, for amounts payable on or after the first day of Nepalese fiscal year next following the date of the entry into force of this Agreement;
- (ii) in respect of taxes on income derived on or after the first day of the Nepalese fiscal year next following the date of the entry into force of this Agreement.

## Article 29

### TERMINATION

1. This Agreement shall continue in effect indefinitely but either Contracting State may, on or before the thirtieth day of June of any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State a notice of termination in writing through diplomatic channels.
2. The provisions of this Agreement shall cease to have effect:
  - a) in Korea:
    - (i) in respect of taxes withheld at source, for amounts payable on or after the first day of January in the first calendar year following that in which the notice is given;
    - (ii) in respect of other taxes, for the taxable year beginning on or after the first day of January in the first calendar year following that in which the notice is given;
  - b) in Nepal:
    - (i) in respect of taxes withheld at source or advance tax, for amounts payable on or after the first day of Nepalese fiscal year next following the date on which the notice is given;
    - (ii) in respect of taxes on income derived on or after the first day of the Nepalese fiscal year next following the date on which the notice is given.

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

Done in duplicate at Seoul this 5<sup>th</sup> day of October 2001, in the Nepali, Korean, and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

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FOR THE GOVERNMENT  
OF NEPAL

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FOR THE GOVERNMENT OF THE  
REPUBLIC OF KOREA

**PROTOCOL TO THE AGREEMENT BETWEEN**

**THE REPUBLIC OF KOREA**

**AND**

**THE GOVERNMENT OF NEPAL**

**FOR THE AVOIDANCE OF DOUBLE TAXATION AND**

**THE PREVENTION OF FISCAL EVASION**

**WITH RESPECT TO TAXES ON INCOME**

On signing the Agreement between the Republic of Korea and the Government of Nepal for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed that the following provisions shall form an integral part of the Agreement.

With reference to Paragraph 2 of Article 5,

The term "permanent establishment" includes a warehouse in relation to a person habitually providing storage facilities for others.

With reference to Paragraph 3 of Article 7,

The deduction shall not be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by a 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 or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on monies 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 or other

rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on monies lent to the head office of the enterprise or any of its other offices.

With reference to Paragraph 2 of Article 10 and Paragraph 2 of Article 12,

There shall be immediately substituted for the rate of 5, 10, or 15 per cent specified in Paragraph 2 of Article 10 and for the rate 15 percent specified in Paragraph 2 of Article 12 such lower rates as may be agreed upon between Nepal and any other country in any Agreement for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income concluded between Nepal and that other country subsequent to this Agreement.

With reference to sub-paragraph 1 b) of Article 23,

The special incentive measures designed to promote economic development in Nepal are the measures under the Income Tax Act, the Industrial Enterprise Act, the Foreign Investment and Technology Transfer Act, the Electricity Act and other related laws. It is understood that the provisions of sub-paragraph 1 b) of Article 23 shall not be applied to a resident of Korea whose income is derived from engaging in the business activities in the financial sector or from third states. This provision shall cease to have effect in respect of income derived by a resident of Korea in any taxable year beginning after December 31, 2003. However, the competent authorities of both Contracting States may consult each other and agree upon extending this period up to any further period.

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

Done in duplicate at Seoul this 5<sup>th</sup> day of October 2001, in the Nepali, Korean, and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

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FOR THE GOVERNMENT OF  
NEPAL

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FOR THE GOVERNMENT OF THE  
REPUBLIC OF KOREA

# ABOUT THE AUTHOR

# **OTHER BOOK BY AUTHOR:**

## **Compulsory Mathematics**

# E-BOOK

