

BELARUS

Agreement for avoidance of double taxation and prevention of fiscal evasion with Belarus

Whereas the annexed Agreement between the Government of the Republic of India and the Government of the Republic of Belarus for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on property (capital) shall enter into force on the seventeenth day of July, 1998, in accordance with Article 30 of the said Agreement, thirty days after the receipt of later of notifications by both the Contracting States to each other of completion of the procedure required by their respective laws for bringing into force of the said Agreement.

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 44A of the Wealth-tax Act, 1957 (27 of 1957), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification : No. GSR 392(E), dated 17-7-1998.

ANNEXURE

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF BELARUS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON PROPERTY (CAPITAL)

The Government of the Republic of India and the Government of the Republic of Belarus 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 property (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 property (capital) imposed on behalf of a Contracting State or of its political sub-divisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on property (capital) all taxes imposed on total income, on total property (capital) or on elements of income or of property (capital) including taxes on gains from the alienation of immovable property or property other than immovable property and taxes on the total amounts of wages or salaries paid by enterprises.

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

(a) in India :

(i) the income-tax including any surcharge thereon; and

(ii) wealth-tax

(hereinafter referred to as "Indian Tax"); and

(b) in Belarus :

(i) the tax on income and profits of enterprises associations and organisations;

(ii) the income-tax on individuals; and

(iii) the tax on immovable property

(hereinafter referred to as "Belarusian tax").

4. The Agreement shall apply also to any similar or substantially identical taxes which are imposed by either Contracting State after the date of signature of the Agreement in addition to, or in place of, the taxes referred to in paragraph 3 above. 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. In this Agreement, unless the context otherwise requires :

(a) the term "India" means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions,

according to the Indian law and in accordance with international law and the U.N. Convention on the law of the Sea;

(b) the term "Belarus" means the Republic of Belarus and when used in a geographical sense, means the territory over which the Republic of Belarus exercises under the laws of the Republic of Belarus and in accordance with international law sovereign rights and jurisdiction;

(c) the terms "a Contracting State" and "the other Contracting State" mean, as the context requires, India or the Republic of Belarus;

(d) the term "tax" means Indian tax or Belarusian 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 imposed relating to those taxes;

(e) the term "person" includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;

(f) the term "company" means :

(i) in India, any body corporate or other entity which is treated as a company or body corporate under the taxation laws in force;

(ii) in Belarus, any legal person or any entity which is treated as a legal person 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 "competent authority" means :

(i) in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative;

(ii) in the case of Belarus, the State Tax Committee or its authorised representative;

(i) 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;

(j) 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;

(k) the term "fiscal year" means :

(i) in the case of India, the "previous year" as defined under section 3 of the Income-tax Act, 1961;

(ii) in the case of Belarus, the calendar year from 1st day of January to 31st day of December of the year.

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 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, place of incorporation, residence, place of management or any other criterion of a similar nature. However, this term does not include any person who is liable to tax in that State only in respect of income from sources in that State or property 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 interests);

(b) if the State in which he has his centre of vital interests cannot be determined or if he does not have a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting 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 each State considers him as its own national or if he is not a national of either 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 if 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. 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, an oil or gas well, a quarry or any other place of extraction of natural resources;

(g) a warehouse in relation to a person providing storage facilities for others;

(h) a farm, plantation or other place where agriculture, forestry, plantation, or related activities are carried on;

(i) a sales outlet;

(j) an installation or structure used for the exploration or exploitation of natural resources;

(k) a building site or construction or assembly project or supervisory activities in connection therewith only if such site, project or activity lasts for more than six months.

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 purposes 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 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.

However, the provisions of sub-paragraphs (a) to (f) shall not be applicable where the enterprise maintains any other fixed place of business in the other Contracting State for any purposes other than the purposes specified in the said sub-paragraphs.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 5 applies - is acting 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 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; 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.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, a 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 itself or on behalf of that enterprise and other enterprises controlling, controlled by, or subject to the same common control, as that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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

7. An enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it provides services or facilities in connection with, or supplies plant and machinery on hire used for or to be used in the prospecting for, or extraction or exploitation of mineral oils in that State.

8. 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 5 applies.

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. Ships, boats, motor vehicles 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 apply to income from immovable property of an enterprise and also 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 also 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 make if it were a separate independent enterprise engaged in the same or similar activities under the same or similar conditions and acting 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 deduction 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 taxation laws of that State.

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

5. For the purpose 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 are good and sufficient reasons to the contrary.

6. Where the 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 : *International traffic* - 1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic, as the case may be, shall be taxable only in that State.

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

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

4. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall mean profits derived by an enterprise from the transportation by sea or air, respectively, of passengers, mail, livestock, goods or merchandise carried on by the owners or lessees or charterers of ships or aircraft. This will also include :

(a) the sale of tickets for such transportation on behalf of other enterprises;

(b) the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transportation of containers) used in connection with the operation of ships or aircraft in international traffic;

(c) the rental of ships or aircraft incidental to the operation of ships or aircraft in international traffic; and

(d) other activity directly connected with operation of ships or aircraft in international traffic.

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 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.

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 Contracting 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) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 per cent of the shares of the company paying the dividends;

(b) 15 per cent 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 rights which is subjected to the same taxation treatment as income from shares under 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 case, the provisions of Article 7 or 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 that 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,—

(a) interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

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

(ii) the Central Bank of the other Contracting State or any other bank or Governmental financial institutions that may be mutually agreed upon between the two Contracting States;

(b) interest arising in a Contracting State shall be exempt from tax in that Contracting State to the extent approved by the Government of that State if it is derived and beneficially owned by any person, other than a person referred to in sub-paragraph (a), who is a resident of the other Contracting State, provided that the transaction giving rise to the debt-claim has been approved in this regard by the Government of the first-mentioned Contracting 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 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 a case, the provisions of Article 7 or 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, its political sub-division or 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 Contracting 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 and fees for technical services* - 1. Royalties or 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 recipient is the beneficial owner of the royalties or fees for technical services, the tax so charged shall not exceed 15 per cent of the gross amount of the royalties or fees for technical services.

3. The term "royalties" as used in this Article means payment 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 cinematographic films or films or tapes 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 payment of any kind in consideration for the rendering of any managerial, technical or consultancy services including the provision of services by technical or other personnel but does not include payments for services mentioned in Articles 14 and 15 of this Agreement.

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, property or contract 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 a 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 fees 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 in connection with which the liability to pay the royalties or fees for technical services was incurred, and such royalties or fees for 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 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 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 13 : *Capital gains (gains from alienation of property)* - 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 also be taxed in that other Contracting State.

2. Gains from the alienation of property other than immovable 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 property other than immovable 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 property other than immovable 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 a resident of a Contracting State from the performance 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 a period of twelve 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 independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15 : *Dependent personal services* - 1. Subject to the provisions of Articles 17, 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 Contracting 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 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 Contracting State.

3. Notwithstanding the preceding provisions of this Article, the remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by the 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 : *Artists 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, such 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 visit to that State is supported wholly by public funds of one or both of the Contracting States of political sub-divisions or local authorities thereof or the activity is exercised within the framework of cultural or sports co-operation agreement between the Contracting States. In such a case, the income is taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

ARTICLE 18 : *Government service - 1.* (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division 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 the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof, to an individual in respect of services rendered to that State or sub-division or local authority thereof shall be taxed 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 19 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 sub-division or a local authority thereof.

ARTICLE 19 : *Non-Government pensions and annuities - 1.* Any pension, other than a pension referred to in Article 18, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State shall be taxable only in the first-mentioned Contracting State.

2. The term "pension" means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.

3. 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 payments in return for adequate and full consideration in money or money's worth.

ARTICLE 20 : *Students and apprentices - 1.* A student or business apprentice 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 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 for an amount not exceeding the amount which is exempt from tax under the laws of that other Contracting State for any fiscal 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 : *Professors, teachers and research scholars - 1.* A professor or teacher who is or was a resident of one of the Contracting States 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 institution in that 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 arrival in that other State.

2. This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

3. For the purposes of this Article and Article 20, an individual shall be deemed to be a resident of the Contracting State if he is resident in that Contracting State in the fiscal year in which he visits the other Contracting State or in the immediately fiscal year.

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 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 be taxed in that other State.

ARTICLE 23 : *Property (Capital)* - 1. Property (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. Property (Capital) represented by property other than immovable 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 property other than immovable 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. Property (Capital) represented by ships and aircraft operated in international traffic or by boats engaged in inland waterways transport and by property other than immovable property pertaining to the operation of such ships, boats and aircraft shall be taxable only in the Contracting State of which the owner of such ships, boats, aircraft or property is a resident.

4. All other elements of property (capital) of a resident of a Contracting State shall be taxed only in that State.

ARTICLE 24 : *Elimination of double taxation* - 1. The laws in force in either of the Contracting States shall continue to govern the taxation of income and property (capital) on the respective Contracting States except where express provision to the contrary is made in this Agreement.

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

Where a resident of India derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in the Republic of Belarus, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in the Republic of Belarus whether directly or by deduction; and as a deduction from the tax on the capital of that resident an amount equal to the property (capital) tax paid in the Republic of Belarus. Such deduction in either case shall not, however, exceed that part of the income-tax or capital tax (as computed before the deduction is given) which is attributable, as the case may be, to the income or the capital which may be taxed in the Republic of Belarus.

3. In the case of the Republic of Belarus, double taxation shall be eliminated as follows :

Where a resident of the Republic of Belarus derives income which, in accordance with the provisions of this Agreement, may be taxed in India, the Republic of Belarus shall allow as a deduction from the tax on the income of that resident, an amount equal to the income-tax paid in India; and as a deduction from the tax on the property (capital) of that resident, an amount equal to the capital tax paid in India. Such deduction shall not, however, exceed that part of the income-tax or property (capital) tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the property (capital) which may be taxed in India.

4. The tax payable in the Contracting State mentioned in paragraphs 2 and 3 of this Article shall be deemed to include the tax which would have been payable but for the tax incentives granted under the laws of the Contracting State and which are designed to promote economic development.

5. Income which in accordance with the provisions of this Agreement, is not to one subjected to tax in a Contracting State, may be taken into account for calculating the rate of tax to be imposed in that Contracting State.

ARTICLE 25 : *Non-discrimination* - 1. Nationals of a Contracting State shall not be subjected in the other Contracting State to other or more burdensome taxation or any requirement connected therewith, than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which an enterprise 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 enterprise of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Agreement.

3. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to persons not resident in that State any personal allowances, reliefs, reductions and deductions for taxation purposes which are by law available only to persons who are so resident.

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 may be subjected in the same circumstances and under the same conditions.

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

6. Except where the provisions of Article 9, paragraph 7 of Article 11 or paragraph 7 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 enterprises, 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.

ARTICLE 26 : *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 Contracting 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 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the date of 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 for 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 an 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 27 : *Exchange of information* - 1. The competent authorities of the Contracting States shall exchange such information (including documents) 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) 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. The competent authorities shall, through consultation, develop appropriate conditions,

methods and techniques, the list of information and documents concerning the matters in respect of which such exchange of information shall be made, including, where appropriate, exchange of information regarding tax avoidance. The exchange of information or documents shall be on request of the competent authorities of the Contracting States.

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

(a) to carry out administrative measures at variance with the laws or administrative practice of that or the other Contracting State;

(b) to supply information or documents which are 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 or documents 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.

ARTICLE 28 : *Assistance in collection* - 1. The Contracting States undertake to lend assistance and support to each other, in the collection of the taxes to which this Agreement relates, in the cases where the taxes are definitely due according to the laws of the State making the request.

2. In the case of a request for enforcement of collection, tax claims of either of the Contracting States which have been finally determined will be accepted for enforcement by the other Contracting State to which the request is made and collected in that State in accordance with the laws applicable to the enforcement and collection of its taxes.

3. In the case of Indian tax, the request will be sent by the Central Board of Direct Taxes, Department of Revenue to the State Tax Committee of the Republic of Belarus and will be accompanied by such certificate as is required by the laws of India to establish that the taxes have been finally determined and are due from the taxpayer.

4. In the case of Belarusian tax, the request will be sent by the State Tax Committee of the Republic of Belarus to the Central Board of Direct Taxes, Department of Revenue, in India and will be accompanied by such certificate as is required by the laws of the Republic of Belarus to establish that the taxes have been finally determined and are due from the taxpayer.

5. Where that tax claim has not become final by reason of its being subject to appeal or any other proceeding, a Contracting State may, in order to protect its revenues, request the other Contracting State to take such interim measures in this behalf as are lawful under the laws of that other Contracting State.

6. A request for assistance in collection of taxes due from a taxpayer shall be made only if adequate assets of that taxpayer are not available for recovering the taxes from him in the Contracting State making the request.

7. The Contracting State in which tax is recovered in pursuance of paragraphs 1, 2 and 5 of this Article shall immediately thereafter remit the amount so recovered to the Contracting State which made the request but it shall be entitled to reimbursement of actual costs, if any, incurred in the course of rendering assistance to the extent mutually agreed between the competent authorities of the Contracting States.

ARTICLE 29 : *Diplomatic and consular officials* - Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officials 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, the completion of the procedure required by the respective laws for the entry into force of this Agreement.

2. This Agreement shall enter into force thirty days after the receipt 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 India :

(i) in respect of income arising 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;

(i) in respect of capital which is held on the last day of any fiscal year beginning on or after the first day of April next following the calendar year in which the Agreement enters into force ;

(b) in Belarus :

(i) in respect of taxes withheld at source on amounts of income, derived on or after the 1st day of January in the calendar year next following the year in which the Agreement enters into force; and

(ii) in respect of other taxes on income and taxes on property (capital) to such taxes chargeable in any taxable year beginning on or after the 1st day of January in the calendar year next following the year in which the Agreement enters into force.

ARTICLE 31 : *Termination* - This Agreement shall remain in force indefinitely 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 India,

(i) in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the notice of termination is given;

(ii) in respect of capital which is held at the expiry of any previous year beginning on or after the first day of April next following the calendar year in which the notice of termination is given;

(b) in Belarus,

(i) in respect of taxes withheld at source, to amounts of income derived on or after the 1st day of January in the calendar year next following the year in which the notice is given;

(ii) in respect of other taxes on income or taxes on property (capital) to such taxes chargeable in any taxable year beginning on or after the 1st day of January in the calendar year next following the year in which the notice is given.

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

DONE in duplicate at New Delhi, this 27th day of September, 1997, in Hindi, Belarusian and English languages, all the texts being equally authentic. In the case of divergence between any of the texts, the English text shall be the operative one.

For the Government of the
Republic of India

For the Government of the
Republic of Belarus

PROTOCOL

The Government of Republic of India and the Government of the Republic of Belarus have agreed at the signing at New Delhi on 27th September, 1997, of the Agreement between the two States for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on property (capital) upon the following provisions which shall form an integral part of the said Agreement.

1. For purposes of this Agreement, the term "political sub-division" as used in the Agreement shall be applicable to India only.

2. With reference to Article 4, it is understood that when establishing the "place of effective management" as used in paragraph 3 of Article 4, circumstances which may, *inter alia*, be taken into account are the place where a company is actually managed and controlled, the place where the decision making at the highest level on important policies essential for the management of a company takes place, the place that plays a leading part in the management of a company from an economic and functional point of view and the place where the relevant accounting books are kept.

3. For purposes of this Agreement, it is understood that the term "fixed base" includes a fixed place such as an office or a room or any other place regularly available to him through which the activity of a person performing independent personal services is wholly or partly carried on.

IN WITNESS THEREOF, the undersigned, being duly authorised thereto have signed this Protocol.

DONE, in duplicate, at New Delhi, this 27th day of September, 1997, in Hindi, Belarusian and English languages, all texts being equally authentic. In the case of divergence between any of the texts, the English text shall be the operative one.

For the Government of
the Republic of India

For the Government of
the Republic of Belarus