

DENMARK

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

Whereas the annexed Convention between the Government of the Republic of India and the Government of the Kingdom of Denmark for the avoidance of double taxation and the prevention of fiscal evasion, with respect to taxes on income and on capital has come into force on the 13th day of June, 1989, on the notification by both the Contracting States to each other of the completion of the constitutional requirements, as required by paragraph 1 of Article 30 of the said Convention;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964) and section 44A of the Wealth-tax Act, 1957 (27 of 1957), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in the Union of India.

Notification : No. GSR 853(E), dated 25-9-1989.

ANNEXURE

CONVENTION BETWEEN THE REPUBLIC OF INDIA AND THE KINGDOM OF DENMARK FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Republic of India and the Government of the Kingdom of Denmark;
Desiring to conclude a Convention 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* - The Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 : *Taxes covered - 1.* The taxes to which this Convention shall apply are:

(a) in India:

- (i) the income-tax including any surcharge thereon imposed under the Income-tax Act, 1961 (43 of 1961);
- (ii) the surtax imposed under the Companies (Profits) Surtax Act, 1964 (7 of 1964);
- (iii) the wealth-tax imposed under the Wealth-tax Act, 1957 (24 of 1957);
(hereinafter referred to as "Indian tax").

(b) in Denmark:

- (i) the income-tax to the State (ind-komotskatten til staten);
- (ii) the municipal income-tax (den kormmunal indkomstskat);
- (iii) the income-tax to the country municipalities (den amtskommunale Indkomstskat);
- (iv) the old age pension contribution (folkepensionsbidreget);
- (v) the seamen's tax (smandsskatten);
- (vi) the special income-tax (den saerlige indkomstskat);
- (vii) the church tax (kirkes katten);
- (viii) the tax on dividends (udbytteskatten);

- (ix) the contribution to the sickness “per diem” fund (bidrag til dagpengefonden);
- (x) the hydrocarbon tax (kulbrinteskatten);
- (xi) the capital tax to the State (formueskatten til staten);

(hereinafter referred to as “Danish tax”).

2. The Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Convention in addition to, or in place of, the taxes referred to in paragraph 1. The competent authorities of the Contracting States shall notify in each other of any substantial changes which are made in their respective taxation laws.

ARTICLE 3 : *General definitions - 1.* In this Convention, unless the context otherwise requires :

- (a) the term “India” means the territory of India and includes territorial sea and the air space 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.
- (b) the term “Denmark” means the territory of the Kingdom of Denmark and including the territorial sea of Denmark and the air space above it, as well as any other maritime area to the extent that that area in accordance with international law has been or may hereafter be designated under Danish laws as an area within which Denmark may exercise sovereign rights for the purpose of exploring and exploiting the natural resources of the sea bed or its Sub-soil and the superjacent waters and with regard to other activities for the economic exploitation and exploration of the area; the term does not comprise the Faroe Islands and Greenland;
- (c) the terms “a Contracting State” and “the other Contracting State” mean India or Denmark as the context requires;
- (d) the term “tax” means Indian tax or Danish 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 Convention applies or which represents a penalty imposed relating to those taxes;
- (e) the term “person” includes an individual, a company 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 any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting States;
- (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 in the case of India, the Central Government in the Ministry of Finance, (Department of Revenue) or their authorised representative; and in the case of Denmark, the Minister for Inland Revenue, Customs and Excise or his authorised representative;
- (i) the term “national” means any individual possessing the nationality of a Contracting State and any legal person, partnership or association deriving its status 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.

2. As regards the application of the Convention 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 Convention applies.

ARTICLE 4 - *Resident* - 1. For the purposes of this Convention, 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 interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, 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 Convention, the term “permanent establishment” means a fixed place of business through which the business of the 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 premises used as a sales outlet or for receiving or soliciting orders;

(j) an installation or structure used for the exploration of natural resources provided that the activities are carried on for a period or periods of 183 days or more in any twelve-month period;

(k) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities (together with other such sites, projects or activities, if any) continue for a period of 183 days or more.

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; and

(e) the maintenance of a fixed place of business solely for the purpose of advertising; for the supply of information, for scientific research, or for other activities which have a preparatory or auxiliary character, for the enterprise.

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

(a) he has and habitually exercises in that 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) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise; or

(c) he habitually secures orders in the first-mentioned State wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises controlling, controlled by, or subject to the same common control, as that enterprise.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise 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.

ARTICLE 6 : *Income from immovable property* - 1. Income derived by a resident of a Contracting State from immovable property 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 right 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 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 these 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. In any case where the correct amount of profits attributable to a permanent establishment is incapable of determination or the determination thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on a reasonable basis.

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

the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. 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 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 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 Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8 : *Air transport - 1*. Profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic 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. The provisions of paragraphs 1 and 2 shall apply to profits derived by the Danish, Norwegian and Swedish air transport consortium, known as the Scandinavian Airlines System (SAS), but only to such part of the profit as corresponds to the shareholding in the consortium held by Det Danske Luftfartsselskab (DDL), the Danish partner of Scandinavian Airlines System (SAS).

4. For the purposes of this Article, interest on funds connected with the operation of aircraft in international traffic shall be regarded as profits derived from the operation of such aircraft, and the provisions of Article 12 shall not apply in relation to such interest.

5. The term "operation of aircraft" shall mean business of transportation by air of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft and any other activity directly connected with such transportation.

ARTICLE 9 : *Shipping - 1*. Profits derived from the operation of ships in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. Notwithstanding the provisions of paragraph 1, such profits may be taxed in the other Contracting State from which they are derived provided that the tax so charged shall not exceed :

(a) during the first five fiscal years after the entry into force of this Convention, 50 per cent, and

(b) during the subsequent five fiscal years, 25 per cent,

of the tax otherwise imposed by the internal law of that State. Subsequently, only the provisions of paragraph 1 shall be applicable.

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 engaged in the operation of ships.

4. For the purposes of this Article :

- (a) interest on funds connected with the operation of ships in international traffic shall be regarded as income from the operation of such ships and the provisions of Article 12 shall not apply in relation to such interest ; and
- (b) profits from the operation of ships includes profits derived from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) in connection with the transport of goods or merchandise in international traffic.

ARTICLE 10 - *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 Convention and the competent authorities of the Contracting States shall, if necessary, consult each other.

ARTICLE 11 - *Dividends - 1*. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed :

- (a) 15 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least 25 per cent of the shares of the company paying the dividends;
- (b) 25 per cent 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 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 15, 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 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 12 - *Interest* - 1. Subject to the provisions of paragraph 4 of Article 8 and paragraph 4(a) of Article 9 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 the tax so charged on interest payable in respect of a loan given or debt created after the date of entry into force of this Convention, shall not exceed :

- (a) 10 per cent of the gross amount, if such interest is paid on any loan of whatever kind granted by a bank, and
- (b) 15 per cent of the gross amount in all other cases.

3. Notwithstanding the provisions of paragraph 2 of this Article, interest arising in a Contracting State and derived by the Government of the other Contracting State, a political sub-division or local authority thereof, the Central Bank of that other Contracting State or any agency of that Government, or by any other resident of that other Contracting State with respect to debt-claims of that resident which are financed, guaranteed or insured by the Government of that other Contracting State, a political sub-division or local authority thereof, the Central Bank of that other Contracting State or any agency of that Government, shall be exempt from tax in 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 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 15, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political sub-division, 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 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 Convention.

ARTICLE 13 - *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 and 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 20 per cent of the gross amount of the royalties or fees for technical services.

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 film 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 term “fees for technical services” as used in this Article means payments of any amount to any person other than payments to an employee of the person making payments, in consideration for the services of a managerial, technical or consultancy nature, including the provision of services of technical or other personnel.

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 case the provisions of Article 7 or Article 15, as the case may be, shall apply.

6. Royalties and 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 their royalties or fees for the 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 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 paid exceeds, the amount which would have been paid 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 Convention.

ARTICLE 14 - *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 together 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.

With respect to gains derived by the Danish, Swedish and Norwegian air transport consortium Scandinavian Airlines System (SAS), the provisions of this paragraph shall apply only to such proportion of the gains as corresponds to the participation held in that consortium by Det Danske Luftfartsselskab (DDL), the Danish partner of Scandinavian Airlines System (SAS).

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 provided that such shares represent at least 10 per cent of the share capital of that company.

6. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15 - *Independent personal services* - 1. Income derived by an individual who is 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 the fiscal year of that other State, 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, surgeons, lawyers, engineers, architects, dentists and accountants.

ARTICLE 16 - *Dependent personal services* - 1. Subject to the provisions of Articles 17, 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 provision 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 the fiscal year of that other State;
- (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.

4. Where a resident of Denmark 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 Denmark.

ARTICLE 17 - *Directors' fees and remuneration of top level managerial officials* - 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 18 - *Entertainers and athletes* - 1. Notwithstanding the provisions of Articles 15 and 16, 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 an athlete, from his personal activities as such exercised in the other Contracting State may be taxed in that other State.

2. Where income in respect of personal activities exercised by entertainer or athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7,15 and 16, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or an athlete who is a resident of a Contracting State from his personal activities, as such exercised in the other Contracting State, shall be taxable only in the first-mentioned Contracting State, if the activities in the other Contracting State are supported wholly or substantially from the public funds of the first-mentioned Contracting State, including any of its political sub-divisions or local authorities.

4. Notwithstanding the provisions of paragraph 2, and Articles 7, 15 and 16, where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such in a Contracting State accrues not to the entertainer or athlete himself but to another person, that

income shall be taxable only in the other Contracting State, if that other person is supported wholly or substantially from the public funds of that other State, including any of its political sub-divisions or local authorities.

ARTICLE 19 - Remuneration and pensions in respect of 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. 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 authority shall be taxable only in that State.
3. The provisions of Articles 16 and 17 shall apply to remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or local authority thereof.

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 not exceeding 20,000 Danish Crowns or its equivalent in Indian currency during any fiscal year of that other State provided that such employment is directly related to his studies or is necessary 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 - Other income - 1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing articles of this Convention, shall be taxable only in that Contracting 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 15, 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 Convention, and arising in the other Contracting State may be taxed in that other State.

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 and aircraft operated in international traffic and by boats engaged in inland waterways transport, and by movable property pertaining to the operation of such ships, aircraft and boats, shall be taxable only in the Contracting State in which the enterprise is a resident.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

ARTICLE 23 - *Avoidance of double taxation - 1.* The laws in force in either of the Contracting States shall continue to govern the taxation of income and capital in the respective Contracting States except where express provision to the contrary is made in this Convention.

2. Double taxation shall be avoided in the case of India as follows :

(a) Where a resident of India derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Denmark, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in Denmark, whether directly or by deduction; and as a deduction from the tax on the capital of that resident an amount equal to the capital tax paid in Denmark. 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 Denmark. Further, where such resident is a company by which surtax is payable in India, the deduction in respect of income-tax paid in Denmark shall be allowed in the first instance from income-tax payable by the company in India and as to the balance, if any, from surtax payable by it in India ;

(b) Where a resident of India derives income or owns capital which, in accordance with the provisions of this Convention, shall be taxable only in Denmark, India may include this income or capital in the tax base but shall allow as a deduction from the income-tax or capital tax that part of the income-tax or capital tax which is attributable, as the case may be, to the income derived from or the capital owned in Denmark.

3. Double taxation shall be avoided in the case of Denmark as follows :

(a) subject to the provisions of sub-paragraph (c), where a resident of Denmark derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in India, Denmark shall allow :

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

- (ii) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in India ;
- (b) 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 India ;
- (c) where a resident of Denmark derives income or owns capital which, in accordance with the provisions of this Convention shall be taxable only in India, Denmark may include this income or capital in the tax base, but shall allow as a deduction from the income-tax or capital tax that part of the income-tax or capital tax which is attributable, as the case may be, to the income derived from or the capital owned in India ;
- (d) for the purposes of the deduction referred to in sub-paragraph (a), the term “income-tax paid in India” shall be deemed to include any amount which would have been payable as Indian tax under the laws of India and in accordance with this Convention for any year but for an exemption from, or reduction of, tax granted for that year under :
 - (i) Sections 10(4),10(4A), 10(4B), 10(6)(viii), 10(15)(iv), 10A, 32A, 80HH, 80-I, 80J and 80L of the Income-tax Act, 1961 (43 of 1961), so far as they were in force on, and have not been modified since, the date of the signature of this Convention or have been modified only in minor respects so as not to affect its general character ; or
 - (ii) any other provisions which may be enacted hereafter granting a deduction in computing the taxable income or an exemption or reduction from tax which the competent authorities of the Contracting States agree to be for the purposes of the economic development of India, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character ;
- (e) for the purposes of deduction referred to in sub-paragraph (a), Indian tax on interest and royalties and fees for technical services shall in no case be considered as having been paid at a rate of less than,
 - (i) in the case of interest—
 - (a) 10 per cent in the case of banks ; and
 - (b) 15 per cent in other cases ; and
 - (ii) 20 per cent in the case of royalties and fees for technical services.

ARTICLE 24 - *Non-discrimination* - 1. The 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 and under the same conditions 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 in the same circumstances and under the same conditions.

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. Except where the provisions of paragraph 1 of Article 10, paragraph 7 of Article 12, or paragraph 7 of Article 13, 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 Contracting 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 in the same circumstances and under the same conditions.

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

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 Convention, he may, notwithstanding 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. This case must be presented within three years of the date of receipt of notice of the action which gives rise to taxation not in accordance with the Convention.

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 avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws 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 Convention. They may also consult together for the elimination of double taxation in cases not provided for in the convention.

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 26 - *Exchange of information* - 1. The competent authorities of the Contracting States shall exchange such information (including documents) as necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention, in particular for the prevention of fraud or evasion of such taxes. 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. 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) 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 Convention. 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. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made, including, where appropriate, exchange of information regarding tax avoidance.

2. The exchange of information or documents shall be either on a routine basis or on request with reference to particular cases or both. The competent authorities of the Contracting States shall agree from time to time on the list of the information or documents which shall be furnished on a routine basis.

3. 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 administrative practice of that or of 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 ; and
- (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 27 - *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 Convention 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 or 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 to the Danish Tax Directorate, Statshattedirektoratet, Post Box 100, DK-3460 Birkerød, Denmark, 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 Danish tax, the request will be sent by the Danish Tax Directorate, to the Central Board of Direct Taxes, (FTD), Department of Revenue, Ministry of Finance, North Block, New Delhi - 110 001, India and will be accompanied by such certificate as is required by the laws of Denmark to establish that the taxes have been finally determined and are due from the taxpayer.

5. Where the 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 costs, if any, incurred in the

course of rendering such assistance to the extent mutually agreed between the competent authorities of the two States.

ARTICLE 28 - *Diplomatic agents and consular officers* - Nothing in this Convention 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 29 - *Territorial extension* - 1. This Convention may be extended by common agreement either in its entirety or with such modifications as are agreed upon to any part of the territory of Denmark which is specifically excluded from the application of the Convention and which imposes taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Contracting States in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures.

2. Unless otherwise agreed by both Contracting States, the termination of the Convention by one of them under Article 31 shall also terminate, in the manner provided for in that Article, the application of the Convention to any part of the territory of Denmark to which it has been extended under this Article.

ARTICLE 30 - *Entry into force* - 1. The Governments of the Contracting States shall notify to each other that the constitutional requirements for the entry into force of this Convention have been complied with.

2. This Convention shall enter into force on the date of the latter of the notifications referred to in paragraph 1 and its provisions shall have effect in respect of tax or the income year beginning on or after 1st January in the calendar year next following the year in which the latter of the notifications referred to in paragraph 1 is given, and subsequent income years.

3. The Agreement between the Governments of India and Denmark for the Avoidance of Double Taxation of Income, signed at Copenhagen on the 16th September, 1959, shall cease to have effect at the time when the provisions of this Convention shall be effective in accordance with the provisions of paragraphs 1 and 2.

ARTICLE 31 - *Termination* - This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving written notification 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 Convention enters into force. In such event, the Convention shall cease to have effect, in respect of tax for the income year beginning on or after 1st January in the Calendar year next following the year in which the notification is given and subsequent income years.

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

DONE in duplicate at COPENHAGEN this 8th day of March, one thousand nine hundred and eighty-nine in the Hindi, Danish and English languages, all the texts being equally authentic. In case of divergence between any of the texts, the English text shall be the operative one.

PROTOCOL

The Government of India and the Government of the Kingdom of Denmark :

Having entered into a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital :

Have agreed, at the time of signing the said Convention, on the following provisions which shall constitute an integral part thereof :

(1) For the purposes of paragraph 3(e) of Article 23, it is understood that the rates of tax specified therein shall in no case exceed the rate of withholding tax applicable to such categories of income under the Indian tax laws.

(2) For the purposes of Article 27, a request for assistance in collection of taxes due from a taxpayer shall not be made unless such taxes aggregate to 2000 Danish Crowns or its equivalent in Indian currency or more.

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

DONE in duplicate at COPENHAGEN this 8th day of March, one thousand nine hundred eighty-nine in Hindi, Danish and English languages, all the texts being equally authentic. In case of divergence between the three texts, English text shall be the operative one.

PROTOCOL

At the moment of signing the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital between the Government of the Republic of India and the Government of the Kingdom of Denmark the signatories have agreed that the following provisions shall form an integral part of the Convention :

1. The Convention has been extended to apply in its entirety to the territory of the Faroe Islands.
2. In the Convention the terms “the Kingdom of Denmark” and “Denmark” shall also apply to the Faroe Islands unless the context otherwise requires.
3. The taxes which in pursuance of the present protocol are the subject of the Convention shall include the following taxes which are levied on the Faroe Islands :
 - (a) Skat til landskassen (the provincial income-tax) ;
 - (b) Kommunalindkomstskat (the communal income-tax) ;
 - (c) Kirkeskat (the Church tax) ;
 - (d) Udbytteskat (tax on dividends) ;
 - (e) Ejendomsavanceafgift (tax on profit from real estate) ;
 - (f) Royaltyafgift (tax on royalty).
4. The term “competent authorities” means in the case of the Faroe Islands the Faroe Local Government or the authority which on behalf of the Local Government has been authorized to handle questions with reference to the Convention.
5. This protocol shall enter into force on and have effect from the same date as the Convention.

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

6. Done in duplicate at Copenhagen this 8th day of March, one thousand nine hundred and eighty-nine in Hindi, Danish and English languages, all the texts being equally authentic. In case of divergence between any of the texts, the English text shall be the operative one.