

HUNGARY

Agreement for Avoidance of Double Taxation and Prevention of Fiscal Evasion with Foreign Countries - With Hungary

Whereas the annexed Convention between the Government of the Republic of India and the Government of the Republic of Hungary for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, has come into force on the 4th day of March, 2005, thirty days after the receipt of the later of the notifications by both the Contracting States to each other, under Article 28 of the said Convention, of the completion of the procedures required under their respective laws for the entry into force of this Convention.

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), 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 197(E), dated 31-3-2005.

ANNEXURE

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

The Republic of Hungary and the Republic of India desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and with a view to promoting economic cooperation between the two countries, have agreed as follows :

ARTICLE 1 : PERSONAL SCOPE - This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 : TAXES COVERED - 1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amount of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

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

(a) in Hungary :

(i) the income-tax on individuals;

(ii) the corporation tax;

(iii) the dividend tax;

(hereinafter referred to as "Hungarian tax");

(b) in India : the income-tax, including any surcharge thereon (hereinafter referred to as "Indian tax").

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

ARTICLE 3 : GENERAL DEFINITIONS - 1. For the purposes of this Convention, unless the context otherwise requires :

(a) the term "Hungary" when used in a geographical sense means the territory of the Republic of Hungary;

(b) the term "India" means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Convention on the Law of the Sea;

(c) the terms "Contracting State" and "the other Contracting State" mean Hungary or India, as the context requires;

- (d) 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;
- (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" means respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term "international traffic" means any transport by a ship, or aircraft operated by an enterprise of a Contracting State, except when the ship, or aircraft is operated solely between places in the other Contracting State;
- (h) the term "competent authority" means :
 - (i) in the case of Hungary, the Minister of Finance or his authorised representative;
 - (ii) in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative;
- (i) the term "national" means :
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership, association, company or other entity deriving its status as such from the laws in force in a Contracting State.
- (j) the term "fiscal year" means :
 - (i) in the case of India, the financial year beginning on the first day of April;
 - (ii) in the case of Hungary, the calendar year;
- (k) the term "tax" means Indian tax or Hungarian 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 or fine imposed relating to those taxes.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4 : **RESIDENT** - 1. For the purposes of this 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, place of incorporation or any other criterion of a similar nature, and also includes that State and any local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows :

- (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident 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 Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop; and
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction, installation or assembly project or supervisory activities in connection therewith constitute a permanent establishment only if such site, project or activity lasts more than nine months.

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

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person :

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise; or
- (c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises controlling, controlled by, or subject to the same control, as that enterprise.

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

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

ARTICLE 6 : INCOME FROM IMMOVABLE PROPERTY - 1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships and aircraft shall not be regarded as immovable property.

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

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

ARTICLE 7 : BUSINESS PROFITS - 1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

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

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

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

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

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

ARTICLE 8 : INTERNATIONAL TRANSPORT - 1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

The term “profit” shall include income derived by the enterprise from the use, maintenance or rental of containers operated in international traffic (including trailers, barges and related equipment for the transport of such containers) if such income is incidental to the profits of such enterprise from the operation of ships and aircraft in international traffic.

2. For the purposes of this Article, interest on bank accounts excluding term deposits earned on funds directly connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, and the provisions of Article 11 shall not apply in relation to such interest.

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

ARTICLE 9 : ASSOCIATED ENTERPRISES - 1. Where

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

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

ARTICLE 10 : DIVIDENDS - 1. Dividends paid by a company which is resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

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

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

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

ARTICLE 11 : INTEREST - 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, 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

- (iii) (a) the Hungarian Exim Bank; or
- (b) a resident of Hungary if the interest is paid in respect of a loan made, guaranteed or insured or a credit extended, guaranteed or insured by the Hungarian Exim Bank; or
- (iv) (a) the Export Import Bank of India (Exim Bank); or
- (b) a resident of India if the interest is paid in respect of a loan made, guaranteed or insured or a credit extended, guaranteed or insured by the Export Import Bank of India (Exim Bank); or
- (v) any other bank or Government financial institution that may be mutually agreed upon between the two Contracting States.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from Government securities and income and bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that 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, the 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 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 to a 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 10 per cent of the gross amount of the royalties or fees for technical services.

3. (a) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or transmission by satellite, cable, optic fibre or similar technology, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

(b) The term "fees for technical services" 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 Convention.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties or fees for technical services are paid is

effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. 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.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties or fees for technical services, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13 : CAPITAL GAINS - 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of 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.

3. Gains, other than those dealt with in paragraph 2 of this Article, from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

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

5. Gains from the alienation of shares other than those mentioned in paragraph 2 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 the preceding paragraphs of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 : INDEPENDENT PERSONAL SERVICES - 1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in 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 State is for a period or periods aggregating 183 days or more in any 12-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 15 : DEPENDENT PERSONAL SERVICES - 1. Subject to the provisions of Articles 16, 18, 19 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the

other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 16 : DIRECTORS' FEES - Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17 : ARTISTES AND SPORTSPERSON - 1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income mentioned in this Article shall be exempt from tax in the Contracting State in which the activity of the entertainer or sportsperson is exercised provided that this activity is supported in a considerable part out of public funds of this State or of the other State or the activity is exercised under a cultural agreement between the Contracting States. In such a case, the income is taxable only in the Contracting State in which the artiste or the sportsperson is a resident.

ARTICLE 18 : PENSIONS - 1. Pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

2. Notwithstanding the provisions of the paragraph 1, pensions and other similar remunerations paid under the compulsory pension system of Hungary to a resident of India in consideration of past employment shall be taxable only in Hungary.

3. Notwithstanding the provisions of paragraph 1 any pension paid by, or out of funds created by India or a political sub-division, or a local authority thereof to a resident of Hungary in consideration of past employment shall be taxable only in India.

ARTICLE 19 : 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 State and the individual is a resident of that State who :

- (i) is a national of that State; or
- (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. The provisions of Articles 15, 16, 17 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

ARTICLE 20 : STUDENTS - 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 which he derives from an employment which he exercises in the other Contracting State if the employment is a requirement of his studies or apprenticeship.

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 seven consecutive years from the date of his first arrival in that other State.

ARTICLE 21 : PROFESSORS AND TEACHERS - 1. A professor or teacher who visits one of the Contracting States for a period not exceeding two years for the sole purpose of teaching or carrying out advanced study (including research) at a university, college or other approved institution in that Contracting State and who was immediately before that visit a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching or research for a period not exceeding two years from the date he first visits that Contracting State for such purpose.

2. The preceding provisions of this Article shall not apply to remuneration which a professor or teacher receives for conducting research if the research is undertaken primarily for the private benefit of a specific person or persons.

3. For the purposes of paragraph 1 "approved institution" means an institution which has been approved in this regard by the competent authority of the concerned State. The Competent Authority of a Contracting State approving the institution shall intimate the name of the institution so approved to the Competent Authority of the other Contracting State.

ARTICLE 22 : OTHER INCOME - 1. Items of income of a resident of a Contracting State wherever arising, not dealt with in the foregoing Articles of this Convention 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 beneficial owner of such income, being a resident of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in the form of lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any form or nature whatsoever, such income may be taxed in the other Contracting State.

ARTICLE 23 : ELIMINATION OF DOUBLE TAXATION - 1. In Hungary double taxation shall be eliminated as follows:

- (a) Where a resident of Hungary derives income which, in accordance with the provisions of this Convention may be taxed in India, Hungary shall, subject to the provisions of sub-paragraph (b) exempt such income from tax.
- (b) Where a resident of Hungary derives items of income which, in accordance with the provisions of Articles 10, 11 and 12 may be taxed in India, Hungary shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in India. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given which is attributable to such items of income which may be taxed in India.

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

Where a resident of India derives income which, in accordance with the provisions of this Convention, may be taxed in Hungary, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in Hungary whether directly or by deduction at source. Such amount shall not however exceed that part of the income-tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Hungary.

3. Where in accordance with any provisions of this Convention income derived by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

ARTICLE 24 : NON-DISCRIMINATION - 1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 4 of Article 11, or paragraph 4 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

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 Contracting State to any taxation or any requirement connected therewith which is more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

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

ARTICLE 25 : MUTUAL AGREEMENT PROCEDURE - 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the 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 a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. 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 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.

ARTICLE 26 : 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 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. The exchange of information is not restricted by Article 1. Any information so 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 of 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 Convention. Such persons or authorities shall use the

information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information (including 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 which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

ARTICLE 27 : DIPLOMATIC AGENTS AND CONSULAR OFFICERS - Nothing in this 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 28 : 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 Convention.

2. This Convention 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 Convention shall have effect:

- (a) in India: 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 Convention enters into force; and
- (b) in Hungary: in respect of income arising in any fiscal year beginning on or after the first day of January next following the calendar year in which the Convention enters into force.

4. The Convention between the Government of the People's Republic of Hungary and the Government of the Republic of India for avoidance of double taxation with respect to taxes on income signed at New Delhi on 30th October, 1986 and the Protocol thereto signed on the same date shall cease to have effect when the provisions of this Convention become effective in accordance with the provisions of paragraph 3.

ARTICLE 29 : TERMINATION - This Convention shall remain in force indefinitely until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination in writing 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 Convention. In such event, the Convention shall cease to have effect:

- (a) in India, in respect of income arising in any fiscal year beginning on or after the 1st April next following the calendar year in which the notice of termination is given;
- (b) in Hungary: in respect of income arising in any fiscal year beginning on or after the first day of January next following the calendar year in which the notice of termination is given.

In witness whereof the undersigned, being duly authorised thereto, have signed this Agreement.

Done in two originals at New Delhi this 3rd day of November, 2003 in Hindi, the Hungarian and English languages, all three texts being equally authentic. In case of divergence between the texts the English text shall prevail.

PROTOCOL

At the moment of signing the Convention between the Republic of Hungary and the Republic of India for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed that the following provisions shall form an integral part of the Convention:

With reference to Articles 6, 13 and 16 :

With reference to paragraph 1 of Article 6 and Article 13 it is understood that income from immovable property and capital gains on alienation of immovable property respectively may be taxed in both the

Contracting States. With reference to Article 16 it is understood that Directors' fees and other similar payments referred to in the said Article may be taxed in both the Contracting States.

With reference to Article 7 :

- (a) In the determination of the profits of a building site or construction, assembly or installation project there shall be attributed to that permanent establishment in the Contracting State in which the permanent establishment is situated only the profits resulting from the activities of the permanent establishment as such. If machinery or equipment is delivered from the head office or another permanent establishment of the enterprise (situated outside that Contracting State) or a third person (situated outside that Contracting State) in connection with those activities or independently therefrom there shall not be attributed to the profits of the building site or construction, assembly or installation project the value of such deliveries.
- (b) With respect to paragraph 3 it is understood that the administrative and general expenses incurred outside India will be allowed as a deduction in accordance with the provisions of section 44C of the Indian Income-tax Act, 1961, as effective on the date of the signing of this Convention.

With reference to Article 10 :

When the company paying the dividends is a resident of India the tax on distributed profits shall be deemed to be taxed in the hands of the shareholders and it shall not exceed 10 per cent of the gross amount of dividend.

With reference to Articles 10, 11 and 12 :

In respect of Articles 10 (Dividends), 11 (Interest) and 12 (Royalties and fees for technical services), if under any Convention, Agreement or Protocol between India and a third State which is a member of the OECD, India limits its taxation at source on dividends, interest, royalties or fees for technical services to a rate lower or a scope more restricted than the rate or scope provided for in this Convention on the said items of income, the same rate or scope as provided for in that Convention. Agreement or Protocol on the said items of income shall also apply under this Convention.

With reference to Article 16 :

Remuneration received by a member of the Supervisory Board of a company as per the Act on Business Associations (Act CXLIV of 1997) of Hungary will be taxed in accordance with the provisions of Article 16.

With reference to Articles 20 and 21 :

For the purposes of these Articles, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year.

With reference to Article 24 :

- (a) It is understood that the provisions of Article 24 paragraph 2 shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State, nor being in conflict with the provisions of paragraph 3 of Article 7. However, the difference in tax rate shall not exceed 13 percentage points.
- (b) Notwithstanding the provisions of Article 10 paragraph 5 and Article 24 paragraph 2, a company which is a resident of India and which has a permanent establishment in Hungary may be subject to tax in Hungary in addition to the tax on profits attributable to that permanent establishment.

However, such additional tax may not exceed 10 per cent of the profits of the enterprise attributable to the permanent establishment after deducting therefrom the tax on profits chargeable on the profits of a company which is a national of Hungary and imposed on the profits of the enterprise attributable to the permanent establishment by Hungary.

In witness whereof the undersigned, being duly authorized thereto, have signed this Agreement.

Done in two originals at New Delhi this 3rd day of November, 2003 in Hindi, the Hungarian and English languages, all three texts being equally authentic. In case of divergence between the texts the English text shall prevail.