

IRELAND

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

Whereas the annexed Convention between the Government of the Republic of India and the Government of Ireland for the Avoidance of Double Taxation and for the Prevention of Fiscal Evasion with respect to taxes on income and capital gains has entered into force on 26th December, 2001, thirty days after the receipt of the later of the notifications by both the Contracting States to each other of the completion of the procedure required by their respective laws, as required by Article 28 of the said 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. 45/2002 [F. No. 503/6/99-FTD], dated 20-2-2002.

ANNEXURE

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

The Government of the Republic of India and the Government of Ireland, desiring to conclude a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income and capital gains and with a view to promoting economic co-operation 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 and capital gains imposed on behalf of a Contracting State or of its political sub-divisions or local authorities irrespective of the manner in which they are levied.

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

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

(a) In India :

the income-tax including any surcharge thereon;
(hereinafter referred to as “Indian tax”);

(b) In Ireland :

(i) the income-tax;
(ii) the corporation tax; and
(iii) the capital gains tax

(hereinafter referred to as “Irish 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 referred to in paragraph 3. The competent authorities of the Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

ARTICLE 3 : *General Definitions* - 1. For the purposes of this Convention, unless the context otherwise requires :—

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

(b) the term “Ireland” includes any area outside the territorial waters of Ireland which, in accordance with international law, has been or may hereafter be designated under the laws of Ireland

concerning the Continental Shelf, as an area within which the rights of Ireland with respect to the sea and subsoil and their natural resources may be exercised;

- (c) the term “person” includes an individual, a company, a trust, a partnership which is treated as a taxable unit under the Income-tax Act, 1961 (43 of 1961) of India, 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;
- (d) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (e) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (f) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (g) the term “competent authority” means :
 - (i) in the case of India : the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative;
 - (ii) in the case of Ireland : the Revenue Commissioners or their authorised representative;
- (h) the term “national” means :
 - (i) in relation to Ireland, any citizen of Ireland and any legal person, association or other entity deriving its status as such from the laws in force in Ireland;
 - (ii) in relation to India (A) any individual possessing the nationality of India; (B) any legal person, partnership or association deriving its status as such from the laws in force in India;
- (i) the term “fiscal year” means :
 - (i) in the case of India, “previous year” as defined under section 3 of the Income-tax Act, 1961;
 - (ii) in the case of Ireland, a year beginning with the sixth day of April in one year and ending with the fifth day of April in the following year;
- (j) The term “tax” means Indian tax or Irish 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;
- (k) the terms “a Contracting State”, “one of the Contracting States” and “the other Contracting State” mean Ireland or the Republic of India, as the context requires, and the term “Contracting States” means Ireland and the Republic of India.

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.

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. 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;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction or exploration of natural resources;
- (g) an installation or structure used for the exploration or exploitation of natural resources;
- (h) a sales outlet;
- (i) a warehouse in relation to a person providing storage facilities for others; and
- (j) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on.

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

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

5. Notwithstanding the previous 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.

6. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 8 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 5 which,

if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; 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.

7. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 8 applies.

8. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, if the activities of such an agent are carried out wholly or almost wholly for the enterprise and the conditions made or imposed between them in their commercial and financial relations differ from those which would have been made or imposed if this had not been the case, that agent shall not be considered to be an agent of an independent status for the purpose of this paragraph.

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

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

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

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

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

ARTICLE 7 : *Business profits* - 1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may also 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 the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, whether in the State in which the permanent establishment is situated or elsewhere. Executive and general administrative expenses shall be allowed as deductions in accordance with the taxation laws of that State. Nothing in

this paragraph shall, however, authorise a deduction for expenses which would not be deductible if the permanent establishment were a separate enterprise.

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

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

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

ARTICLE 8 : *Shipping and air transport* - 1. Profits derived by an enterprise of a Contracting State from the operation or rental of ships or aircraft in international traffic and the rental of containers and related equipment which is incidental to the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State.

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

3. For the purposes of this Article, interest on funds connected directly 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, provided that such funds are incidental to that operation.

4. Notwithstanding the preceding provisions of this Article, profits derived by an enterprise of a Contracting State from the operation of ships between the ports of the other Contracting State and the ports of third countries may be taxed in that other Contracting State, but the tax imposed in that other State shall be reduced by an amount equal to two-thirds thereof.

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 a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends. 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 includes income from shares or other rights, not being debt-claims, participating in profit, 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 dividend 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 Contracting State provided it is derived and beneficially owned by, or derived in connection with a loan or credit extended, guaranteed or insured by:

- (a) the Government, a political sub-division, a statutory body or a local authority of the other Contracting State; or
- (b) (i) in the case of India, the Reserve Bank of India, the Industrial Finance Corporation of India, the Industrial Development Bank of India, the Export-Import Bank of India, the National Housing Bank, the Small Industries Development Bank of India and the Industrial Credit and Investment Corporation of India (ICICI); and
 - (ii) in the case of Ireland, the Central Bank of Ireland; or
- (c) any other similar institution as may be agreed from time to time between the Competent Authorities of the Contracting States.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from Government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, but does not include any income which is treated as a dividend under Article 10. 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, 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 relationships, 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 or fees for technical services may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties or fees for technical services, the tax so charged shall not exceed 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 or films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process or for the use of or the right to use industrial, commercial or scientific equipment, other than an aircraft, 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 also be taxed in that other State.

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

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

4. Gains from the alienation of 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 Contracting State.

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

ARTICLE 14 : *Independent personal services* - 1. Income derived by a resident of a Contracting State 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 12-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 also be taxed in that other State.

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

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

3. The provisions of paragraphs 1 and 2, shall not apply to income from activities performed in a Contracting State by entertainers or sportspersons if the visit to that State is substantially supported by public funds of one or both of the Contracting States or of political sub-divisions or local authorities thereof. In such a case, the income is taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

ARTICLE 18 : *Pensions and annuities* - 1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment and any annuity paid to such a resident in consideration of past employment shall be taxable only in that State.

2. The term “annuity” means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money’s worth.

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

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

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

ARTICLE 20 : *Students and apprentices* - 1. A student or business apprentice who is or was a resident of a Contracting State immediately before visiting the other Contracting State and who is present in that other Contracting 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 to the extent that it does not exceed the amount which is exempt from tax under the laws of that other Contracting State for any fiscal year; provided that such employment is directly related to his studies or is undertaken for the purposes of his maintenance.

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

ARTICLE 21 : *Professors, teachers and research scholars* - 1. A professor, teacher or research scholar who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college or other similar institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his first arrival in that other State for such purpose.

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

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

ARTICLE 22 : *Other income* - 1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this 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 recipient of such income, being a resident of a Contracting

State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14 as the case may be, shall apply.

3. Notwithstanding the provisions of paragraph 1, if a resident of a Contracting State derives income from sources within the other Contracting State in the form of winnings from 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. The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Convention.

2. Subject to the provisions of the laws of India regarding the allowance as a credit against Indian tax of tax paid in a territory outside India (which shall not affect the general principle hereof), the amount of Irish tax paid, under the laws of Ireland and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of India, in respect of income from sources within Ireland which has been subjected to tax both in India and Ireland shall be allowed as a credit against the Indian tax payable in respect of such income but in an amount not exceeding that proportion of Indian tax which such income bears to the entire income chargeable to Indian tax.

3. Subject to the provisions of the laws of Ireland regarding the allowance as a credit against Irish tax of tax payable in a territory outside Ireland (which shall not affect the general principle hereof)—

(a) Indian tax payable under the laws of India and in accordance with this Convention, whether directly or by deduction, on profits, income and gains from sources within India (excluding in the case of a dividend tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Irish tax computed by reference to the same profits, income and gains by reference to which Indian tax is computed.

(b) In the case of a dividend paid by a company which is a resident of India to a company which is a resident of Ireland and which controls directly or indirectly 25 per cent or more of the voting power in the company paying the dividend, the credit shall take into account [in addition to any Indian tax creditable under the provisions of sub-paragraph (a)] Indian tax payable by the company in respect of the profits out of which such dividend is paid.

4. (a) For the purposes of sub-paragraph (b) of paragraph 3, the term “Indian tax payable” shall be deemed to include 75 per cent of the Indian tax which would have been paid but for any exemption or reduction of tax granted under incentive provisions contained in Indian law designed to promote economic development to the extent that such exemption or reduction is granted for profits from industrial or manufacturing activities, or from the development, maintenance and operation of infrastructure facilities, or from agriculture, fishing or tourism (including restaurants and hotels), provided that such incentive provisions remain in substance unchanged since the date of signature of this Convention and that the activities have been carried out within India.

(b) The provisions of sub-paragraph (a) shall cease to apply after twelve years from the date of entry into force of this Convention.

(c) Should India amend in substance its incentive provisions in relation to the activities specified in sub-paragraph (a) or introduce any new incentive provisions in relation to such activities, India may request in writing that this paragraph should apply to such amended or new provisions. Likewise, India may request in writing an extension of the time-limit in sub-paragraph (b). Upon receipt of such request, Ireland shall enter into negotiations with India for such purposes.

5. For the purposes of paragraphs 2 and 3, profits, income and gains owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with the provisions of this Convention shall be deemed to arise from sources in that other Contracting State.

6. Income which in accordance with the provisions of this Convention is not to be subjected to tax in a Contracting State may be taken into account for calculating the rate of tax to be imposed in that Contracting State on other 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.

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

4. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

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 laws 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. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

ARTICLE 26 : *Exchange of information* - 1. The competent authorities of the Contracting States shall exchange such information including documents, as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting State 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. The exchange of information is not restricted by Article 1.

Any information so exchanged by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of the State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes covered by the 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 or documents which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information 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 : *Diplomatic agents and consular officials* - Nothing in this convention shall affect the fiscal privileges of diplomatic agents or consular officials 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, of 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.

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 Ireland :
 - (i) in respect of income-tax and capital gains tax, for any year of assessment beginning on or after the sixth day of April in the year next following the date on which this Convention enters into force;
 - (ii) in respect of corporation tax, for any financial year beginning on or after the first day of January in the year next following the year in which this Convention enters into force.

ARTICLE 29 : *Termination* - This Convention shall remain in force indefinitely unless terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Convention. In such event, the Convention shall cease to have effect :

- (a) in India, in respect of income arising in any fiscal year on or after the first day of April next following the calendar year in which the notice is given :
- (b) in Ireland :
 - (i) in respect of income-tax and capital gains tax, for any year of assessment beginning on or after the sixth day of April in the year next following the calendar year in which the notice is given ;
 - (ii) in respect of corporation tax, for any financial year beginning on or after the first day of January next following the calendar year in which the notice is given.

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

Done in duplicate at New Delhi on this 6th day of November in 2000, in the Hindi and English languages, both the texts being equally authentic. In case of divergence between the two texts, the English text shall prevail.

PROTOCOL

At the signing of the Convention between the Government of the Republic of India and the Government of Ireland for the Avoidance of Double Taxation and for the Prevention of Fiscal Evasion with respect to taxes on income and capital gains, the undersigned have agreed that the following shall form an integral part of the Convention :

With reference to Articles 3 and 23

1. Where a person resident in Ireland is a member of a partnership which is resident in India and by virtue of this Convention any profits, income or gains of the partnership are relieved from tax in Ireland, the Convention shall not affect any liability to tax in Ireland of such person in respect of such person's share

of any profits, income or gains of the partnership; any such share of profits, income or gains shall be treated for the purposes of Article 23 as profits, income or gains from sources in India and the appropriate part of the Indian tax borne by the partnership shall be allowed as a credit against any Irish tax computed by reference to the said share of the profits, income or gains.

With reference to Article 7

2. If, in accordance with the laws of a Contracting State, profits are attributed to a permanent establishment of an enterprise carrying on insurance business, 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; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in Article 7.

With reference to Article 24

3. The provisions of this Article shall not be construed as preventing India from charging the profits of a permanent establishment of an Irish company in India at a rate of tax which is higher than that imposed on the profits of a similar Indian company, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Convention.

With reference to collection assistance

4. It is understood that at the date of signature of this Convention, the laws of Ireland do not permit it to lend assistance in the collection of taxes on income, profits or gains of another country. However, if after the date of signature of this Convention, the laws of Ireland in this respect change and Ireland enters into an arrangement with another country to permit such assistance in collection, then Ireland shall inform the Indian competent authority and, if requested by such authority, shall immediately enter into negotiations for the purpose of incorporating provisions with regard to collection assistance in this Convention.

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

Done in duplicate at New Delhi on this 6th day of November in 2000, in the Hindi and English languages, both the texts being equally authentic. In case of divergence between the two texts, the English text shall prevail.

ADDENDUM TO NOTIFICATION 45/2002 [F. NO. 503/6/99-FTD], DATED 20-2-2002.

In the Notification No. 45/2002 of the Government of India, in the Ministry of Finance (Department of Revenue), Number G.S.R. 105(E), dated the 20th February, 2002 published in the Gazette of India, (Extraordinary), in Part-II, section 3, sub-section (i), dated the 20th February, 2002, the Exchange of Letters between the Indian and the Irish authorities as annexed shall form part of the aforesaid notification.

ANNEXURE

The Department of Foreign Affairs presents its compliments to the Embassy of India and has the honour to refer to the Convention between the Government of Ireland and the Government of the Republic of India for the Avoidance of Double Taxation and for the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains which was signed in New Delhi on 6th November, 2000 and ratified by the Government of the Republic of India on November 9, 2000 and which has yet to be ratified by the Irish Government, and to make, on behalf of the Government of Ireland, the following proposal for the purpose of its application.

The Government of Ireland proposes that the references in Article 3(1)(ii) to "a year beginning with the sixth day of April in one year and ending with the fifth day of April in the following year" should read "the calendar year".

The Government of Ireland also proposes that the references in article 28(3)(b)(i) to "the sixth of April in the year next following" should be read as "the first day of January in the year next following". By reason of the amendment, the Convention between the Government of Ireland and the Government of the Republic of India would then take effect for all taxes covered by it from January 1, 2002.

Finally, the Government of Ireland also proposes that the references in Article 29(b)(i) to "the sixth of April in the year next following" should be read as "the first day of January in the year next following".

If the foregoing proposals are acceptable to the Government of the Republic of India, the Department of Foreign Affairs has the honour to suggest that the present Note and the reply of the Government of the

Republic of India to that effect shall be regarded as constituting an agreement between the two Governments in this matter which shall enter into force at the same time as the entry into force of the Convention.

The Department of Foreign Affairs avails itself of this opportunity to renew to the Embassy of India the assurances of its highest consideration.

The Embassy of India, Dublin, presents its compliments to the Department of Foreign Affairs of the Government of Ireland and with reference to their Note Verbale No. 348/764, dated 3rd September, 2001, regarding the Convention for Avoidance of Double Taxation and the Prevention of Fiscal Evasion, signed between India and Ireland, has the honour to convey that the concerned authorities in India have informed that the Government of India has accepted the amendments to the convention suggested by the Government of Ireland *vide* the Note Verbale under reference above.

This information may please be conveyed to the Department of Revenue, Government of Ireland, so that these amendments can come into effect from the date as stipulated in the Note Verbale dated 3rd September, 2001, from the esteemed Department.

The Embassy of India avails itself of this opportunity to renew to the Department of Foreign Affairs, Government of Ireland the assurances of its highest consideration.

Notification : *No. GSR 212(E), dated 19-3-2002.*