

NEW ZEALAND

Agreement for avoidance of double taxation of income and the prevention of fiscal evasion with New Zealand

Whereas the annexed Convention between the Government of the Republic of India and the Government of New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has come into force on the 3rd December, 1986, on the notification by both the Contracting States to each other of the compliance of the constitutional requirements, as required by paragraph (1) of 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) and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), 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 314(E), dated 27-3-1987, as amended by GSR 477(E), dated 21-4-1988 and GSR 37(E), dated 12-1-2000.

TEXT OF ANNEXED CONVENTION, DATED 17-10-1986

The Government of the Republic of India and the Government of New Zealand, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows :

ARTICLE 1 - *Personal scope* - This Convention shall apply to persons who are residents of one or both of the Contracting States.

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

- (a) in the case of New Zealand, the income-tax and the excess retention tax (hereinafter referred to as "New Zealand tax") ;
- (b) in the case of India, the income-tax including any surcharge thereon and the surtax (hereinafter referred to as "Indian tax").

2. 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 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) (i) the term "New Zealand" means the territory of New Zealand but does not include Tokelau or the Associated Self Governing States of the Cook Islands and Niue; it also includes any area beyond the territorial sea which by New Zealand legislation, and in accordance with international law has been, or may hereafter be, designated as an area in which the rights of New Zealand with respect to natural resources may be exercised;
(ii) the term 'India' means the territory of India and includes the territorial sea and the 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 of the Law of the Sea;
- (b) the terms "a Contracting State" and "the other Contracting State" mean New Zealand or India as the context requires;
- (c) the term "tax" means New Zealand tax or Indian tax as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which the Convention applies or which represents a penalty imposed relating to those taxes;
- (d) the term "person" includes an individual, a company, any other body of persons or entity which are defined as or deemed to be a person under the taxation laws in force in the respective Contracting States;

- (e) the term “company” means anybody 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” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term “national” means—
 - (i) in respect of New Zealand, any individual possessing citizenship of New Zealand and any legal person, partnership or association deriving its status as such from the law in force in New Zealand;
 - (ii) in respect of India, any individual possessing the nationality of India and any legal person, partnership or association deriving its status as such from the law in force in India;
- (h) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in other Contracting State;
- (i) the term “competent authority” means—
 - (i) in the case of New Zealand the Commissioner of Inland Revenue 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.

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 laws 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 Contracting State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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 of natural resources;
- (g) a warehouse in relation to a person providing storage facilities for others;
- (h) a farm, plantation or other place where agricultural, forestry or plantation activities are carried on;
- (i) premises used as a sales outlet;
- (j) a building site or a construction or installation or assembly project or supervisory activities in connection therewith, where such site or project or supervisory activities (together with other such sites or projects or activities, if any) or any combination thereof continue for a period of more than six months; and
- (k) an installation or structure for the exploration or exploitation of natural resources :

Provided that for the purposes of this paragraph 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 carries on activities in that State in connection with the exploration or exploitation of natural resources in that State.

3. Notwithstanding the preceding provisions of this article, the term “permanent establishment” shall be deemed not to include—

- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for any other activities which have a preparatory or auxiliary character, for the enterprise.

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

- (a) he has and habitually exercises in that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise;
- (b) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

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

6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other

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

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

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

ARTICLE 7 - *Business profits* - 1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to (a) that permanent establishment or, (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment.

2. Subject to the provisions of paragraph (3), where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly or independently with the enterprise of which it is a permanent establishment. In any case where the correct amount of profits attributable to a permanent establishment is incapable of determination or the determination thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on a reasonable basis.

3. In determining the profits of a permanent establishment, there shall be allowed as deduction expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere, in accordance with the provisions of and subject to the limitations of the taxation laws of that State.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph (2) shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this article.

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

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

7. Nothing in this article shall affect any provisions of the law of either Contracting State at any time in force regarding the taxation of any income or profits from the business of any form of insurance.

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

ARTICLE 8 - *Air transport* - 1. Profits of an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in that State.

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

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

ARTICLE 8A - *Shipping* - 1. Profits of an enterprise of a Contracting State derived from the operation of ships in international traffic shall be taxed only in that Contracting State.

2. Notwithstanding the provisions of paragraph (1), such profits to the extent that they are derived from the other Contracting State may also be taxed in that Contracting State but the tax so imposed shall not exceed 50 per cent of the tax which would have been chargeable on those profits in the absence of this Convention.

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

4. Profits of an enterprise of a Contracting State referred to in paragraphs (1), (2) and (3) includes profits of that enterprise from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers), to the extent that those containers are used in international traffic.

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 tax charged therein on those profits.

3. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting State shall if necessary consult each other.

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 per cent of the gross amount of the dividends. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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 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 State 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;
- (iii) in the case of India, the Export Import Bank of India; in the case of New Zealand, any financial institution agreed to be of a similar nature to the Export Import Bank of India by the competent authorities of both 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. However, this term does not include income dealt with in 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 State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 12 - *Royalties and fees for technical services* - 1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

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

4. The term "fees for technical services" as used in this article means payments of any kind to any person, other than payments to an employee of the persons making the payments and to any individual for independent personal services mentioned in Article 14, in consideration for services of a managerial, technical or consultancy nature, including the provision of services of technical or other personnel.

5. The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services, arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right of property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of article 7 or article 14, as the case may be, shall apply.

6. Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of 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 - *Alienation of property* - 1. Income or 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. Income or 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 income or gains from the alienation of such a permanent establishment (alone or with the whole enterprise), or of such a fixed base, may be taxed in that other State.

3. Income or gains of 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. Income or gains from the alienation of shares of the capital stock of a company where the property of the company consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Income or gains from the alienation of shares other than those mentioned in paragraph (4) in a company which is a resident of a Contracting State may be taxed in that State.

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

ARTICLE 14 - *Independent personal services* - 1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other 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 Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any consecutive twelve-month period; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 15 - *Dependent personal services* - 1. Subject to the provisions of articles 16, 17, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

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

3. Notwithstanding the preceding provisions of this article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operating in international traffic by an enterprise of a Contracting State may be taxed in that Contracting 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 athletes* -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 an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

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

3. The provisions of paragraphs (1) and (2) shall not apply if the visit to a Contracting State of the entertainer or the athlete is directly or indirectly supported, wholly or substantially, from the public funds of the other Contracting State, including a political sub-division, a statutory body or a local authority of that other State.

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

2. The term "annuity" as used in this article means a stated sum payable periodically as 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 political 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. Payment which a student of business or technical apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that Contracting State solely for the purpose of study or training as a recipient of a grant, allowance or award from an arrangement for assistance programme entered into by the Government of that Contracting State shall be exempt from tax in that Contracting State on the amount of such grant, allowance or award.

ARTICLE 21 - *Professors and teachers* - 1. A professor or teacher who visits a Contracting State for a period not exceeding two years for the purpose of teaching or carrying out advanced study or research at a university, college, school or other approved educational institution in that Contracting State and who immediately before that visit was a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching, advanced study or research in respect of which he is subject to tax in the other Contracting State.

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

ARTICLE 22 - *Other income* - Items of income of a resident of a Contracting State not dealt within the foregoing Articles of this Convention shall be taxable only in that State except that, if such income arises in the other Contracting State, it may also be taxed in that other State.

ARTICLE 23 - *Elimination of double taxation* - 1. (a) Subject to the provisions of the law of New Zealand relating to the allowance as a credit against New Zealand tax of tax paid in any country other than New Zealand (which shall not affect the general principle hereof), Indian tax paid under the law of India and consistently with Convention, whether directly or by deduction, in respect of income derived by a resident of New Zealand from sources in India (excluding, in the case of a dividend, tax paid in respect of the

profits out of which the dividend is paid), shall be allowed as a credit against New Zealand tax payable in respect of that income.

(b) For the purposes of this Article, income of a resident of New Zealand which in accordance with the provisions of this Convention may be taxed in India shall be deemed to arise from sources in India.

2. (a) Subject to the provisions of the law of India relating to the allowance as a credit against Indian tax of tax paid in any country other than India (which shall not affect the general principle hereof), New Zealand tax paid under the law of New Zealand and consistently with this Convention, whether directly or by deduction, in respect of income derived by a resident of India from sources in New Zealand (excluding, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid), shall be allowed as a credit against Indian tax payable in respect of that income.

(b) For the purposes of this article, income of a resident of India which in accordance with the provisions of this Convention may be taxed in New Zealand shall be deemed to arise from sources in New Zealand.

3. For the purposes of paragraph (1) the term "Indian tax paid" shall be deemed to include any amount which would have been payable as Indian tax but for a deduction allowed in computing the taxable income or an exemption or reduction of tax granted for that year under section 10(4), 10(4A), 10(15)(iv) of the Income-tax Act, 1961 and any other provision to be agreed between the competent authorities of both Contracting States:

Provided that the credit for the Indian tax to be so allowed shall not exceed the smaller of:

(a) the New Zealand tax which would have been payable under New Zealand law but for the provisions of this paragraph; and

(b) where applicable, the limitation of tax agreed to in the relevant Articles of this Convention.

ARTICLE 24 - Non-discrimination - 1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which 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.

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

4. Nothing in the Article shall be construed as preventing a Contracting State from distinguishing in its taxation laws between residents and non-residents solely on the basis of their residence and to levy taxes or grant exemption, relief, reduction or allowance for tax purposes accordingly.

5. This Article shall not apply to any provisions of the taxation laws of a Contracting State which are reasonably designed to prevent or defeat the avoidance or evasion of taxes.

6. In this article the term "taxation" means the taxes to which this Convention applies.

ARTICLE 25 - Mutual agreement procedure - 1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this 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. This case must be presented within three years from the date of receipt of notice of the action giving rise to taxation not in accordance with the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at 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 laws of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting State 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 States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) 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 which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional, secret or trade process, or information, the disclosure of which would be contrary to public policy.

ARTICLE 27 - *Diplomatic and consular officers* - Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officers under the general rules of international law or under the provisions of special international agreements.

ARTICLE 28 - *Entry into force* - 1. The Contracting States shall notify each other that the constitutional requirements for the entry into force of this Convention have been complied with.

2. This Convention shall enter into force on the date of the notification referred to in paragraph (1) and its provisions shall have effect :

- (a) in New Zealand : for any income year beginning on or after 1 April in the calendar year next following the date on which the Convention enters into force;
- (b) in India : for any “previous year” (as defined in the Income-tax Act, 1961) beginning on or after 1 April in the calendar year next following the date on which the Convention enters into force.

ARTICLE 29 - *Termination* - This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention by giving notice of termination, through diplomatic channels, 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 New Zealand : for any income year beginning on or after 1 April in the calendar year next following that on which the notice of termination is given;
- (b) in India : for any “previous year” (as defined in the Income-tax Act, 1961) beginning on or after 1 April in the calendar year next following the date on which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed the present Convention.
DONE in duplicate at Auckland this 17th day of October, 1986 in the Hindi and English languages, both the texts being equally authentic. In case of divergence between the two texts, the English text shall be the operative one.

NOTIFICATION 2

WHEREAS the annexed Protocol to the Convention between the Government of the Republic of India and the Government of New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has come into force on 9th January, 1997, on the notification by both the Contracting States to each other of the compliance with the domestic requirements as required by Article 2 of the said Protocol :

NOW, THEREFORE, in exercise of the powers conferred under section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Protocol shall be given effect to in the Union of India.

ANNEXURE

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

The Government of the Republic of India and the Government of New Zealand,

Having regard to the Convention between the Government of the Republic of India and the Government of New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income done at Auckland on 17th October, 1986 (hereinafter referred to as "the Convention").

Have agreed that the following provisions shall form an integral part of the Convention :

ARTICLE 1 - Notwithstanding paragraph 3 of Article 23 of the Convention, a New Zealand resident deriving income from India, being income referred to in that paragraph, shall not be deemed to have paid Indian tax in respect of such income where the competent authority of New Zealand considers, after consultation with the competent authority of India, that it is inappropriate to do so having regard to :

- (a) whether any arrangements have been entered into by any person for the purpose of taking advantage of paragraph 3 of Article 23 for the benefit of that person or any other person;
- (b) whether any benefit accrues or may accrue to a person who is neither a New Zealand resident nor an Indian resident;
- (c) the prevention of fraud or the avoidance of the taxes to which the Convention applies;
- (d) any other matter which either competent authority considers relevant in the particular circumstances of the case, including any submissions from the New Zealand resident concerned.

ARTICLE 2 - 1. The Contracting States shall notify each other that the domestic requirements for the entry into force of this Protocol have been complied with.

2. This Protocol shall enter into force on the date of the later of the notifications referred to in paragraph (1) of this article.

ARTICLE 3 - Article 1 of this Protocol shall apply to income derived on or after the 1st day of the month following the date on which this Protocol enters into force.

DONE at New Delhi in duplicate this the Twenty-ninth day of August, One Thousand Nine Hundred Ninety-six in the Hindi and the English languages, both texts being equally authentic. In case of divergence between the two texts, the English text shall be the operative one.

Notification : No. SO 166(E), dated 5-3-1997.