

SWEDEN

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

Whereas the annexed Convention between the Government of the Kingdom of Sweden and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income and on capital shall come into force, on the twenty-fifth day of the December, 1997, thirty days after the receipt of the letter of the notifications by both the Contracting States to each other of the procedures required under their laws for bringing into force of the said Convention in accordance with Article 30 of the said Convention;

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

Notification : No. GSR 705(E), dated 17-12-1997

ANNEXURE

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

The Government of the Republic of India and the Government of the Kingdom of Sweden, desiring to conclude a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income and on capital 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 the Contracting States.

ARTICLE 2 : *Taxes covered - 1.* This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political sub-divisions or local authorities, irrespective of the manner in which they are levied.

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

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

(a) in India :

- (i) the income-tax, including any surcharge thereon; and
- (ii) the tax on capital (the wealth-tax);
(hereinafter referred to as 'Indian tax');

(b) in Sweden :

- (i) the income-tax, including the national income-tax (den statliga inkomstskatten), including the tax on employees at sea (sjömansskatten) and the withholding tax on dividends (kupongskatten);
- (ii) the income-tax on non-residents (den sarskilda inkomstskatten for utomlands bosatta);
- (iii) the income-tax on non-resident artistes and athletes (den sarskilda inkomstskatten for utomlands bosatta artister m.fl.);
- (iv) the municipal income-tax (den kommunala inkomstskatten);
- (v) the tax on means intended for expansion purposes (expansionsmedelsskatt); and
- (vi) the net wealth-tax;
(hereinafter referred to as 'Swedish 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 any substantial changes which have been made in their respective taxation laws.

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

- (a) the term '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 'Sweden' means the Kingdom of Sweden and, when used in a geographical sense, includes the national territory, the territorial sea of Sweden as well as other maritime areas over which Sweden in accordance with international law exercises sovereign rights or jurisdiction;
- (c) the terms 'a Contracting State' and 'the other Contracting State' mean India or Sweden, as the context requires;
- (d) the term 'person' includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;
- (e) the term 'company' means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the terms 'enterprise of a Contracting State' and 'enterprise of the other Contracting State' 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 'international traffic' means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (h) the term 'national' means :
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership and association deriving its status as such from the laws in force in a Contracting State;
- (i) the term 'competent authority' means :
 - (i) in India : the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative;
 - (ii) in Sweden : the Minister of Finance, his authorised representative or the authority which is designated as a competent authority for the purposes of this Convention;
- (j) 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 Sweden, 'beskatningsår' as defined under section 3 of the Kommunalskattelagen, 1928;
- (k) the term 'tax' means Indian tax or Swedish tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes.

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, and also includes that State, a political sub-division, a local authority and any governmental body or agency thereof. In the case of a partnership or estate, the term applies only to the extent that the income derived by such partnership or estate is subject to tax in that State as the income of a resident, either in its hands or in the hands of its partners or beneficiaries.

The term 'resident of a Contracting State' does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

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

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

3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5 : *Permanent establishment* - 1. For the purposes of this Convention, the term 'permanent establishment' means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term 'permanent establishment' includes especially :

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a sales outlet;
- (h) a warehouse in relation to a person providing storage facilities for others; and
- (i) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on.

3. A building site or a construction, assembly or installation project or supervisory activities in connection therewith constitute a permanent establishment only if such site, project or activities continue for a period of 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 preceding provisions of this Article, the term 'permanent establishment' shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

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, at 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, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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 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, buildings, 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 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 that permanent establishment.

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

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

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 of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. Profits derived by a transportation enterprise which is a resident of a Contracting State from the use, maintenance, or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise in international traffic shall be taxable only in that Contracting State unless the containers are used solely within the other Contracting State.

3. With respect to profits derived by the Swedish, Danish and Norwegian air transport consortium Scandinavian Airlines System (SAS), the provisions of paragraph (1) shall apply only to such part of the profits as corresponds to the participation held in that consortium by SAS Sverige AB, the Swedish partner of Scandinavian Airlines System (SAS).

4. 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.

ARTICLE 9 : *Associated enterprises* - Where :

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

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, 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.

Any case resulting in double taxation from the application of this Article may be resolved under the mutual agreement procedure.

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. Notwithstanding the provisions of paragraph (1), 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 beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

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

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

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject to 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 beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

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 or endorsed by :

- (i) the Government, a political sub-division, a statutory body, or a local authority of the other Contracting State; or
- (ii) 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 Industrial Development Bank of India and the Industrial Credit and Investment Corporation of India (ICICI); and
in the case of Sweden, the Swedish International Development Authority (SIDA), SWEDECORP (Styrelsen for internationellt näringslivsbistånd), Swedfund International AB or The Swedish Export Credits Guarantee Board (Exportkreditnämnden); or
- (iii) any other 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. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs (1), (2) and (3) 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 a resident of that State. Where, however, the person paying the interest, whether he is 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. Notwithstanding the provisions of paragraph (1), 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.

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, any patent, trade mark, design or model, plan, secret formula or process, 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 provisions 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 a resident of that State. Where, however, the person paying the royalties or fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

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

2. Gains from alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services including such gains from the

alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains derived by a resident 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.

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

4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of any property other than that referred to in paragraphs (1), (2), (3) and (4), shall be taxable only in the Contracting State of which the alienator is a resident, provided that such resident is subject to tax thereon in that State. If the resident is not subject to tax thereon, then such gains may be taxed in the other Contracting State.

6. Notwithstanding the provisions of paragraph (5), gains from the alienation of any property derived by an individual who has been a resident of a Contracting State and who has become a resident of the other Contracting State, may be taxed in the first-mentioned State if the alienation of the property occurs at any time during the four years next following the date on which the individual has ceased to be a resident of the first-mentioned State.

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 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 the other State; or
- (b) if his stay in the other State is for a period or periods aggregating 183 days or more in any twelve-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 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

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

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

respect of an employment exercised aboard an aircraft operated in international traffic by the Swedish, Danish and Norwegian air transport consortium Scandinavian Airlines System (SAS), such remuneration shall be taxable only in Sweden.

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 sportspersons* - 1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an artiste, 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 artiste or a sportsperson in his capacity as such accrues not to the artiste or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the artiste 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 artistes or sportspersons if the visit to that State is substantially supported by public funds of the other Contracting State or of a political sub-division or local authority thereof. In such a case, the income shall be taxable only in the Contracting State of which the artiste or sportsperson is a resident.

ARTICLE 18 : *Pensions, social security payments and annuities* - 1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration in consideration of past employment, annuities and payments under the Social Security legislation arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned Contracting 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 other State and the individual is a resident of that State who :

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2.(a) Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or 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 to 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 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 shall, besides loans on preferential conditions provided by the Government or any other organisation or institution of the first-mentioned State and tax exempt grants and scholarships, be exempt from tax in the first-mentioned State on :

(a) payments made to him by persons residing outside the first-mentioned State for the purpose of his maintenance, education or training; and

(b) remuneration from employment in the first-mentioned State, in an amount not exceeding 10,000 (ten thousand) Swedish Kronor or its equivalent amount during any fiscal year, as the case may be, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance and that his stay in the first-mentioned State lasts for six months or more.

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 five consecutive years from the date of his first arrival in the first-mentioned State.

ARTICLE 21 : *Professors, teachers and research scholars* - 1. A professor, teacher or research scholar who visits a Contracting State at the invitation of that State or of a university, college, school or other such institution of that State not exceeding three years solely for the purpose of teaching, giving lectures or carrying out research at such institution and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned State, provided that the institution in question receives approval from the competent authority of that Contracting State, on his remuneration for such activity during the period of the first year from the date of his arrival and in the subsequent years, the exemption will be only in respect of remuneration derived by him from outside that State.

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

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 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 : *Capital* - 1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic by an enterprise of a Contracting State and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in that State.

With respect to capital owned by the Swedish, Danish and Norwegian air transport consortium Scandinavian Airlines System (SAS), the provisions of this Article shall apply only to such part of the capital as relates to the participation held in that consortium by SAS Sverige AB, the Swedish partner of SAS.

ARTICLE 24 : *Elimination of double taxation* - 1. The laws in force in either of the Contracting State 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. In the case of India, double taxation shall be avoided as follows :

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

- (b) Where a resident of India derives income which, in accordance with the provisions of this Convention, shall be taxable only in Sweden, India may, when determining the graduated rate of Indian tax, take into account the income which shall be taxable only in Sweden.
- (c) Where a resident of India owns assets which, in accordance with the provisions of this Convention, may be taxed in Sweden, India shall allow as a deduction from tax on such assets an amount equal to the tax on net wealth paid in Sweden in respect of such assets. Such deduction shall not, however, exceed that part of the Indian tax on net wealth as computed before the deduction is given which is appropriate to the assets which may be taxed in Sweden.

3. In the case of Sweden, double taxation shall be avoided as follows :

- (a) Where a resident of Sweden derives income which under the laws of India and in accordance with the provisions of this Convention may be taxed in India, Sweden shall allow - subject to the provisions of the laws of Sweden concerning credit for foreign tax (as it may be amended from time to time without changing the general principle hereof) - as a deduction from the tax on such income, an amount equal to the Indian tax paid in respect of such income.
- (b) Where a resident of Sweden derives income which, in accordance with the provisions of this Convention, shall be taxable only in India, Sweden may, when determining the graduated rate of Swedish tax, take into account the income which shall be taxable only in India.
- (c) Notwithstanding the provisions of sub-paragraph (a) of this paragraph, dividends paid by a company which is a resident of India to a company which is a resident of Sweden shall be exempt from Swedish tax according to the provisions of Swedish law governing the exemption of tax on dividends paid to Swedish companies by subsidiaries abroad.
- (d) For the purposes of sub-paragraph (a) of this paragraph, the term 'Indian tax paid' shall be deemed to include the Indian tax which would have been paid but for any exemption or reduction of tax granted under incentive provisions contained in the 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 agriculture, fishing or tourism (including restaurants and hotels) provided that the activities have been carried out within India. For the purpose of sub-paragraph (c) of this paragraph, a tax of 15 per cent calculated on a Swedish tax base shall be considered to have been paid for such activities under those conditions mentioned in the previous sentence.

The competent authorities may agree to extend the application of this provision also to other activities.

- (e) The provisions of paragraph (d) shall apply only for the first ten years during which this Convention is effective. This period may be extended by a mutual agreement between the competent authorities.
- (f) Where a resident of Sweden owns assets which, in accordance with the provisions of this Convention, may be taxed in India, Sweden shall allow as a deduction from tax on such assets an amount equal to the tax on net wealth paid in India in respect of such assets. Such deduction shall not, however, exceed that part of the Swedish tax on net wealth as computed before the deduction is given which is appropriate to the assets which may be taxed in India.

ARTICLE 25 : *Non-discrimination* - 1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs or reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents. Further 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, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Convention.

3. Except where the provisions 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. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

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

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

ARTICLE 26 : *Mutual agreement procedure* - 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph (1) of Article 25, 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 27 : *Exchange of information* - 1. The competent authorities of the Contracting States shall exchange such information (including documents), as is necessary for carrying out the provisions of this 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 laws of that 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 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 (ordre public).

ARTICLE 28 : *Collection assistance* - 1. The Contracting States undertake to lend assistance to each other in the collection of taxes to which this Convention relates, together with interest, costs, and civil penalties relating to such taxes, referred to in this Article as a "revenue claim".

2. A request for assistance by the competent authority of a Contracting State in the collection of a revenue claim shall include a certification by such authority that, under the laws of that State, the revenue claim has been finally determined. For the purposes of this Article, a revenue claim is finally determined when a Contracting State has the right under its internal law to collect the revenue claim and the taxpayer has no further rights to restrain collection.

3. An amount collected by the competent authority of a Contracting State pursuant to this Article shall be forwarded to the competent authority of the other Contracting State. However, the first-mentioned Contracting State shall be entitled to reimbursement of costs, if any, incurred in the course of rendering such assistance to the extent mutually agreed between the competent authorities of the two States.

4. Nothing in this Article shall be construed as imposing on either Contracting State the obligation to carry out administrative measures of a different nature from those used in the collection of its own taxes or those which would be contrary to its public policy.

ARTICLE 29 : *Members of diplomatic missions and consular posts* - Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions and consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 30 : *Entry into force* - 1. The Contracting States shall notify each other in writing, through diplomatic channels, the completion of the procedures 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 latter of the notifications referred to in paragraph 1 of this Article.

3. The provisions of this Convention shall have effect :

(a) in India,

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

(b) in Sweden,

- (i) in respect of taxes on income, on income derived on or after the first day of January of the year next following that of the entry into force of the Convention;
- (ii) in respect of tax on net wealth, for tax which is assessed on or after the second calendar year following that in which the Convention enters into force.

4. The Convention of 7th June, 1988, between the Government of the Republic of India and the Government of the Kingdom of Sweden for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income and on capital with Protocol shall terminate upon the coming into force of this Convention and accompanying Protocol. The provisions of the said 1988 Convention with Protocol shall cease to have effect from the date on which the corresponding provisions of this Convention and accompanying Protocol shall, for the first time, have effect according to the provisions of paragraph 2 of this Article.

ARTICLE 31 : *Termination* - This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year. In such case, the Convention shall cease to have effect :

(a) in India,

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

- (ii) in respect of capital which is held on the last day of any fiscal year beginning on or after the first day of April following the calendar year in which the notice of termination is given;
- (b) in Sweden,
 - (i) in respect of taxes on income, on income derived on or after the first day of January of the year next following the end of the six months' period;
 - (ii) in respect of tax on net wealth, for tax which is assessed in or after the second calendar year following the end of the six months' period.

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

Done in duplicate at New Delhi, this 24th day of June, 1997, in the Swedish, Hindi and English languages, all three texts being equally authentic. In case of divergence between the texts the English text shall be the operative one.

PROTOCOL

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

With reference to Article 2 :

The fees paid under the Swedish Social Security Legislation and according to the provisions of the Act (1990 : 659) on Special salary tax on earned income and the Act (1991 : 687) on Special salary tax on pension costs are not included in this Convention.

With reference to Article 7 :

In respect of paragraphs (1) and (2) of Article 7, where an enterprise of one of the Contracting States sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of the remuneration which is attributable to the actual activity of the permanent establishment for such sales or business. Especially, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the Contracting State where the permanent establishment is situated.

With reference to Articles 10, 11 and 12 :

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

With reference to Article 25 :

The taxation in India of permanent establishments of Swedish companies, shall in no case differ more from the taxation of similar Indian companies than is provided by the Indian law on the date of signature of this Convention.

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

DONE in duplicate at New Delhi, this 24th day of June, 1997, in the Swedish, Hindi and English languages, all three texts being equally authentic. In case of divergence between the texts the English text shall be the operative one.