

TURKEY

Agreement for avoidance of double taxation and the prevention of fiscal evasion with Turkey

Whereas the annexed Agreement between the Government of the Republic of India and the Government of the Republic of Turkey for the Avoidance of Double Taxation and the prevention of fiscal evasion with respect to taxes on income has come into force on the first day of February, 1997, after the notification by the Contracting States to each other of the completion of the procedures required for bringing into force the said Agreement in accordance with paragraph 1 of Article 27 of the said Agreement ;

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 Agreement shall be given effect to in the Union of India :—

Notification: No. SO 74(E), dated 3-2-1997.

ANNEXURE

AGREEMENT BETWEEN THE REPUBLIC OF INDIA AND THE REPUBLIC OF TURKEY 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 THE REPUBLIC OF TURKEY

Desiring to conclude an Agreement 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 Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2 : *Taxes covered* - 1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State irrespective of the manner in which they are levied.

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

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

(a) in the case of Turkey :

(i) the income-tax (*gelir vergisi*) ;

(ii) the corporation tax (*kurumlar vergisi*) ;

(iii) the levy imposed on the income-tax and the corporation tax (hereinafter referred to as "Turkish tax") ;

(b) in the case of India :

(i) the income-tax including any surcharge thereon ;

(hereinafter referred to as "Indian tax").

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

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

(a) (i) the term "Turkey" means the territory of the Republic of Turkey including any area in which the laws of Turkey are in force, as well as the maritime zones over which Turkey is entitled to sovereign rights and exercises jurisdiction in accordance with international law and Turkish law ;

(ii) the term "India" means the territory of India and includes the territorial sea and air space above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with international law ;

- (b) the terms “a Contracting State” and “the other Contracting State” mean Turkey or India as the context requires ;
- (c) the term “tax” means Indian tax or Turkish tax as the context requires ;
- (d) the term “person” includes an individual, a company and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States ;
- (e) the term “company” means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting States ;
- (f) the term “registered office” shall have the same meaning which it has under the laws of each Contracting State ;
- (g) the term “national” means any individual possessing the nationality of a Contracting State and any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State ;
- (h) 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 ;
- (i) the term “competent authority” means :
 - (i) in Turkey, the Minister of Finance or his authorised representative;
 - (ii) in India, the Central Government in the Ministry of Finance (Department of Revenue) or its authorised representative;
- (j) the term “international traffic” means any transport by a ship or an aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State.

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

ARTICLE 4 : *Resident* - 1. For the purposes of this Agreement, 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 this domicile, resident, legal head office (registered office), place of management or any other criterion of a similar nature.

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

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests) ;
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode ;
- (c) if he has an habitual abode in both Contracting States or in 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, the competent authorities of the Contracting States shall settle the question by mutual agreement in accordance with Article 25 of this Agreement.

ARTICLE 5 : *Permanent establishment* - 1. For the purposes of this Agreement, 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) an installation or structure used for the exploration or exploitation of natural resources ;
- (h) a warehouse in relation to a person providing storage facilities for others ;
- (i) a premises used as a sales outlet or for receiving or soliciting orders;
- (j) (i) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities (together with other such sites, projects or activities, if any) continue for a period of more than six months ; or
- (ii) where such project or supervisory activity, being incidental to the sale of machinery or equipment, continues for a period not exceeding six months and the charges payable for the project or supervisory activity exceed 10 per cent of the sale price of the machinery and equipment :

Provided that for the purpose 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 provides services or facilities in that Contracting State for more than six months in connection with or supplies plant and machinery on hire used or to be used in, the prospecting for, or extraction or production of mineral oils in the 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, display or occasional 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 occasional 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 advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character for the enterprise ;
- (f) the selling of goods or merchandise belonging to the enterprise displayed in an occasional temporary fair or exhibition in the process of closing down of such fair or exhibition ;
- (g) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (f).

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

- (a) he has and habitually exercises in that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise,
- (b) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise, or
- (c) he habitually secures orders in the first-mentioned State, wholly for the enterprise itself or for the enterprise and other enterprises controlling, controlled by, or subject to the same common control, as that enterprise.

5. An enterprise of a Contracting State, shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker,

general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

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 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, fishing places of every kind, 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 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 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. 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

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

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall mean profits derived by an enterprise described in paragraph 1 from the transportation by sea or air respectively of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of ships or aircraft including :

- (a) the sale of tickets for such transportation on behalf of other enterprises;
- (b) other activity directly connected with such transportation ; and

(c) the rental of ships or aircraft incidental to any activity directly connected with such transportation.

3. Profits of an enterprise of a Contracting State described in paragraph 1 from the use, maintenance or rental of containers (including trailers, barges, and related equipment for the transport of containers) used in connection with the operation of ships or aircraft in international traffic shall be taxable only in that State.

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

5. For the purposes of this Article, interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, and the provisions of Article 11 (Interest) shall not apply in relation to such interest.

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 by the first-mentioned State claimed to be profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits, where that other State considers the adjustment justified. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall, if necessary, consult each other.

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, in 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.

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, “jouissance” shares or “jouissance” rights, founders’ 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, and income derived from an investment fund and investment trust.

4. Profits of a company of a Contracting State carrying on business in the other Contracting State through a permanent establishment situated therein may, after having been taxed under Article 7 be taxed on the remaining amount in the Contracting State in which the permanent establishment is situated and in accordance with paragraph 2 of this Article.

5. 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, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

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 :

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

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State, provided that it is derived and beneficially owned by :

- (a) the Government, a political sub-division or a local authority of the other Contracting State;
- (b) the Central Bank of the other Contracting State; or
- (c) the Turkish Export-Import Bank (Exim Bank) and the EXIM Bank of India.

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 debtor's profits, and in particular, income from Government securities and income from bonds or debentures, including premiums attaching to such securities, bonds or debentures, and other income assimilated to income from money lent which is treated as interest.

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, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 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 and such interest is borne by such permanent establishment or fixed base, then interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

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

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 or fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties and fees for technical services, the tax so charged shall not exceed 15 per cent of the gross amount of the royalties or fees for technical services.

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

4. The term "fees for technical services" as used in this Article means payments of any amount to any person other than payments to an employee of the person making payments, in consideration for the services of a managerial, technical or consultancy nature, including the provisions 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, and the right or property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6. Royalties or fees for technical services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the right or property or contract giving rise to the royalties or fees for technical services is effectively connected, 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 Contracting State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties or fees for technical services paid, having regard to the use, right, information or technical services 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 Agreement.

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

2. Gains from the alienation of 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 a fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the registered office of the enterprise is situated.

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

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

6. Gains from the alienation of any property other than that referred to in paragraphs 1 to 5 shall be taxable in the Contracting State of which the alienator is a resident. However, the capital gains mentioned in the foregoing sentence and derived from the other Contracting State shall be taxable in the other Contracting State if the time period does not exceed one year between acquisition and alienation.

ARTICLE 14 : *Independent personal services* - 1. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State ; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant "previous year" or "year of income", as the case may be; 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, dentists and accountants.

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

2. Notwithstanding the 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 the calendar year concerned in the case of Turkey and 183 days in the financial year concerned in the case of India, 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, may be taxed in the Contracting State in which the registered office of the enterprise is situated.

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 entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

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

3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by artistes or sportspersons if the visit to that State is substantially supported directly or indirectly by public funds of the other Contracting State or a political sub-division or a local authority thereof. In such circumstances, such income shall be taxable only in the other State.

ARTICLE 18 : *Non-Government persons* - 1. Any pension, other than a pension referred to in Article 19, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State for his past employment may be taxed only in the first-mentioned Contracting State. This provision shall also apply to life annuities paid to a resident of a Contracting State.

2. Pensions and life annuities paid, and other periodical or occasional payments made by a Contracting State, or one of its political sub-divisions in respect of insuring personal accidents, may be taxed only in that State.

3. The term "pension" means a periodic payment made in consideration of past employment or by way of compensation for injuries received in the course of performance of services.

4. 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 : *Remuneration and pensions in respect of Government services* - 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) not being the national of the first-mentioned State, did not become a resident of that State solely for 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 other 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 : *Teachers and students* - 1. Payments which a student or business apprentice who is a national of a Contracting State and who is present in the other Contracting 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 other State, provided that such payments arise from sources outside that other State.

2. Likewise, remuneration received by a teacher or by an instructor who is a national of a Contracting State and who is present in the other Contracting State for the primary purpose of teaching or engaging in scientific research for a period or periods not exceeding two years shall be exempt from tax in that other State on his remuneration from personal services for teaching or research, provided that such payments arise from sources outside that other State.

3. Remuneration which a student or a trainee who is a national of a Contracting State derives from an employment which he exercises in the other Contracting State for a period or periods not exceeding 183 days in a calendar year in the case of Turkey and 183 days in a financial year in the case of India, in order to obtain practical experience related to his education or training shall not be taxed in that other State.

ARTICLE 21 : *Other income* - 1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing Articles of this Agreement shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case, provisions of Article 7 shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with the foregoing Articles of this Agreement arising in the other Contracting State may also be taxed in that other State.

ARTICLE 22 : *Elimination of double taxation* - 1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting States except where express provisions to the contrary is made in this Agreement.

2. (a) Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Turkey, India shall allow as deduction from the tax on the income of that resident an amount equal to the income-tax paid in Turkey, whether directly or by deduction. Such deduction in either case 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 Turkey.

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

3. Double taxation for the residents of Turkey shall be eliminated as follows :

(a) Where a resident of Turkey derives income covered by sub-paragraph (b) which, in accordance with the provisions of this Agreement, may be taxed in India, Turkey shall exempt such income from tax but may, in calculating tax on the remaining income of that person, apply that rate of tax which would have been applicable if the exempted income had not been so exempted.

- (b) Where a resident of Turkey derives income which in accordance with the provisions of Articles 10, 11, 12 and paragraph 6 of Article 13 of this Agreement, may be taxed in India, Turkey shall allow as a deduction from the tax on the income of that person, an amount equal to the tax paid in India.

Such deduction shall not, however, exceed, that part of the income-tax computed before the deduction is given, which is appropriate to the income which may be taxed in India.

ARTICLE 23 : *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. Subject to the provisions of paragraph 4 of Article 10, the taxation of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities in the same circumstances or under the same conditions. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which an enterprise 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 enterprise of the first-mentioned Contracting State, nor as a being in conflict with the provisions of paragraph 3 of Article 7 of this Agreement.

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 other similar enterprises of the first-mentioned State are or may be subjected in the same circumstances or under the same conditions.

4. These provisions shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

ARTICLE 24 : *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 Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement, in particular for the prevention of fraud or evasion of such taxes. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Agreement. Such persons or authorities shall use the information only for such purposes but may disclose the information in public Court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made, including where appropriate, exchange of information regarding tax avoidance.

2. 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 the administrative practice of that or of the other Contracting State;
- (b) to supply information or documents which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information or documents which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

ARTICLE 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 Agreement, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic laws of the Contracting States, provided that the competent authority of the other Contracting State has received notification that such a case exists within five years from the end of the taxable year to which the case relates.

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 Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

ARTICLE 26 : *Diplomatic and consular officials* - Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

ARTICLE 27 : *Entry into force* - 1. Each Contracting State shall notify to the other the completion of the procedure required as far as it is concerned for the bringing into force of this Agreement. This Agreement shall enter into force on the first day of the following month when the latter of those notifications has been received.

2. Its provisions shall have effect :

- (a) in Turkey, for taxes with respect to every taxable year beginning on or after the first day of January of the year Nineteen Hundred Ninety-four;
- (b) in India, for taxes with respect to every previous year beginning on or after the first day of April of the year Nineteen Hundred Ninety-four.

ARTICLE 28 : *Termination* - This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after expiration of a period of five years from the date of its entry into force. In such case, the Agreement shall cease to have effect :

- (a) in Turkey, for taxes with respect to every taxable year beginning on or after the first day of January of the year following that in which the notice of termination is given;
- (b) in India, for taxes with respect to every previous year beginning on or after the first day of April of the year following that in which the notice of termination is given.

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

DONE in duplicate at New Delhi this 31st day of January, 1995 in the Hindi, Turkish 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 time of signing the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income, concluded this day between the Republic of India and the Republic of Turkey, the undersigned have agreed that the following provisions shall form an integral part of the Agreement.

With respect to sub-paragraph (c) of paragraph 1 of Article 3

1. The term "tax" shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty.

With respect to proviso to sub-paragraph (j) of paragraph 2 of Article 5

2. It is understood that an enterprise covered therein will be subject to taxation accordingly and not in accordance with provisions of Article 12 (Royalties and Fees for Technical Services) and Article 14 (Independent Personal Services).

With respect to paragraph 1 of Article 7

3. It is understood that, where an enterprise of a Contracting State has a permanent establishment in the other Contracting State, and the enterprise;

- (a) effects sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment, or
- (b) carries on other business activities in that other State of the same or similar kind as those effected through that permanent establishment,

profits derived from such sales and business activities may be taxed in that other Contracting State as part of the profits of the permanent establishment.

With respect to paragraph 3 of Article 7

4. With regard to a permanent establishment in India, it is understood that, the executive and general administrative expenses incurred outside India which will be allowed as a deduction in determining the profits of the permanent establishment shall be the least of the following amounts :

- (a) an amount equal to 5 per cent of the adjusted total income; or
- (b) an amount equal to the average head office expenditure; or
- (c) the amount of so much of the expenditure in the nature of head office expenditure incurred which is attributable to the business of the permanent establishment in India.

In a case where the adjusted total income is a loss, the amount under clause (a) above shall be computed at the rate of 5 per cent of the average adjusted total income. The expressions 'adjusted total income', 'average adjusted total income', 'average head office expenditure' and 'head office expenditure' will have the same meaning as defined in the Indian Income-tax Act, 1961.

With respect to paragraph (1) of Article 23

5. It is understood that the expression "in the same circumstances", refers to taxpayers (individuals, legal persons, partnerships and associations) placed from the point of view of the application of the ordinary taxation laws and regulations, in substantially similar circumstances both in law and in fact.

Amongst other things this means that a national of one of the States, resident of a third State and doing business in the other State will be subjected to the same taxation or requirements connected therewith in that other State to which a national of that other State, resident in a third State and doing business in that other State, is or may be subjected.

6. It is understood that the provisions of this Agreement shall not apply to income derived by a resident of a Contracting State from agricultural activities in the other Contracting State.

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

DONE in duplicate at New Delhi this 31st day of January, 1995 in the Hindi, Turkish and English languages, all three texts, being equally authentic. In case of divergence between the texts, the English text shall be the operative one.