



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (i)

PART II—Section 3—Sub-section (i)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 583]

नई दिल्ली, मंगलवार, नवम्बर 20, 2001/कार्तिक 29, 1923

No. 583]

NEW DELHI, TUESDAY, NOVEMBER 20, 2001/KARTIKA 29, 1923

MINISTRY OF FINANCE

(Department of Revenue)

CORRIGENDUM

New Delhi, the 20th November, 2001

INCOME-TAX

G.S.R. 855(E).—In the notification of the Government of India, in the Ministry of Finance (Department of revenue), Number G.S.R. 682(E) dated the 20th September, 2001 published in the Gazette of India, (Extraordinary), in Part-II, Section 3, Sub-section (i) dated the 21st September, 2001 in Hindi version, at page 1, in paragraph 1, in line 3, in place of “the Government of Republic of Australia” read “the Government of Republic of Austria”.

[Notification No. 349/2001/F. No. 505/1/82-FTD]

G. C. SRIVASTAVA, Jt. Secy. (FT & TR)

MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

New Delhi, the 20th September, 2001

INCOME-TAX

G.S.R. 682(E)— Whereas the annexed Convention between the Government of the Republic of India and the Government of the Republic of Austria for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income shall enter into force, on the 5th September, 2001, thirty days after the exchange of Instruments of Ratification as required by paragraph 2 of Article 28 of the said Convention;

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

**Convention between the Government of the Republic of India
and the Government of the Republic of Austria 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 Austria, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

Article 1

PERSONS COVERED

This Convention shall apply to persons who are residents of one or both of the Contracting States.

Article 2

TAXES COVERED

(1) This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, 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 Convention shall apply are in particular:

(a) in Austria:

- (i) the income tax (die Einkommensteuer);
- (ii) the corporation tax (die Körperschaftsteuer);

(hereinafter referred to as "Austrian taxes");

(b) in India:

the income tax including any surcharge thereon imposed under the Income-tax Act, 1961 (43 of 1961);

(hereinafter referred to as "Indian tax".)

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

Article 3GENERAL DEFINITIONS

- (1) For the purposes of this Convention, unless the context otherwise requires:-
- (a) the term "Austria" means the Republic of Austria;
 - (b) the term "India" means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law including the U.N. Convention on the Law of the Sea;
 - (c) the terms "a Contracting State" and "the other Contracting State" mean Austria or India as the context requires;
 - (d) the term "fiscal year" means: -
 - (i) in relation to Austrian tax, the calendar year;
 - (ii) in relation to Indian tax, the financial year beginning on the first day of April;
 - (e) the term "tax" means Austrian tax or Indian tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes;
 - (f) 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;
 - (g) 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;
 - (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 Austria, the Federal Minister of Finance or his authorised

representative:

(ii) in India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representatives;

(j) the term "national" means:

(i) any individual possessing the nationality of a Contracting State;

(ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;

(k) 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.

(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 and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State 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 only of the State with which his personal and economic relations are closer (centre of vital interests);

(b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;

(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavour to 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 only 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;

(i) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities (for the

same or connected project, site or activities) continue for a period of more than six months.

(3) 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.

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

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

(5) Notwithstanding the provisions of paragraphs 1 and 2, where a person, other than an agent of an independent status to whom paragraph 6 applies, is acting 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 such a person

- (a) has, and habitually exercises, in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise; or

(c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises controlling, controlled by, or subject to the same control, as that enterprise.

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

(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 6 applies.

(8) 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, 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, and according to the domestic law of the Contracting State in which the permanent establishment is situated. However, no such deduction shall be allowed in respect of amounts, if any paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

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

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

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

Article 8

SHIPPING AND AIR TRANSPORT

(1) Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

(2) Profits derived by an enterprise referred to in paragraph 1 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) 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 shall not apply in relation to such interest.

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

Article 9

ASSOCIATED ENTERPRISES

(1) Where -

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or

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

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

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

Article 10

DIVIDENDS

(1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

(2) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the 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 the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

INTEREST

(1) Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

(2) However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the 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 -

(a) interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by:

- (i) the State, a political subdivision or a local authority of the other Contracting State; or
- (ii) the Central Bank of the other Contracting State; or
- (iii) in the case of India also the Export-Import Bank of India; or
- (iv) in the case of Austria also the Oesterreichische Kontrollbank AG;

(b) interest arising in a Contracting State shall be exempt from tax in that Contracting State to the extent approved by the State if it is derived and beneficially owned by any person (other than a person referred to in subparagraph a) who is a resident of the other Contracting State provided that the transaction giving rise to the debt-claim has been approved in this regard by the first-mentioned Contracting State.

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

(6) Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

Article 12

ROYALTIES AND FEES FOR TECHNICAL SERVICES

(1) Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

(2) However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties and fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties and 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 experience.

(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 a person making payments, in consideration for the services of a managerial, technical or consultancy nature, including the provision of services of technical or other personnel.

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

(6) 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.

(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 exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13

CAPITAL GAINS

(1) Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

(2) Gains from the alienation of 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 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 of which the alienator is a resident.

(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, 2, 3, 4 and 5, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

INDEPENDENT PERSONAL SERVICES

(1) Income derived by an individual who is a resident of a Contracting State 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 State; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any period of twelve months; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

Article 15DEPENDENT PERSONAL SERVICES

(1) Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

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

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

Article 16DIRECTORS' 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 17ENTERTAINERS AND SPORTSPERSONS

(1) Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from 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 this capacity as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

(3) Notwithstanding the provisions of paragraph 1, income derived by an entertainer or a sportsperson who is a resident of a Contracting State from personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned Contracting State, if the activities in the other Contracting State are supported wholly or substantially from the public funds of the first-mentioned Contracting State, including any of its political subdivisions or local authorities.

(4) Notwithstanding the provisions of paragraph 2 and Articles 7, 14 and 15, where income in respect of personal activities exercised by an entertainer or a sportsperson in this capacity as such in a Contracting State accrues not to the entertainer or sportsperson but to another person, that income shall be taxable only in the other Contracting State, if that other person is supported wholly or substantially from the public funds of that other State, including any of its political subdivisions or local authorities.

Article 18

PENSIONS AND ANNUITIES

(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 shall be taxable only in the first-mentioned Contracting State.

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

(3) 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 subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

- (b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
- (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
- (2) The provisions of paragraph 1 of this Article shall also apply to remuneration derived by members of permanent delegations of foreign commerce of a Contracting State in the other Contracting State.
- (3) (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision 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.
- (4) The provisions of Articles 15, 16, 17, and 18 shall apply to remuneration and pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20

STUDENTS

- (1) A student or business apprentice who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other State solely for the purpose of his education or training, shall be exempt from tax in that other State on :-
- (a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
 - (b) remuneration which he derives from an employment which he exercises in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in any period of twelve month if the employment is directly related to his studies or apprenticeship.
- (2) The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in

no event shall any individual have the benefits of this Article, for more than five consecutive years from the date of his first arrival in that other State.

Article 21

PROFESSORS, TEACHERS AND RESEARCH SCHOLARS

(1) A professor or a teacher who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other 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.

(3) For the purposes of paragraph 1, "approved institution" means an institution which has been approved in this regard by the competent authority of the concerned Contracting State.

Article 22

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

Article 23ELIMINATION 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 State except where express provision to the contrary is made in this Convention.

(2) In the case of Austria double taxation shall be eliminated as follows:-

(a) Where a resident of Austria derives income which, in accordance with the provisions of this Convention, may be taxed in India, Austria shall, subject to the provisions of subparagraphs b) and c) exempt such income from tax.

(b) Where a resident of Austria derives items of income which, in accordance with the provisions of paragraphs 2 of Articles 10, 11, 12, paragraphs 4 and 5 of Article 13 and paragraph 3 of Article 22 may be taxed in India, Austria shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in India. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from India.

(c) Where in accordance with any provision of the Convention income derived by a resident of Austria is exempt from tax in Austria, Austria may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

(3) In the case of India, double taxation shall be eliminated as follows:-

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

(b) Where, in accordance with any provision of this Convention, income derived by a resident of India is exempt from tax in India, India may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

Article 24NON-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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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

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

(4) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned 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 25MUTUAL AGREEMENT PROCEDURE

(1) Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the

first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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

(4) The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 26

EXCHANGE OF INFORMATION

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention. 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 27

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR ACTIVITIES

Nothing in this Convention 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 28

ENTRY INTO FORCE

- (1) This Convention shall be ratified and the instruments of ratification shall be exchanged at New Delhi as soon as possible.
- (2) The Convention shall enter into force thirty days after the exchange of instruments of ratification and its provisions shall have effect -
- (a) in Austria, in respect of the taxes levied for any fiscal year following the calendar year in which the exchange of instruments of ratification takes place.
- (b) in India, in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the exchange of instruments of ratification takes place.
- (3) The Convention between the Republic of Austria and the Republic of India for the avoidance of double taxation with respect to taxes on income, signed at New Delhi on 24th September, 1963, shall cease to have effect when the provisions of this Convention become effective in accordance with the provisions of paragraph 2.

Article 29

TERMINATION

This Convention shall remain in force indefinitely but either of the Contracting States may on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State through diplomatic channels, written notice of termination and, in such event, this Convention shall cease to have effect: -

a) in Austria, in respect of the taxes levied for any fiscal year following the calendar year in which the notice of termination is given.

b) in India, in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the notice of termination is given.

IN WITNESS WHEREOF the Plenipotentiaries of the two Contracting States, duly authorised thereto, have signed this Convention.

DONE in duplicate in Vienna on the 8th day of November, 1977 in the German, Hindi and English languages, each text being equally authentic. In the case of a divergence among the texts, the English text shall be the operative one.

For the Government of
the Republic of India:

For the Government of
the Republic of Austria:

Sd/-

Sd/-

PRAMOD MAHAJAN

DR. BENITA FERBERO-WALDNER

PROTOCOL

At the moment of signing the Convention between the Government of the Republic of Austria 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, the undersigned have agreed that the following provisions shall form an integral part of the Convention:

Ad Articles 6 and 13:

With reference to paragraphs 1 of Article 6 and Article 13 it is understood that in the case of India income from immovable property and capital gains on alienation of immovable property respectively may be taxed in both Contracting States subject to the provisions of Article 23 paragraph 3.

Ad Article 7:

a) It is understood that the deductions in respect of the head office expenses as referred to in paragraph 3 of Article 7 shall in no case be less than those allowable under the Indian Income Tax Act as on the date of entry into force of this Convention.

b) In the case of Austria the term "profits" as used in this Article includes the profits derived by any partner from his participation in a partnership and in any other body of persons which is treated in the same way for tax purposes and from a participation in a sleeping partnership (Stille Gesellschaft) created under Austrian law.

Ad Article 24

It is understood that the provisions of Article 24 paragraph 2 shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State, nor being in conflict with the provisions of paragraph 3 of Article 7. However the difference in tax rate shall not exceed 15 percentage points.

Ad Article 26

It is understood that in the case of disclosure of information referred to in paragraph 1 of Article 26 the confidentiality of person related data may be waived only insofar as this is necessary to safeguard predominant and legitimate interests of another person or predominant public interests.

It is understood that the provisions of Article 26 paragraph 2 subparagraph c) include the basic rights granted by a State, in particular in the area of data protection.

IN WITNESS WHEREOF the Plenipotentiaries of the two Contracting States, duly authorised thereto, have signed this Protocol.

DONE in duplicate in *Vienna* on the *8th* day of *November 1999* in the German, Hindi and English languages, each text being equally authentic. In the case of a divergence among the texts the English text shall be the operative one.

For the Government of
the Republic of India:

Sd./-

PRAMOD MAHAJAN

For the Government of
the Republic of Austria:

Sd./-

DR. BENITA FERRERO-WALDNER

[Notification No. 271/2001/F. No. 505/1/82-FTD]

VIJAY MATHUR, Jt. Secy.