

ISRAEL

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

Whereas the annexed Convention between the Government of the Republic of India and the Government of the State of Israel for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income and on capital has entered into force on the 15th May, 1996, after the notification by both the Contracting States to each other of the completion of the procedures required under their laws for bringing into force of the said Convention in accordance with Article 29 of the said Convention.

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

Notification : No. GSR 256(E), dated 26-6-1996.

ANNEXURE

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

The Government of the Republic of India and the Government of the State of Israel,

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, have agreed as follows :

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

ARTICLE 2 : *Taxes covered* - 1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political sub-divisions or local authorities and to taxes on capital 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 and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

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

(a) In India :

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

(b) In Israel :

- (i) the income-tax ;
- (ii) the company tax ;
- (iii) the capital gains tax ;
- (iv) the tax imposed upon gains from the alienation of immovable property according to the Land Appreciation Tax Law ; and
- (v) taxes imposed on real property according to the Property Tax Law,
(hereinafter referred to as "Israeli tax").

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

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

- (a) the term "India" means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Convention on the Law of the Sea ;
- (b) the term "Israel" means the State of Israel, and when used in a geographical sense, means the territory and the territorial sea over which it exercises its State sovereignty and jurisdiction, as well as the continental shelf, the exclusive economic zone and that part of the sea-bed and sub-soil under the sea over which it exercises sovereign rights according to the international law ;
- (c) the term "person" includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting State ;
- (d) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes ;
- (e) the terms "a Contracting State" and "the other Contracting State" mean the Republic of India or the State of Israel as the context requires ;
- (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State ;
- (g) the term 'international traffic' means any transport by a ship or aircraft operated by an enterprise which is a resident of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State ;
- (h) the term "competent authority" means :
 - (i) in India: the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative ;
 - (ii) in Israel: the Minister of Finance or his authorised representative;
- (i) 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 ;
- (j) the term "fiscal year" means :
 - (i) in the case of India, the twelve-month period beginning on the 1st of April ;
 - (ii) in the case of Israel, the twelve-month period beginning on the 1st of January ;
- (k) the term "tax" means Indian tax or Israeli tax, as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes.

2. (a) 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.

- (b) If as a result of the application of sub-paragraph (a), the meaning of a term under the laws of a Contracting State is different from the meaning of that term under the laws of the other Contracting State, or if the meaning of such term is not readily determinable under the laws of one of the Contracting States, the competent authorities of the Contracting States may agree upon a common meaning of that term.
- (c) If, in a particular case, the application of the Convention fails to prevent double taxation because the Contracting States have differing rules with respect to the source of the category of income involved, the competent authorities of the Contracting States may reach agreement as to the source of income in the particular case so as to eliminate double taxation.

ARTICLE 4 : *Resident* - 1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

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

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

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

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

2. The term "permanent establishment" includes especially :

- (a) a place of management ;
- (b) a branch ;
- (c) an office ;
- (d) a factory ;
- (e) a workshop ; and
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

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

4. 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 on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for 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 place of business a permanent establishment under the provisions of that paragraph.

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 of an independent status, provided that such persons are acting in the ordinary course of their business, and in their commercial and financial relations with the enterprise, no conditions are agreed or imposed which differ from those usually agreed between independent persons.

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

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

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

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

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

ARTICLE 7 : *Business profits* - 1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may also be taxed in the other State but only so much of them as is attributable to that permanent establishment.

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

3. In 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.

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

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

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

7. 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 from the operation of ships and aircraft in international traffic shall be taxable only in the Contracting State of which the enterprise is a resident.

2. The term "profits" shall include derived by the enterprise from the rental of ships and aircraft operated in international traffic. Such term shall also include income derived by the enterprise from the use, maintenance or rental of containers operated in international traffic (including trailers, barges and related equipment for the transport of such containers) if such income is incidental to the profits of the enterprise from the operation of ships and aircraft in international traffic.

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

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

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

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 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 where that other State considers the adjustment justified. 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 other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

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

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, 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.

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 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 15, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11 : *Interest* - 1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraphs 1 and 2, interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State, if the interest is paid in respect of—

- (a) a bond, debenture or other similar obligation of the Government of the first-mentioned Contracting State or a political sub-division or local authority thereof ; or
- (b) a loan made, refinanced, guaranteed or insured, or a credit extended, refinanced, guaranteed or insured by—
 - (i) in the case of India, the Reserve Bank of India,
 - (ii) in the case of Israel, the Bank of Israel, or
 - (iii) other governmental agencies or lending institutions as may be specified and agreed in an exchange of notes between the competent authorities of the Contracting States.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from Government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

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

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such 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* - 1. Royalties 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 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, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

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 film, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or perform in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Royalties 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, 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 was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

ARTICLE 13 : *Fees for technical services* - 1. 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 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 fees for technical services, the tax so charged shall not exceed 10 per cent of the gross amount of the fees for technical services.

3. The term "fees for technical services" as used in this Article means payments of any kind received as a consideration for services of a managerial, technical or consultancy nature, including the provision of services by technical or other personnel, but does not include payments for services mentioned in Article 16 of this Convention.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State, in which the fees for technical services arise, through a permanent establishment situated therein, or perform in that other State independent personal services from a fixed base situated therein, and the right, property or contract in respect of which the 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 15, as the case may be, shall apply.

5. Fees for technical services shall be deemed to arise in a Contracting State when the services are rendered in that State and 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 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 fees for technical services was incurred, and such fees for technical services are borne by such permanent establishment or fixed base, then such fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of fees for technical services paid exceeds the amount which

would have been paid 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.

7. The provisions of paragraphs 1 to 6 of this Article shall not apply to payments relating to services mentioned hereinbelow :

- (i) Services that are ancillary and subsidiary, and inextricably and essentially linked, to a sale of property ;
- (ii) Services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships or aircraft in international traffic ;
- (iii) Teaching in or by an educational institution ;
- (iv) Services for the personal use of the individual or individual making the payments ; or
- (v) Professional services as defined in Article 15.

ARTICLE 14 : *Capital gains* - 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may also be taxed in that other State.

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

4. Gains from the alienation of shares or similar rights being shares in a company, the assets of which consist principally of immovable property situated in a Contracting State, may be taxed in that State. Gains from the alienation of an interest in a partnership, trust or estate, the property of which consists principally of immovable property situated in a Contracting State, may also be taxed in that State.

5. Gains derived by a resident of a Contracting State from the sale, exchange or other disposition, directly or indirectly, or shares other than those mentioned in paragraph 4, or similar rights in a company which is a resident of the other Contracting State may also be taxed in that other State.

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

ARTICLE 15 : *Independent personal services* - 1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State ; or
- (b) if his stay in the other state is for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 16 : *Dependent personal services* - 1. Subject to the provisions of Articles 17, 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 also be taxed in that other State.

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned,
- (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 of 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 also be taxed in the Contracting State of which the enterprise is a resident.

ARTICLE 17 : *Directors' fees* - Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may also be taxed in that other State.

ARTICLE 18 : *Artistes and sportspersons* - 1. Notwithstanding the provisions of Articles 15 and 16, 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 sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16, 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 his 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 sub-divisions or local authorities.

4. Notwithstanding the provisions of paragraph 2 and Articles 7, 15 and 16, where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such in a Contracting State accrues not to the entertainer or sportsperson himself but to an other 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 sub-divisions or local authorities.

ARTICLE 19 : *Pensions* - Subject to the provisions of paragraph 2 of Article 20, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

ARTICLE 20 : *Government service* - 1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who :

- (i) is a national of that State ; or
- (ii) did not become a resident of that State solely for the purpose of rendering the services.

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

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

3. The provisions of Articles 16, 17 and 19 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 21 : *Professors, teachers and students* - 1. Remuneration received for education or scientific research by an individual who is or was immediately before visiting a Contracting State a resident of other Contracting State and who is present in the first-mentioned State for the purpose of scientific research or for teaching at an educational institution shall be exempt from tax in the first-mentioned State. This exemption shall be granted for a period that shall not exceed two years from the date on which the teacher or researcher first entered the first-mentioned State for the purpose of engaging in scientific research or for teaching. This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

2. (a) Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

(b) Payments which a student or business apprentice receives as remuneration from employment in the first-mentioned State, in an amount not exceeding a sum equivalent to 3,000 US dollars in the currency of the first-mentioned State during any fiscal year shall be exempt from tax in the first-mentioned State.

The benefit of this paragraph 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 paragraph for more than three consecutive years from the date of his first arrival in the first-mentioned Contracting State.

ARTICLE 22 : *Other income* - 1. Items of income of a resident of a Contracting State, wherever arising not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraph 1, any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any form or nature whatsoever may also be taxed in the Contracting State where they arise.

ARTICLE 23 : *Capital* - 1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

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

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

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

ARTICLE 24 : *Elimination of double taxation* - 1. Subject to the laws of Israel from time to time in force regarding the allowance as a credit against Israeli tax or tax paid in any country other than Israel (which shall not affect the general provision contained in this paragraph), Indian tax paid in respect of income derived from or capital owned in India shall be allowed as a credit against Israeli tax payable in respect of that income or capital. The credit shall not, however, exceed that portion of Israeli tax which the income or

capital from sources within India be as to the entire income or capital, as the case may be, subject to Israeli tax.

2. Where a resident of India derives income or owns capital which, in accordance with the provisions of this convention, may be taxed in Israel, India shall allow :

- (a) as a deduction from the tax on the income of that resident, an amount equal to the income-tax paid in Israel, whether directly or by deduction.
- (b) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in Israel.

Such deduction in either case shall not, however, exceed that part of the income-tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in Israel.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, where, a resident of a Contracting State derives income by way of dividends on shares of companies resident in the other Contracting State, the first-mentioned Contracting State shall allow credit of 15 per cent of gross amount of such dividend from the tax payable.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, where a resident of a Contracting State derives income by way of interest from any source in other Contracting State, the first-mentioned Contracting State shall allow a credit of 10 per cent of the gross amount of such interest from the tax payable.

5. Where in accordance with any provision of the Convention income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such state may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

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

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as preventing a Contracting State from charging the profits of permanent establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State, nor as being in conflict with the provision of paragraph 3 of Article 7 of this Convention.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, paragraph 6 of Article 12, or paragraph 6 of Article 13, apply interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirements 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.

ARTICLE 26 : *Mutual agreement procedure* - 1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The

case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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

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

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

ARTICLE 27 : *Exchange of information* - 1. The competent authorities of the Contracting States shall exchange such information (including documents), as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation :

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State ;
- (b) to supply information which is not obtainable under the laws or in the normal course of administration of that or of the other Contracting State ;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

ARTICLE 28 : *Diplomatic agents and consular officers* - Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 29 : *Entry into force* - 1. The Contracting State shall notify the other Contracting State in writing, through diplomatic channels, upon the completion of their respective legal procedures to bring this Convention into force.

2. The Convention shall enter into force on the date of the letter of such notifications and its provisions shall have effect :

- (a) in the Republic of India :
 - (i) in respect of taxes withheld at source on dividends, interest, royalties and fees for technical services, as defined in Articles 10, 11, 12 and 13, respectively, for amounts paid or credited on or after the first day of the month next following that in which the Convention enters into force ;
 - (ii) in respect of taxes on income, and taxes on capital, for fiscal years beginning on or after the first day of April, 1994 ; and
- (b) in the State of Israel :
 - (i) in respect of taxes withheld at source on dividends, interest, royalties and fees for technical services, as defined in Articles 10, 11, 12 and 13, respectively, for amounts paid or credited on or after the first day of the month next following that in which the Convention enters into force ;

- (ii) in respect of taxes on income, and taxes on capital, for taxable periods beginning on or after the first day of January, 1994.

ARTICLE 30 : *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 the entry into force of the Convention, 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 the Republic of India :

- (i) in respect of taxes withheld at source on dividends, interest, royalties and fees for technical services, as defined in Articles 10, 11, 12 and 13, respectively, for amounts paid or credited on or after the first day of April, next following the calendar year in which the notice of termination is given ; and
- (ii) in respect of taxes on income, and taxes on capital, of fiscal years beginning on or after the first day of April, next following the calendar year in which the notice of termination is given ; and

(b) in the State of Israel :

- (i) in respect of taxes withheld at source on dividends, interest, royalties and fees for technical services, as defined in Articles 10, 11, 12 and 13, respectively, for amounts paid or credited on or after the first day of January, next following the calendar year in which the notice of termination is given ; and
- (ii) in respect of taxes on income, and taxes on capital, for taxable periods beginning on or after the first day of January, next following the calendar year in which the notice of termination is given.

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

Done at New Delhi on 29th January, 1996 in two original copies, each in the Hindi, Hebrew and English languages, all the texts being equally authentic. In the case of any divergence in interpretation, the English text shall prevail.

PROTOCOL

At the signing today of the Convention between the Republic of India and the State of Israel for the Avoidance of Double Taxation and for the Prevention of Fiscal Evasion with respect of Taxes on Income and on Capital, the undersigned have agreed upon the following provisions, which shall form an integral part of the Convention.

1. Nothing in the provisions of paragraph 3 of Article 7 shall be interpreted as precluding a Contracting State from determining executive and administrative expenses of a head office incurred outside that Contracting State according to the provisions of internal laws as they exist at the time of the signing of this Convention. However, should future changes in the domestic law of a Contracting State further restrict the deduction of such expenses in any manner, then the two Contracting States shall consult each other for purposes of amending this paragraph.

2. The competent authorities of the Contracting States shall initiate the proper procedure to review the provisions of Articles 12 and 13 (Royalties and fees for technical services, respectively) after a period of five years from the date of entry into force of this Convention. However, if under any Convention or Agreement between India and any third State which enters into force after 1-1-1995, India limits its taxation at source or Royalties or Fees for Technical Services or Interest or Dividends to a rate lower or a scope more restricted than the rate or scope provided for in this Convention, the same rate or scope as provided for in that Convention or Agreement on the said items of income shall also apply under this Convention with effect from the date on which the present Convention comes into force or the relevant Indian Convention or Agreement, whichever enters into force later.

3. In respect of paragraph 2 of Article 25, it is understood that if India enters into an Agreement or Convention for the avoidance of double taxation with a third State after 1-1-1995, whereby the difference in the rates of tax between enterprises of a permanent establishment of a company of a country other than India and that of India is removed or reduced, then, a corresponding reduction shall be effected in respect of rates of taxes on profits according to the enterprises of a company which is a resident of Israel.

In witness whereof the undersigned, duly authorised hereto, have signed this Protocol.

Done at New Delhi on 29th January, 1996, in two original copies, each in the Hindi, Hebrew and English languages, all the texts being equally authentic. In the case of any divergence in interpretation, the English text shall prevail.