

INDIA - MAURITIUS DTAA

1605. Agreement for avoidance of double taxation and prevention of fiscal evasion with Mauritius

Whereas the annexed Convention between the Government of the Republic of India and the Government of Mauritius for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains and for the encouragement of mutual trade and investment has come into force on the notification by both the Contracting States to each other on completion of the procedures required by their respective laws, as required by Article 28 of the said Convention ;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964) , the Central Government hereby directs that all the provisions of the said Convention, shall be given effect to in the Union of India.

Notification : GSR No. 920(E), dated 6-12-1983.

TEXT OF ANNEXED CONVENTION, DATED 24-8-1982

The Government of the Republic of India and the Government of Mauritius, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains and for the encouragement of mutual trade and investment: have agreed as follows :

CHAPTER I - SCOPE OF THE CONVENTION

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

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

(a) in the case of India,

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

(ii) the surtax imposed under the Companies (Profits) Surtax Act, 1964 (7 of 1964) ;

(hereinafter referred to as Indian tax) ;

(b) in the case of Mauritius, the income-tax (hereinafter referred to as Mauritius tax).

2. This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Convention in addition to, or in place of, the existing taxes referred to in paragraph (1) of this article.

3. The competent authorities of the Contracting States shall notify to each other any significant changes which are made in their respective taxation laws.

CHAPTER II - DEFINITIONS

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 air space above it as well as any other maritime zone referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (Act No. 80 of 1976), in which India has certain rights and to the extent that these rights can be exercised therein as if such maritime zone is a part of the territory of India ;
- (b) the term Mauritius means all the territories, including all the islands, which in accordance with the laws of Mauritius, constitute the State of Mauritius and includes,
 - (i) the territorial sea of Mauritius ; and
 - (ii) any area outside the territorial sea of Mauritius which in accordance with international law has been or may hereafter be designated, under the laws of Mauritius concerning the Continental Shelf, as an area within which the rights of Mauritius with respect to the sea bed and sub-soil and their natural resources may be exercised ;
- (c) the terms a Contracting State and the other Contracting State mean India or Mauritius as the context requires ;
- (d) the term tax means Indian tax or Mauritius 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 ;
- (e) the term person includes an individual, a company and any other entity, corporate or non-corporate, which is treated as a taxable unit under the taxation laws in force in the respective Contracting States ;
- (f) the term company means any body corporate or any entity which is treated as a company or a body corporate under the taxation laws in force in the respective Contracting States ;
- (g) the terms enterprise of a Contracting State and enterprise of the other Contracting State mean respectively an industrial, mining, commercial, plantation or agricultural enterprise or similar undertaking carried on by a resident of a Contracting State and an industrial, mining, commercial, plantation or agricultural enterprise

or similar undertaking carried on by a resident of the other Contracting State ;

- (h) the term competent authority means in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative; and in the case of Mauritius, the Commissioner of Income-tax or his authorised representative ;
- (i) the term national means any individual possessing the nationality of a Contracting State and any local person, partnership or association deriving its status from the laws in force in the Contracting State ;
- (j) the term international traffic means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated by the enterprise solely between places in the other Contracting State.

2. In the application of the provisions of this Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws in force of that Contracting State relating to the areas which are the subject of this Convention.

ARTICLE 4 - *Residents* - 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 taxation therein by reason of his domicile, residence, place of management or any other criterion of similar nature. The terms resident of India and resident of Mauritius shall be construed accordingly.

2. Where by reason of the provisions of paragraph (1), an individual is a resident of both Contracting States, then his residential status for the purposes of the Convention shall be determined in accordance with the following rules :

- (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (hereinafter referred to as his centre of vital interests) ;
- (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode ;

- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national ;
- (d) if he is a national of both Contracting 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 the Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

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 the enterprise is wholly or partly carried on.

2. The term permanent establishment shall include

- (a) a place of management ;
- (b) a branch ;
- (c) an office ;
- (d) a factory ;
- (e) a workshop ;
- (f) a warehouse, in relation to a person providing storage facilities for others ;
- (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources ;
- (h) a firm, plantation or other place where agricultural, forestry, plantation or related activities are carried on ;
- (i) a building site or construction or assembly project or supervisory activities in connection therewith, where such site, project or supervisory activity continues for a period of more than nine months.

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

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

- (e) the maintenance of a fixed place of business solely
 - (i) for the purpose of advertising,
 - (ii) for the supply of information,
 - (iii) for scientific research, or
 - (iv) for similar activities,

which have a preparatory or auxiliary character for the enterprise.

4. Notwithstanding the provisions of paragraphs (1) and (2) of this article, a person acting in a Contracting State for or on behalf of an enterprise of the other Contracting State [other than an agent of an independent status to whom the provisions of paragraph (5) apply] shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if :

- (i) he has and habitually exercises in that first-mentioned State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise ; or
- (ii) he habitually maintains in that first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly fulfils orders on behalf of the enterprise.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted exclusively or almost exclusively on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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

CHAPTER III - TAXATION OF INCOME

ARTICLE 6 - *Income from immovable property* - 1. Income from immovable property may be taxed in the Contracting State in which such property is situated.

2. The term immovable property shall be defined in accordance with the law and usage of the Contracting State in which the property 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, oil-wells, quarries and other places of extraction of 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) of this article, 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. Where the correct amount of profits attributable to a permanent establishment cannot be readily determined or the determination thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on a reasonable basis.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

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 from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated or, if there is no such home harbour, in the Contracting State of which the operator of the ship is resident.

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

4. For the purposes of paragraph (1), interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits 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 or aircraft shall mean business of transportation of persons, mail, livestock or goods, carried on by the owners or lessees or charterers of the ships or aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of ships or aircraft and any other activity directly connected with such transportation.

ARTICLE 9 - *Associated enterprises* - Where

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

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

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

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

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

- (a) five per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 per cent of the capital of the company paying the dividends ;
- (b) fifteen per cent of the gross amount of the dividends in all other cases.

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

3. Notwithstanding the provisions of paragraph (2), dividends paid by a company which is a resident of Mauritius to a resident of India may be taxed in Mauritius and according to the laws of Mauritius, as long as dividends paid by companies which are residents of Mauritius are allowed as deductible expenses for determining their taxable profits. However, the tax charged shall not exceed the rate of the Mauritius tax on profit of the company paying the dividends.

4. 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 Contracting State of which the company making the distribution is a resident.

5. The provisions of paragraphs (1), (2) and (3) shall not apply if the beneficial owner of the dividends, being a resident of the 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 a case, the provisions of article 7 or article 14, as the case may be, shall apply.

6. 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, subject to the provisions of paragraphs (3) and (4) of this article, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State.

3. Interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

- (a) the Government or a local authority of the other Contracting State ;
- (b) any agency or entity created or organised by the Government of the other Contracting State ; or
- (c) any bank carrying on a *bona fide* banking business which is a resident of the other Contracting State.

4. Interest arising in a Contracting State shall be exempt from tax in that Contracting State to the extent approved by the Government of that State if it is derived and beneficially owned by any person [other than a person referred to in paragraph (3)] 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 Government of the first-mentioned Contracting State.

5. 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 debtors 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.

6. The provisions of paragraphs (1), (2), (3) and (4) shall not apply if the recipient 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.

7. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by that permanent

establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

8. Where, by reason of a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, 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 recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law 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 law of that State, but the tax so charged shall not exceed 15 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 films, and films or tapes 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 provisions of paragraphs (1) and (2) shall not apply if the recipient 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 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 are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of article 7 or article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting 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 in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the recipient or between both of them and some other person, the amount of royalties paid, 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 recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In that 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 from the alienation of immovable property, as defined in paragraph (2) of article 6, may be taxed in the Contracting State in which such property is situated.

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 together with the whole enterprise) or of such a fixed base, may be taxed in that other State.

3. Notwithstanding the provisions of paragraph (2) of this article, gains from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains derived by a resident of a Contracting State from the alienation of any property other than those mentioned in paragraphs (1), (2) and (3) of this article shall be taxable only in that State.

5. For the purposes of this article, the term alienation means the sale, exchange, transfer, or relinquishment of the property or the extinguishment of any rights therein or the compulsory acquisition thereof under any law in force in the respective Contracting States.

ARTICLE 14 - *Independent personal services* - 1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

2. The term professional services includes especially independent scientific, literary, artistic, educational or teaching activities, as well as

the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

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

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant previous year or year of income, 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 in respect of an employment exercised aboard a ship or aircraft in international traffic, may be taxed only in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 16 - *Directors fees* - Directors fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

ARTICLE 17 - *Artistes and athletes* - 1. Notwithstanding the provisions of articles 14 and 15, income derived by public entertainers such as theatre, motion picture, radio or television artistes and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

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

3. Notwithstanding the provisions of paragraph (1) of this article, income derived by an entertainer or an athlete 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 those 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) of this article and articles 7, 14 and 15, where income is derived from personal activities exercised by an entertainer or an athlete in his capacity as such in a Contracting State and accrues not to the entertainer or athlete himself but to another person, that income shall be taxable only in the Contracting State, if that other person is supported wholly or substantially from the public funds of that other Contracting State, including any of its political sub-divisions or local authorities.

ARTICLE 18 - *Governmental functions* - 1. Remuneration, other than pension, paid by the Government of a Contracting State, to an individual who is a national of that State in respect of services rendered to that State shall be taxable only in that State.

2. Any pension paid by the Government of a Contracting State to an individual who is a national of that State, shall be taxable only in that Contracting State.

3. The provisions of paragraphs (1) and (2) of this article shall not apply to remuneration and pensions in respect of services rendered in connection with any business carried on by the Government of either of the Contracting States for the purpose of profit.

4. The provisions of paragraph (1) of this article shall likewise apply in respect of remuneration paid under a development assistance programme of a Contracting State, out of funds supplied by that State, to a specialist or volunteer seconded to the other Contracting State with the consent of that other State.

5. For the purposes of this article, the term Government shall include any State Government or local or statutory authority of either Contracting State and, in particular, the Reserve Bank of India and the Bank of Mauritius.

ARTICLE 19 - *Non-Government pensions and annuities* - 1. Any pension, other than a pension referred to in article 18, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State shall be taxed 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 moneys worth.

ARTICLE 20 - *Students and apprentices - 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 Contracting State solely for the purpose of his education or training, shall be exempt from tax in that other Contracting State on

- (a) payments made to him from sources outside that other Contracting State for the purposes of his maintenance, education or training, and
- (b) remuneration from employment in that other Contracting State, in an amount not exceeding Rs. 15,000 in Indian currency or its equivalent in Mauritius rupees at the parity rate of exchange during any previous year or year of income, as the case may be, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

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 Contracting State.

ARTICLE 21 - *Professors, teachers and research scholars - 1.* A professor, teacher and research scholar who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State at the invitation of that other Contracting State or of a university, college, school or other approved institution in that other Contracting State for the purpose of teaching or engaging in research, or both, at the university, college, school or other approved institution, shall be exempt from tax in that other Contracting 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 Contracting State.

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

3. For the purposes of this article and article 20 an individual shall be deemed to be resident of a Contracting State if he is a resident in that Contracting State in the previous year or the year of income, as the case may be, in which he visits the other Contracting State or in the immediately preceding previous year or the year of income.

4. For the purpose 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) of this article, 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.

CHAPTER IV - METHODS FOR ELIMINATION OF DOUBLE TAXATION

ARTICLE 23 - *Elimination of double taxation - 1.* The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Convention.

2. (a) The amount of Mauritius tax payable, under the laws of Mauritius and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of India, in respect of profits or income arising in Mauritius, which has been subjected to tax both in India and in Mauritius, shall be allowed as a credit against the Indian tax payable in respect of such profits or income provided that such credit shall not exceed the Indian tax (as computed before allowing any such credit) which is appropriate to the profits or income arising in Mauritius. Further, where such resident is a company by which surtax is payable in India, the credit aforesaid shall be allowed in the first instance against income-tax payable by the company in India and as to the balance, if any, against surtax payable by it in India.

(b) In the case of a dividend paid by a company which is a resident of Mauritius to a company which is a resident of India and which owns at least 10 per cent of the shares of the company paying the dividend, the credit shall take into account [in addition to any Mauritius tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph] the Mauritius tax payable by the company in respect of the profits out of which such dividend is paid.

3. For the purposes of the credit referred to in paragraph (2) the term Mauritius tax payable shall be deemed to include any amount which would have been payable as Mauritius tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under :

- (i) sections 33, 34, 34A and 34B of the Mauritius Income-tax Act, 1974 (41 of 1974) ;

(ii) any other provision which may subsequently be made granting an exemption or reduction of tax which the competent authorities of the Contracting States agree to be for the purposes of economic development.

4. (a) The amount of Indian tax payable under the laws of India and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of Mauritius, in respect of profits or income arising in India, which has been subjected to tax both in India and Mauritius shall be allowed as a credit against Mauritius tax payable in respect of such profits or income provided that such credit shall not exceed the Mauritius tax (as computed before allowing any such credit) is appropriate to the profits or income arising in India.

(b) In the case of a dividend paid by a company which is a resident of India to a company which is a resident of Mauritius and which owns at least 10 per cent of the shares of the company paying the dividend, the credit shall take into account [in addition to any Indian tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph] the Indian tax payable by the company in respect of the profits out of which such dividend is paid.

5. For the purposes of the credit referred to in paragraph (4), the term Indian tax payable shall be deemed to include any amount by which tax has been reduced by the special incentive measures under

(i) section 10(4), 10(4A), 10(6)(vii), 10(15)(iv), 10(28), 10A, 32A, 33A, 35B, 54E, 80HH, 80HHA, 80-I or 80L of the Income-tax Act, 1961 (43 of 1961);

(ii) any other provision which may subsequently be enacted granting a reduction of tax which the competent authorities of the Contracting States agree to be for the purposes of economic development.

6. Where under this Convention a resident of a Contracting State is exempt from tax in that Contracting State in respect of income derived from the other Contracting State, then the first-mentioned Contracting State may, in calculating tax on the remaining income of that person, apply the rate of tax which would have been applicable if the income exempted from tax in accordance with this Convention had not been so exempted.

CHAPTER V - SPECIAL PROVISIONS

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

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less

favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities in the same circumstances.

3. Nothing contained in this Article shall be construed as obliging a Contracting State to grant persons not resident in that State any personal allowances, reliefs, reductions and deductions for taxation purposes which are by law available only to persons who are so resident.

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 Contracting 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 that first-mentioned State are or may be subjected in the same circumstances.

5. In this article, the term taxation means taxes which are the subject of this Convention.

ARTICLE 25 - *Mutual agreement procedure* - 1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident. This case must be presented within three years of the date of receipt of notice of the action which gives rise to taxation not in accordance with the Convention.

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

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

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

consisting of representatives of the competent authorities of the Contracting States.

ARTICLE 26 - *Exchange of information or document* - 1. The competent authorities of the Contracting States shall exchange such information or document as is necessary for carrying out the provisions of this Convention or for prevention of evasion of taxes which are the subject of this Convention. Any information or document so exchanged shall be treated as secret but may be disclosed to persons (including courts or other authorities) concerned with the assessment, collection, enforcement, investigation or prosecution in respect of the taxes which are the subject of this Convention, or to persons with respect to whom the information or document relates.

2. The exchange of information or documents shall be either on a routine basis or on request with reference to particular cases or both. The competent authorities of the Contracting States shall agree from time to time on the list of the information or documents which shall be furnished on a routine basis.

3. The provisions of paragraph (1) shall not be construed so as to impose on a Contracting State the obligation

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

ARTICLE 27 - *Diplomatic 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.

CHAPTER VI - FINAL PROVISIONS

ARTICLE 28 - *Entry into force* - Each of the Contracting State shall notify to the other completion of the procedures required by its law for the bringing into force of this Convention. The Convention shall enter into force on the date of the later of these notifications and shall thereupon have effect

- (a) in India, in respect of income and capital gains assessable for any assessment year commencing on or after 1st April, 1983 ;
- (b) in Mauritius, in respect of income and capital gains assessable for any assessment year commencing on or after 1st July, 1983.

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 India, in respect of income and capital gains assessable for the assessment year commencing on 1st day of April in the second calendar year next following the calendar year in which the notice is given, and subsequent years ;

(b) in Mauritius, in respect of income and capital gains assessable for the assessment year commencing on 1st day of July in the second calendar year next following the calendar year in which the notice is given, and subsequent years.

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

Done on this 24th day of August, 1982 at Port Louis on two original copies each in Hindi and English languages, both the texts being equally authentic. In case of divergence between the two texts, the English text shall be the operative one.

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1605A. Taxation of income from dividend and capital gains under the Indo-Mauritius Double Tax Avoidance Convention

1. The Ministry of Finance today 13-4-2000 issued a clarification regarding taxation of income from dividends and capital gains under the Indo-Mauritius Double Tax Avoidance Convention (DTAC). In a circular addressed to all the Chief Commissioners of Income-tax, the Ministry said provisions of the Indo-Mauritius DTAC of 1983 apply to residents of both India and Mauritius. Article 4 of the DTAC defines a resident of one State to mean any person who, under the laws of that State is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. Foreign Institutional Investors and other investment funds, etc., which are operating from Mauritius are invariably incorporated in that country. These entities are liable to tax under the Mauritius tax law and are therefore to be considered as residents of Mauritius in accordance with the DTAC.

2. The circular said prior to 1-6-1997, dividends distributed by domestic companies were taxable in the hands of the shareholder and tax was deductible at source under the Income-tax Act, 1961. Under

the DTAC, tax was deductible at source on the gross dividend paid out at the rate of 5% or 15% depending upon the extent of shareholding of the Mauritius resident. Under the Income-tax Act, 1961, tax was deductible at source at the rates specified under section 115A, etc. Doubts have been raised regarding the taxation of dividends in the hands of investors from Mauritius. It is hereby clarified that wherever a Certificate of Residence is issued by the Mauritian Authorities, such certificate will constitute sufficient evidence for accepting the status of residence as well as beneficial ownership for applying the DTAC accordingly.

3. It further said, the test of residence mentioned above would also apply in respect of income from capital gains on sale of shares. Accordingly, FIIs, etc., which are resident in Mauritius would not be taxable in India on income from capital gains arising in India on sale of shares as per paragraph 4 of article 13. The aforesaid clarification shall apply to all proceedings which are pending at various levels.

PIB Press Release : Dated 13-4-2000.

1605B. Clarification regarding agreement for avoidance of double taxation with Mauritius

1. A Convention for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes of income and capital gains was entered into between the Government of India and the Government of Mauritius and was notified on 6-12-1983. In respect of India, the Convention applies from the assessment year 1983-84 and onwards.

2. Article 13 of the convention deals with taxation of capital gains and it has five paragraphs. The first paragraph gives the right of taxation of capital gains on the alienation of immovable property to the country in which the property is situated. The second and third paragraphs deal with right of taxation of capital gains on the alienation of movable property linked with business or professional enterprises and ships and aircrafts.

3. Paragraph 4 deals with taxation of capital gains arising from the alienation of any property other than those mentioned in the preceding paragraphs and gives the right of taxation of capital gains only to that State of which the person deriving the capital gains is a resident. In terms of paragraph 4, capital gains derived by a resident of Mauritius by alienation of shares of companies shall be taxable only in Mauritius according to Mauritius tax law. Therefore, any resident of Mauritius deriving income from alienation of shares of Indian companies will be liable to capital gains tax only in Mauritius as per Mauritius tax law and will not have any capital gains tax liability in India.

4. Paragraph 5 defines alienation to mean the sale, exchange, transfer or relinquishment of the property or the extinguishment of any rights

in it or its compulsory acquisition under any law in force in India or in Mauritius.

Circular : No. 682, dated 30-3-1994.

1605C. Clarification regarding taxation of income from dividends and capital gains under the Indo-Mauritius Double Tax Avoidance Convention (DTAC)

1. The provisions of the Indo-Mauritius DTAC of 1983 apply to residents of both India and Mauritius. Article 4 of the DTAC defines a resident of one State to mean any person who, under the laws of that State is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. Foreign Institutional Investors and other investment funds, etc., which are operating from Mauritius are invariably incorporated in that country. These entities are liable to tax under the Mauritius Tax law and are, therefore, to be considered as residents of Mauritius in accordance with the DTAC.

2. Prior to 1-6-1997, dividends distributed by domestic companies were taxable in the hands of the shareholder and tax was deductible at source under the Income-tax Act, 1961. Under the DTAC, tax was deductible at source on the gross dividend paid out at the rate of 5% or 15% depending upon the extent of shareholding of the Mauritius resident. Under the Income-tax Act, 1961, tax was deductible at source at the rates specified under section 115A, etc. Doubts have been raised regarding the taxation of dividends in the hands of investors from Mauritius. It is hereby clarified that wherever a Certificate of Residence is issued by the Mauritian Authorities, such Certificate will constitute sufficient evidence for accepting the status of residence as well as beneficial ownership for applying the DTAC accordingly.

3. The test of residence mentioned above would also apply in respect of income from capital gains on sale of shares. Accordingly, FIIs, etc., which are resident in Mauritius would not be taxable in India on income from capital gains arising in India on sale of shares as per paragraph 4 of article 13.

Circular : No. 789, dated 13-4-2000.

CLARIFICATION ONE

Reference is invited to the Circular No. 789, dated 13-4-2000 issued by the Board where it was clarified that wherever the certificate of residence is issued by the Mauritian authorities, such certificate will constitute sufficient evidence for accepting the status of residence, as well as beneficial ownership for applying DTAC accordingly. The said circular specified the mode of proof of residence of an entity in Mauritius.

Certain doubts have been raised regarding the effect of the aforesaid circular, particularly whether the said circular would also apply to entities which are resident of both India and Mauritius. In order to remove all doubts on the subject, it is hereby clarified that where an assessee is a resident of both the Contracting States, in accordance with para 1 of article 4 of Indo-Mauritius DTAC, then, his residence is to be determined in accordance with para 3 of the said article, which reads as under :

3. Where, by reason of the provisions of paragraph 1, a person other than an individual is resident of both the Contracting States, then it shall be deemed to be a resident of the Contracting State in which the place of effective management is situated.

In view of the above, where an Assessing Officer finds and is satisfied that a company or an entity is resident of both India and Mauritius, he would be free to proceed to determine the residential status under para 3 of article 4 of DTAC. Where it is found as a fact that the company has its place of effective management in India, then notwithstanding its being incorporated in Mauritius, it would be taxed under the DTAC in India.

Circular : No. 1/2003, dated 10-2-2003.