**United States of America**

**Double Taxation Avoidance Agreement**

**Convention between the Government of the United States of America and the Government of the Republic of India for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income**

**Notification No. G. S. R. 990(E), dtd. 20.12.1990.**

Whereas the annexed Convention between the Government of the United States of America and the Government of the Republic of India for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income has entered into force on the 18th December, 1990, 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 the said Convention in accordance with paragraph 1 of Article 30 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.

Further, in exercise of the powers conferred by section 44A(b) of the Wealth-tax Act, 1957 (27 of 1957) and section 44(b) of the Gift-tax Act, 1958 (18 of 1958), the Central Government also directs that the provisions of Article 28 of the said Convention shall be given effect to in the Union of India.

**ANNEXURE**

**CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF INDIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME**

The Government of the United States of America and the Government of the Republic of India, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

**Article 1**

**GENERAL SCOPE**

1.     This Convention shall apply to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Convention.

2.     The Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded:

a.     by the laws of either Contracting State; or

b.    by any other agreement between the Contracting States.

3.     Notwithstanding any provision of the Convention except paragraph 4, a Contracting State may tax its residents (as determined under article 4 (Residence)), and by reason of citizenship may tax its citizens, as if the Convention had not come into effect. For this purpose, the term "citizen" shall include a former citizen whose loss of citizenship had as one of its principal purposes the avoidance of tax, but only for a period of 10 years following such loss.

4.     The provisions of paragraph 3 shall not affect--

a.     the benefits conferred by a Contracting State under paragraph 2 of article 9 (Associated enterprises), under paragraphs 2 and 6 of article 20 (Private pensions, annuities, alimony, and child support), and under articles 25 (Relief From Double Taxation), 26 (Non-Discrimination), and 27 (Mutual Agreement Procedure); and

b.    the benefits conferred by a Contracting State under articles 19 (remuneration and pensions in respect of Government service), 21 (payments received by students and apprentices), 22 (payments received by professors, teachers and research scholars) and 29 (diplomatic agents and consular officers), upon individuals who are neither citizens of, nor have immigrant status in, that State.

**Article 2**

**TAXES COVERED**

1.     The existing taxes to which this Convention shall apply are:

**a.**     **In the United States,**

The federal income taxes imposed by the Internal Revenue Code (but excluding the accumulated earnings tax, the personal holding company tax, and social security taxes), and the excise taxes imposed on insurance premiums paid to foreign insurers and with respect to private foundations (hereinafter referred to as "United States tax"); provided, however, the Convention shall apply to the excise taxes imposed on insurance premiums paid to foreign insurers only to the extent that the risks covered by such premiums are not reinsured with a person not entitled to exemption from such taxes under this or any other Convention which applies to these taxes; and

**b.**    **In India:**

                      i.        the income-tax including any surcharge thereon, but excluding income-tax on undistributed income of companies, imposed under the Income-tax Act; and

                     ii.        the surtax.

(hereinafter referred to as "Indian tax").

Taxes referred to in (a) and (b) above shall not include any amount payable in respect of any default or omission in relation to the above taxes or which represent a penalty imposed relating to those taxes.

2.     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 any significant changes which have been made in their respective taxation laws and of any official published material concerning the application of the Convention.

**Article 3**

**GENERAL DEFINITIONS**

1.     In 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 jurisdictions, according to the Indian law and in accordance with international law;

b.    the term "United States", when used in a geographical sense, means all the territory of the United States of America, including its territorial sea, in which the laws relating to United States tax are in force, and all the area beyond its territorial sea, including the seabed and subsoil thereof, over which the United States has jurisdiction in accordance with international law and in which the laws relating to United States tax are in force;

c.     the terms "a Contracting State" and "the other Contracting State" mean India or the United States as the context requires;

d.    the term "tax" means Indian tax or United States tax, as the context requires;

e.     the term "person" includes an individual, an estate, a trust, a partnership, a company, any other body of persons, or other taxable entity;

f.     the term "company" means any body corporate or any entity which is treated as a company or body corporate for tax purposes;

g.    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;

h.     the term "competent authority" means, in the case of India, the Central Government in the Ministry of Finance (Department of Revenue) or their authorized representative, and in the case of the United States, the Secretary of the Treasury or his delegate;

i.      the term "national," means any individual possessing the nationality or citizenship of a Contracting State;

j.      the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places within the other Contracting State;

k.     the term "taxable year" in relation to Indian tax means "previous year" as defined in the Income-tax Act, 1961.

2.     As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of article 27 (Mutual Agreement Procedure), have the meaning which it has under the laws of that State concerning the taxes to which the Convention applies.

**Article 4**

**RESIDENCE**

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, citizenship, place of management, place of incorporation, or any other criterion of a similar nature, provided however, that

a.     this term does not include any person who is liable to tax in that State in respect only of income from sources in that State; and

b.    in the case of income derived or paid by a partnership, estate, or trust, this term applies only to the extent that the income derived by such partnership, estate, or trust is subject to tax in that State as the income of a resident, either in its hands or in the hands of its partners or beneficiaries.

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 does not have 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 paragraph 1, a company is a resident of both Contracting States, such company shall be considered to be outside the scope of this Convention except for purposes of paragraph 2 of article 10 (Dividends), article 26 (Non-discrimination), article 27 (Mutual agreement procedure), article 28 (Exchange of information and administrative assistance) and article 30 (Entry into force).

4.     Where, by reason of the provisions of paragraph 1, a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall settle the question by mutual agreement and determine the mode of application of the Convention to such person.

**Article 5**

**PERMANENT ESTABLISHMENT**

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

2.     The term "permanent establishment" includes especially:

a.     a place of management;

b.    a branch;

c.     an office;

d.    a factory;

e.     a workshop;

f.     a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources;

g.    a warehouse, in relation to a person providing storage facilities for others;

h.     a farm, plantation or other place where agriculture, forestry, plantation or related activities are carried on;

i.      a store or premises used as a sales outlet;

j.      an installation or structure used for the exploration or exploitation of natural resources, but only if so used for a period of more than 120 days in any twelve-month period;

k.     a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities (together with other such sites, projects or activities, if any) continue for a period of more than 120 days in any twelve-month period;

l.      the furnishing of services, other than included services as defined in article 12 (royalties and fees for included services), within a Contracting State by an enterprise through employees or other personnel, but only if:

                      i.        activities of that nature continue within that State for a period or periods aggregating to more than 90 days within any twelve-month period; or

                     ii.        the services are performed within that State for a related enterprise (within the meaning of paragraph 1 of article 9 (associated enterprises)).

3.     Notwithstanding the preceding provisions of this article, the term "permanent establishment" shall be deemed not to include any one or more of the following:

a.     the use of facilities solely for the purpose of storage, display, or occasional delivery of goods or merchandise belonging to the enterprise;

b.    the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or occasional delivery;

c.     the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

d.    the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

e.     the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for other activities which have a preparatory or auxiliary character, for the enterprise.

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

a.     he has and habitually exercises in the first-mentioned State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business, would not make that fixed place of business a permanent establishment under the provisions of that paragraph;

b.    he has no such authority but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise, and some additional activities conducted in that State on behalf of the enterprise have contributed to the sale of the goods or merchandise; or

c.     he habitually secures orders in the first-mentioned State, wholly or almost wholly for 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, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise and the transactions between the agent and the enterprise are not made under arm's-length conditions, he shall not be considered an agent of 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 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 (REAL PROPERTY)**

1.     Income derived by a resident of a Contracting State from immovable property (real property), including income from agriculture or forestry, situated in the other Contracting State may be taxed in that other State.

2.     The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated.

3.     The provisions of paragraph 1 shall also 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 (a) that permanent establishment; (b) sales in the other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or (c) other business activities carried on in the other State of the same or similar kind as those effected through 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 independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly at arm's length with the enterprise of which it is a permanent establishment and other enterprises controlling, controlled by or subject to the same common control as that enterprise. In any case where the correct amount of profits attributable to a permanent establishment is incapable of determination or the determination thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on a reasonable basis. The estimate adopted shall, however, be such that the result shall be in accordance with the principles contained in this article.

3.     In the determination of 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 a reasonable allocation of executive and general administrative expenses, research and development expenses, interest, and other expenses incurred for the purposes of the enterprise as a whole (or the part thereof which includes the permanent establishment), whether incurred in the State in which the permanent establishment is situated or elsewhere, in accordance with the provisions of and subject to the limitations of the taxation laws of that State. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of banking enterprises, by way of interest on moneys lent to the permanent establishment. likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than toward reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

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

5.     For the purposes of this Convention, the profits to be attributed to the permanent establishment as provided in paragraph 1(a) of this article shall include only the profits derived from the assets and activities of the permanent establishment and 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 the convention, then the provisions of those articles shall not be affected by the provisions of this article.

7.     For the purposes of the Convention, the term "business profits" means income derived from any trade or business including income from the furnishing of services other than included services as defined in article 12 (royalties and fees for included services) and including income from the rental of tangible personal property other than property described in paragraph 3(b) of article 12 (royalties and fees for included services).

**Article 8**

**SHIPPING AND AIR TRANSPORT**

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

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

a.     the sale of tickets for such transportation on behalf of other enterprises;

b.    other activity directly connected with such transportation; and

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

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

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

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

6.     Gains derived by an enterprise of a Contracting State described in paragraph 1 from the alienation of ships, aircraft or containers owned and operated by the enterprise, the income from which is taxable only in that State, shall be taxed only in that State.

**Article 9**

**ASSOCIATED ENTERPRISES**

1.     Where:

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

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

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

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

**Article 10**

**DIVIDENDS**

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

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

a.     15 per cent. of the gross amount of the dividends if the beneficial owner is a company which owns at least 10 per cent. of the voting stock of the company paying the dividends;

b.    25 per cent. of the gross amount of the dividends in all other cases.

Sub-paragraph (b) and not sub-paragraph (a) shall apply in the case of dividends paid by a United States person which is a Regulated Investment Company. Sub-paragraph (a) shall not apply to dividends paid by a United States person which is a Real Estate Investment Trust, and sub-paragraph (b) shall only apply if the dividend is beneficially owned by an individual holding a less than 10 per cent. interest in the Real Estate Investment Trust. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3.     The term "dividends" as used in this article means income from shares or other rights, not being debt-claims, participating in profits, income from other corporate rights which are subjected to the same taxation treatment as income from shares by the taxation laws of the State of which the company making the distribution is a resident; and income from arrangements, including debt obligations, carrying the right to participate in profits, to the extent so characterised under the laws of the Contracting State in which the income arises.

4.     The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the dividends are attributable to such permanent establishment or fixed base. In such case the provisions of article 7 (business profits) or article 15 (Independent Personal Services), 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 in so far as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

**Article 11**

**INTEREST**

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

2.     However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed:

a.     10 per cent. of the gross amount of the interest if such interest is paid on a loan granted by a bank carrying on a bona fide banking business or by a similar financial institution (including an insurance company); and

b.    15 per cent. of the gross amount of the interest in all other cases.

3.     Notwithstanding the provisions of paragraph 2 of this article, interest arising in a Contracting State:

a.     and derived and beneficially owned by the Government of the other Contracting State, a political sub-division or local authority thereof, the Reserve Bank of India, or the Federal Reserve Bank of the United States, as the case may be, and such other institutions of either Contracting State as the competent authorities may agree pursuant to article 27 (Mutual Agreement Procedure);

b.    with respect to loans or credits extended or endorsed

                      i.        by the Export Import Bank of the United States, when India is the first-mentioned Contracting State; and

                     ii.        by the EXIM Bank of India, when the United States is the first-mentioned Contracting State; and

c.     to the extent approved by the Government of that State, and derived and beneficially owned by any person, other than a person referred to in sub-paragraphs (a) and (b), who is a resident of the other Contracting State, provided that the transaction giving rise to the debt-claim has been approved in this behalf by the Government of the first-mentioned Contracting State; shall be exempt from tax in the first-mentioned Contracting State.

4.     The term "interest" as used in this Convention 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 or prizes attaching to such securities, bonds, or debentures. Penalty charges for late payment shall not be regarded as interest for the purposes of the Convention. However, the term "interest" does not include income dealt with in article 10 (Dividends).

5.     The provisions of paragraphs 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 interest is attributable to such permanent establishment or fixed base. In such case the provisions of article 7 (Business Profits) or article 15 (Independent Personal Services), 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 or a political sub-division, local authority, or resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base, and such interest is borne by such permanent establishment or fixed base, then 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 the Convention.

**Article 12**

**ROYALTIES AND FEES FOR INCLUDED SERVICES**

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

2.     However, such royalties and fees for included services may also be taxed in the Contracting State in which they arise and according to the laws of that State; but if the beneficial owner of the royalties or fees for included services is a resident of the other Contracting State, the tax so charged shall not exceed:

a.     in the case of royalties referred to in sub-paragraph (a) of paragraph 3 and fees for included services as defined in this article (other than services described in sub-paragraph (b) of this paragraph):

                      i.        during the first five taxable years for which this Convention has effect,

A.    15 per cent. of the gross amount of the royalties or fees for included services as defined in this article, where the payer of the royalties or fees is the Government of that Contracting State, a political sub-division or a public sector company; and

B.    20 per cent. of the gross amount of the royalties or fees for included services in all other cases; and

                     ii.        during the subsequent years, 15 per cent. of the gross amount of royalties or fees for included services; and

b.    in the case of royalties referred to in sub-paragraph (b) of paragraph 3 and fees for included services as defined in this article that are ancillary and subsidiary to the enjoyment of the property for which payment is received under paragraph 3(b) of this article, 10 per cent. of the gross amount of the royalties or fees for included services.

3.     The term "royalties" as used in this article means:

a.     payments of any kind received as consideration for the use of, or the right to use, any copyright of a literary, artistic, or scientific work, including cinematograph films or work on film, tape or other means of reproduction for use in connection with radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, including gains derived from the alienation of any such right or property which are contigent on the productivity, use or disposition thereof; and

b.    payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial or scientific equipment, other than payments derived by an enterprise described in paragraph 1 of article 8 (Shipping and Air Transport) from activities described in paragraph 2(c) or 3 of article 8.

4.     For purposes of this article, "fees for included services" means payments of any kind to any person in consideration for the rendering of any technical or consultancy services (including through the provision of services of technical or other personnel) if such services:

a.     are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 3 is received; or

b.    make available technical knowledge, experience, skill, know-how. or processes, or consist of the development and transfer of a technical plan or technical design.

5.     Notwithstanding paragraph 4, "fees for included services" does not include amounts paid:

a.     for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property other than a sale described in paragraph 3(a);

b.    for 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;

c.     for teaching in or by educational institutions;

d.    for services for the personal use of the individual or individuals making the payment; or

e.     to an employee of the person making the payments or to any individual or firm of individuals (other than a company) for professional services as defined in article 15 (Independent Personal Services).

6.     The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for included services, being a resident of a Contracting State, carries on business in the other Contracting State, in which the royalties or fees for included services arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the royalties or fees for included services are attributable to such permanent establishment or fixed base. In such case the provisions of article 7 (business profits) or article 15 (Independent Personal Services), as the case may be, shall apply.

7.

a.     Royalties and fees for included services shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority, or a resident of that State. Where, however, the person paying the royalties or fees for included services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties or fees for included services was incurred, and such royalties or fees for included services are borne by such permanent establishment or fixed base, then such royalties or fees for included services shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

b.    Where under sub-paragraph (a) royalties or fees for included services do not arise in one of the Contracting States, and the royalties relate to the use of, or the right to use, the right or property, or the fees for included services relate to services performed, in one of the Contracting States, the royalties or fees for included services shall be deemed to arise in that Contracting State.

8.     Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties or fees for included 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 the Convention.

**Article 13**

**GAINS**

Except as provided in article 8 (Shipping and Air Transport) to this Convention, each Contracting State may tax capital gains in accordance with the provisions of its domestic law.

**Article 14**

**PERMANENT ESTABLISHMENT TAX**

1.     A company which is a resident of India may be subject in the United States to a tax in addition to the tax allowable under the other provisions of this Convention.

a.     Such tax, however, may be imposed only on:

                      i.        the portion of the business profits of the company subject to tax in the United States which represents the dividend equivalent amount; and

                     ii.        the excess, if any, of interest deductible in the United States in computing the profits of the company that are subject to tax in the United States and either attributable to a permanent establishment in the United States or subject to tax in the United States under article 6 (Income From Immovable Property (Real Property)), article 12 (Royalties and Fees for Included Services) as fees for included services, or article 13 (Gains) of this Convention over the interest paid by or from the permanent establishment or trade or business in the United States.

b.    For purposes of this article, business profits means profits that are effectively connected (or treated as effectively connected) with the conduct of a trade or business within the United States and are either attributable to a permanent establishment in the United States or subject to tax in the United States under article 6 (Income From Immovable Property (Real Property)), article 12 (Royalties and Fees for Included Services) as fees for included services or article 13 (Gains) of this Convention.

c.     The tax referred to in sub-paragraph (a) shall not be imposed at a rate exceeding:

                      i.        the rate specified in paragraph 2(a) of article 10 (Dividends) for the tax described in sub-paragraph (a)(i); and

                     ii.        the rate specified in paragraph 2(a) or (b) (whichever is appropriate) of article 11 (Interest) for the tax described in sub-paragraph (a)(ii).

2.     A company which is a resident of the United States may be subject to tax in India at a rate higher than that applicable to the domestic companies. The difference in the tax rate shall not, however, exceed the existing difference of 15 per centage points.

3.     In the case of a banking company which is a resident of the United States, the interest paid by the permanent establishment of such a company in India to the head office may be subject in India to a tax in addition to the tax imposable under the other provisions of this Conventon at a rate which shall not exceed the rate specified in paragraph 2(a) of article 11 (Interest).

**Article 15**

**INDEPENDENT PERSONAL SERVICES**

1.     Income derived by a person who is an individual or firm of individuals (other than a company) who is a resident of a Contracting State from the performance in the other Contracting State of professional services or other independent activities of a similar character shall be taxable only in the first-mentioned State except in the following circumstances when such income may also be taxed in the other Contracting State:

a.     if such person 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 the person's stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 90 days in the relevant taxable year.

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

**Article 16**

**DEPENDENT PERSONAL SERVICES**

1.     Subject to the provisions of article 17 (Director's Fees), 18 (Income Earned by Entertainers and Athletes), 19 (Remuneration and Pensions in Respect of Government Service), 20 (Private Pensions, Annuities, Alimony and Child Support), 21 (Payments Received by Students and Apprentices) and 22 (Payments Received by Professors, Teachers and Research Scholars), salaries, wages, and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

a.     the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant taxable year;

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 or a trade or business 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 operating in international traffic by an enterprise of a Contracting State may be taxed in that State.

**Article 17**

**DIRECTOR'S FEES**

Director's fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

**Article 18**

**INCOME EARNED BY ENTERTAINERS AND ATHLETES**

1.     Notwithstanding the provisons of articles 15 (Independent Personal Services) and 16 (Dependent Personal Services), 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 an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State, except where the amount of the net income derived by such entertainer or athlete from such activities (after deduction of all expense incurred by him in connection with his visit and performance) does not exceed one thousand five hundred United States dollars ($1,500) or its equivalent in Indian rupees for the taxable year concerned.

2.     Where income in respect of activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete but to another person, that income of that other person may, notwithstanding the provisions of articles 7 (Business Profits), 15 (Independent Personal Services) and 16 (Dependent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised unless the entertainer, athlete, or other person establishes that neither the entertainer or athlete nor persons related thereto participate directly or indirectly in the profits of that other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions, or other distributions.

3.     Income referred to in the preceding paragraphs of this article derived by a resident of a Contracting State in respect of activities exercised in the other Contracting State shall not be taxed in that other State if the visit of the entertainers or athletes to that other State is supported wholly or substantially from the public funds of the Government of the first-mentioned Contracting State, or of a political sub-division or local authority thereof.

4.     The competent authorities of the Contracting States may, by mutual agreement, increase the dollar amounts referred to in paragraph 1 to reflect economic or monetary developments.

**Article 19**

**REMUNERATION AND PENSIONS IN RESPECT OF GOVERNMENT SERVICE**

1.

a.     Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.

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

                      i.        is a national of that State; or

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

2.

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

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

3.     The provisions of article 16 (Dependent Personal Services), 17 (Directors' Fees), 18 (Income Earned by Entertainers and Athletes) and 20 (Private Pensions, Annuities, Alimony and Child Support) shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

**Article 20**

**PRIVATE PENSIONS, ANNUITIES, ALIMONY AND CHILD SUPPORT**

1.     Any pension, other than a pension referred to in article 19 (Remuneration and Pensions in Respect of Government Service), or any annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first-mentioned Contracting State.

2.     Notwithstanding paragraph 1, and subject to the provisions of article 19 (Remuneration and Pensions in Respect of Government Service), Social security benefits and other public pensions paid by a Contracting State to a resident of the other Contracting State or a citizen of the United States shall be taxable only in the first-mentioned State.

3.     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.

4.     The term "annuity" means stated sums payable periodically at stated times during life or during a specified or ascertainable number of years, under an obligation to make the payments in return for adequate and full consideration in money or money's worth (but not for services rendered).

5.     Alimony paid to a resident of a Contacting State shall be taxable only in that State. The term "alimony" as used in this paragraph means periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, which payments are taxable to the recipient under the laws of the State of which he is a resident.

6.     Periodic payments for the support of a minor child made pursuant to a written separation agreement or a decree of divorce, separate maintenance or compulsory support, paid by a resident of a Contracting State to a resident of the other Contracting State shall be taxable only in the first-mentioned State.

**Article 21**

**PAYMENTS RECEIVED BY 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 State principally for the purpose of his education or training shall be exempt from tax in that other State, on payments which arise outside that other State for the purposes of his maintenance, education or training.

2.     In respect of grants, scholarships and remuneration from employment not covered by paragraph 1, a student or business apprentice described in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the State which he is visiting.

3.     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.

4.     For the purposes of this article, an individual shall be deemed to be resident of a Contracting State if he is resident in that Contracting State in the taxable year in which he visits the other Contracting State or in the immediately preceding taxable year.

**Article 22**

**PAYMENTS RECEIVED BY PROFESSORS, TEACHERS AND RESEARCH SCHOLARS**

1.     An individual who visits a Contracting State for a period not exceeding two years for the purpose of teaching or engaging in research at a university, college or other recognized educational institution in that State, and who was immediately before that visit a resident of the other Contracting State, shall be exempted from tax by the first-mentioned Contracting State on any remuneration for such teaching or research for a period not exceeding two years from the date he first visits that State for such purpose.

2.     This article shall apply to income from research only if such research is undertaken by the individual in the public interest and not primarily for the benefit of some other private person or persons.

**Article 23**

**OTHER INCOME**

1.     Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt within 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 (Income from Immovable Property (Real Property)), if the beneficial owner of the 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 income is attributable to such permanent establishment or fixed base. In such case the provisions of article 7 (Business Profits) or article 15 (Independent Personal Services), as the case may be, shall apply.

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

**Article 24**

**LIMITATION ON BENEFITS**

1.     A person (other than an individual) which is a resident of a Contracting State and derives income from the other Contracting State shall be entitled under this Convention to relief from taxation in that other Contracting State only if:

a.     more than 60 per cent. of the beneficial interest in such person (or in the case of a company, more than 50 per cent. of the number of shares of each class of the company's shares) is owned, directly or indirectly, by one or more individual residents of one of the Contracting States, one of the Contracting States or its political sub-divisions or local authorities, or other individuals subject to tax in either Contracting State on their worldwide incomes, or citizens of the United States; and

b.    the income of such