

TO BE PUBLISHED IN PART -II SECTION 3 SUB-SECTION(1)

OF THE GAZETTE OF INDIA EXTRAORDINARY

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

New Delhi, the 21st April, 1995.

NOTIFICATION
INCOME-TAX

9752

GSR (E) - Whereas the annexed Agreement between the Government of the Republic of India and the Government of the Swiss Confederation for the avoidance of double taxation with respect to taxes on income has entered into force on 29th December, 1994 after the notification by both the Contracting States to each other at the completion of the procedures required under their laws for bringing into force of the said Agreement in accordance with paragraph 1 of Article 26 of the said Agreement;

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

A G R E E M E N T

BETWEEN

THE REPUBLIC OF INDIA

AND

THE SWISS CONFEDERATION

FOR THE AVOIDANCE OF DOUBLE TAXATION
WITH RESPECT TO TAXES ON INCOME

THE GOVERNMENT OF THE REPUBLIC OF INDIA

AND

THE SWISS FEDERAL COUNCIL

DESIRING to conclude an Agreement for the avoidance of double
taxation with respect to taxes on income,

HAVE AGREED as follows:

Article 1

Personal scope

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

Article 2

Taxes covered

1. The taxes to which this Agreement shall apply are:

a) In the case of India:

the income tax including any surcharge thereon; and

b) In the case of Switzerland:

the federal, cantonal and communal taxes on income (total income, earned income, income from capital, industrial and commercial profits, capitals gains, and other items of income).

2. The Agreement 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 Agreement in addition to, or in place of, the taxes referred to in paragraph 1 of this Article.

3. In this Agreement, the term "Indian tax" means tax imposed by

"Swiss tax" means tax imposed in Switzerland, being tax to which this Agreement applies; and the term "tax" means Indian tax or Swiss tax, as the context requires; but the taxes in the preceding paragraphs of this Article do not include any penalty or interest imposed under the law in force in either Contracting State relating to the taxes to which this Agreement applies.

4. The competent authorities of the Contracting States shall notify to each other any significant changes which have been made in their relevant respective taxation laws.

Article 3

General definitions

1. In this Agreement, unless the context otherwise requires:
 - a) the term "India" means the territory of India and includes the territorial sea and the air space above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with international law;
 - b) the term "Switzerland" means the Swiss Confederation;
 - c) the terms "a Contracting State" and "the other Contracting State" mean India or Switzerland, as the context requires;
 - d) the term "person" includes an individual, a company, a body of persons, or any other entity which is taxable under the laws in force in either Contracting State;

- e) the term "company" means any body corporate or any entity which is treated as a company under the taxation laws of the respective Contracting States;
- f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean, respectively, an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- g) the term "competent authority" means, in the case of India, the Central Government in the Department of Revenue or their authorised representative, and, in the case of Switzerland, the Director of the Federal Tax Administration or his authorised representative;
- h) the term "national" means any individual, possessing the nationality of a Contracting State and any legal person, partnership or association deriving its status from the laws in force in the Contracting State;
- i) the term "international traffic" means any transport by an aircraft operated by an enterprise of a Contracting State, except when the aircraft is operated solely between places in the other Contracting State;
- j) the term "operation of aircraft" shall mean business of transportation by air of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft and any other activity directly connected with such transportation;
- k) the term "fiscal year" means:

(i) in the case of India, the "previous year" as defined in the Income-tax Act of India; and

(ii) in the case of Switzerland, the calendar year.

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

Article 4

Fiscal domicile

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to taxation therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his residential status for the purposes of this Agreement 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

- 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 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 Agreement, 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 especially:

a) a place of management;

b) a branch;

- c) an office;
- d) a store or other sales outlet;
- e) a factory;
- f) a workshop;
- g) a warehouse in relation to a person providing storage facilities for others;
- h) a permanent sales exhibition;
- i) a mine, a quarry, an oil or gas well, or any other place of extraction of natural resources;
- j) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or supervisory activity continues for a period of more than six months;
- k) an installation or structure used for the exploration or development of natural resources for more than 90 days; and
- l) the furnishing of services other than included services as defined in Article 12, 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 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) for a period or periods aggregating more than 30 days within any twelve-month period.

3. The term "permanent establishment" shall not be deemed to include:

- a) the use of facilities solely for the purpose of storage or display 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 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 for the purpose of advertising, for the supply of information or for scientific research, being activities solely of a preparatory or auxiliary character in the trade or business of the enterprise.

4. 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 paragraph 5 applies - 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 State, an authority to negotiate and enter into contracts for or on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or

- (ii) he habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise from which he regularly delivers goods or merchandise for or on behalf of the enterprise; or
- (iii) in so acting, he manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise, provided that this provision shall apply only in relation to the goods or merchandise so manufactured or processed.

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 wholly or almost wholly on behalf of that enterprise or for the enterprise and other enterprises which are controlled by it or have a controlling interest in it, he would 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 for either company a permanent establishment of the other.

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 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, oilwells, quarries and other places of extraction of natural resources. Ships 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 professional services.

Article 7

Business profits

1. The business profits of an enterprise of a Contracting State, other than the profits from the operation of ships in international traffic, 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 directly or indirectly attributable to that permanent establishment.

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

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, whether in the State in which the permanent establishment is situated or elsewhere. Executive and general administrative expenses shall be allowed as deductions in accordance with the taxation laws of that State. Nothing in this paragraph shall, however, authorise a deduction for expenses which would not be deductible if the permanent establishment

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

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

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

Article 8

Air transport

1. Profits from the operation of 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. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an

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.

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 15 per cent of the gross amount of the dividends.

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

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the taxation law of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such a case the provisions of Article 7 shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor

the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 15 per cent of the gross amount of interest.
3. Notwithstanding the provisions of paragraph 2, where the interest is paid to a bank carrying on a bona fide banking business or, to an enterprise which holds directly or indirectly at least 20 per cent of the capital of the company paying the interest which are a resident of the other Contracting State and are the beneficial owner of the interest, the tax so charged in the Contracting State in which the interest arises shall not exceed 10 per cent of the gross amount of the interest.
4. Notwithstanding the provisions of paragraphs 2 and 3,
 - a) interest arising in Switzerland and paid to a resident of the other Contracting State

by any institution specified and agreed in letters exchanged between the competent authorities of the Contracting States.

- b) interest arising in India and paid to a resident of Switzerland shall be taxable only in Switzerland if it is paid in respect of a loan made, guaranteed or insured, or a credit extended, guaranteed or insured under the Swiss provisions regulating the Export or Investment Risk Guarantee or by any institution specified and agreed in letters exchanged between the competent authorities of the Contracting States;
- c) interest arising in a Contracting State and paid to a resident of the other Contracting State engaged in the operation of aircraft in international traffic shall be taxable only in that other State to the extent that such interest is paid on funds connected with such activity;
- d) interest arising in India and paid to a resident of Switzerland shall be exempt from Indian tax if the loan or other indebtedness in respect of which the interest is paid is an approved loan. The term "approved loan" means any loan or other indebtedness approved by the Government of India in this behalf.

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

tracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such a case the provisions of Article 7 shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, 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 such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

8. Where, owing to a special relationship between the payer and the beneficial owner 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 beneficial owner 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 Agreement.

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 referred to in sub-paragraph b) of paragraph 4 of this Article:

(i) during the first five taxable years for which this Agreement 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 referred to in sub-paragraph a) of paragraph 4 of this Article, 10 per cent of the gross amount of such royalties or fees for included services.

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

- a) payments of any kind received as a 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; and
- b) payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial, or scientific equipment.

4. For purposes of this Article the term "fees for included services" means:

- a) 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 are ancillary and subsidiary to the application or enjoyment of the right, for which a payment described in sub-paragraph b) of paragraph 3 is received;

through the provision of services of technical or other personnel) if such services:

- (i) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in sub-paragraph a) of paragraph 3 is received; or
- (ii) 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;
- b) for teaching in or by educational institutions;
- c) for services for the personal use of the individual or individuals making the payment; or
- d) to an employee of the person making the payments or to any individual or firm of individuals (other than a company) for professional services falling under Article 14.

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

effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

7. 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 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, then such royalties or fees for included services shall be deemed to arise in the State in which the permanent establishment is situated.

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 this Agreement.

Article 13

Capital gains

situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

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

4. Gains from the alienation of shares of a company, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State.

5. a) Gains from the alienation of shares in a company which is a resident of a Contracting State shall be taxable only in the Contracting state of which the alienator is a resident.

b) Notwithstanding the provision of sub-paragraph a), India may tax gains from the alienation of shares in a company which is a resident of India

(i) if the shares form part of at least a 10 per cent interest in the capital stock of that company

(ii) in other cases if the alienation takes place to a resident of that State.

In these cases the provisions of paragraph 1, sub-paragraph b) of Article 21 shall apply.

o. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

Personal Services

1. Subject to the provisions of Articles 15, 17, 18, 19 and 20, salaries, wages and other similar remuneration in respect of an employment as well as income in respect of professional services or other activities of an independent character, derived by an individual resident of a Contracting State, shall be taxable only in that State, unless the employment, services or activities are exercised or performed in the other Contracting State. If the employment, services or activities are so exercised or performed, such remuneration or income as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration or income derived by a resident of a Contracting State in respect of an employment, services or activities exercised or performed 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 fiscal year, and
- b) the remuneration or income is paid by, or on behalf of, a person who is not a resident of the other State, and
- c) the remuneration or income is not borne by a permanent establishment which that person has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

Article 15

Directors' fees

Directors' 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 shall be taxable only in that other Contracting State.

Article 16

Artistes and athletes

television artistes and musicians) or athletes, from their personal activities as such shall be taxable only in the Contracting State in which these activities are exercised.

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

3. The provisions of paragraphs 1 and 2 shall not apply if the visit to a Contracting State of the entertainer or the athlete is directly or indirectly supported, wholly or substantially, from the public funds of the other Contracting State, including any political sub-division, local authority or statutory body of that other State.

Article 17

Pension and Annuities

1. Any pension (other than a pension referred to in Article 18) or annuity derived by a resident of a Contracting State shall be taxable only in that State.

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

period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 18

Government remuneration and pensions

1. Remuneration, other than a pension, paid by the Government of a Contracting State to any individual who is a citizen of that State in respect of services rendered in the discharge of governmental functions in the other Contracting State shall be taxable only in the first-mentioned State.

2. Any pension paid by the Government of a Contracting State to any individual in respect of services rendered shall be taxable only in that Contracting State.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply to payments 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. For the purposes of this Article, the term "Government" shall include any State Government, canton or local or statutory authority of either Contracting State and in particular the Reserve Bank of India and the Swiss National Bank.

Article 19

Students and apprentices

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

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.

Article 20

Professors, Teachers and Researchers

1. An individual who is or was a resident of a Contracting State and who visits the other Contracting State for a period not exceeding 24 months for the primary purpose of teaching or engaging in research, or both, at a university or other recognised educational institution shall be exempt from tax in that other Contracting State on his income from personal services for teaching or research at the university or the recognised educational institution.

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

Article 21

Elimination of double taxation

1. a) Subject to any provisions of the law of India which may from time to time be in force and which relates to the relief of taxes paid in a country outside India, where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Switzerland, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in Switzerland whether directly or by deduction. Such deduction shall not, however, exceed that part of the income tax (as computed before the deduction is given) which is attributable to the income which may be taxed in Switzerland.
- b) Where a resident of Switzerland derives gains from the alienation of shares which may be taxed in India according to Article 13, paragraph 5, sub-paragraph b), India shall allow as a deduction from tax on that income, an amount equal to the income tax paid in Switzerland on these capital gains. The deduction shall not, however, exceed that part of the Indian income tax, which is imposed on these capital gains.

2. a) Where a resident of Switzerland derives income which, in

provisions of sub-paragraphs b), c) and d), exempt such income from tax but may, in calculating tax on the remaining income of that resident, apply the rate of tax which would have been applicable if the exempted income had not been so exempted; provided, however, that such exemption shall apply to gains referred to in paragraph 4 of Article 13 only if actual taxation of such gains in India is demonstrated.

b) Where a resident of Switzerland derives dividends, interest, royalties or fees for included services which, in accordance with the provisions of Articles 10, 11 and 12, may be taxed in India, Switzerland shall allow, upon request, a relief to such resident. The relief may consist of

(i) a credit from the Swiss tax on the income of that resident of an amount equal to the tax levied in India in accordance with the provisions of Articles 10, 11 and 12; such credit shall not, however, exceed that part of the Swiss tax, as computed before the credit is given, which is appropriate to the income which may be taxed in India; or

(ii) a lump sum reduction of the Swiss tax; or

(iii) a partial exemption of such dividends, interest, royalties or fees for included services from Swiss tax, in any case consisting at least of the deduction of the tax levied in India from the gross amount of the dividends, interest, royalties or fees for included services.

Switzerland shall determine the applicable relief and regulate the procedure in accordance with its laws.

conventions of the Swiss Confederation for the avoidance of double taxation.

c) Notwithstanding the provisions of sub-paragraph b), where a resident of Switzerland derives interest, royalties or fees for included services which, in accordance with Articles 11, paragraph 2 and 12, paragraph 2, sub-paragraph a) may be taxed in India, Switzerland shall allow, upon request, a relief to such resident which may consist of

(i) A. a deduction of 5 per cent of the gross amount of such interest referred to in Article 11, paragraph 2;

B. during the first five calendar years for which this Agreement has effect,

(1) for royalties and fees for included services referred to in Article 12, paragraph 2, sub-paragraph a)(i) (A):

aa) a deduction of 5 per cent of the gross amount of royalties or of fees for included services covered by Article 12, paragraph 4, sub-paragraph b)(i);

bb) a deduction of 10 per cent of the gross amount of fees for included services covered by Article 12, paragraph 4, sub-paragraph b)(ii);

(2) for royalties and fees for included services referred to in Article 12, paragraph 2, sub-paragraph a)(i) (B):

aa) a deduction of 10 per cent

services covered by Article 12, paragraph 4, sub-paragraph b)(i);

bb) a deduction of 15 per cent of the gross amount of fees for included services covered by Article 12, paragraph 4, sub-paragraph b)(ii);

C. during the subsequent years for which this Agreement has effect:

aa) a deduction of 5 per cent of the gross amount of royalties referred to in Article 12, paragraph 2, sub-paragraph a)(ii) or of fees for included services covered by Article 12, paragraph 4, sub-paragraph b)(i);

bb) a deduction of 10 per cent of the gross amount of fees for included services covered by Article 12, paragraph 4, sub-paragraph b)(ii);

(ii) a credit from the Swiss tax on the income of that resident, as computed by reference to the relief referred to in the foregoing sub-paragraph of an amount of

A. 10 per cent of the gross amount of the interest referred to in Article 11, paragraph 2;

B. 10 per cent of the gross amount of the royalties referred to in Article 12, paragraph 2, sub-paragraph a), and of the fees for included services covered by Article 12, paragraph 4, sub-paragraph b)(i);

C. 5 per cent of the gross amount of the fees for included services covered by Article 12, paragraph 4, sub-paragraph b)(ii).

Such credit shall, however, be determined pursuant to the general principles of the relief referred to in sub-paragraph b) of this paragraph.

d) Where a resident of Switzerland derives interest dealt with in section 10(4) and 10(15)(iv)(c) of the Indian Income Tax Act of 1961 and referred to in Article 11, paragraph 4, sub-paragraph d), Switzerland shall allow, upon request, a relief to such resident of an amount equal to 10 per cent of the gross amount of the interest.

Article 22

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 and under the same conditions are or may be subjected.

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

3. Enterprises of a Contracting State; the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned 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 and under the same conditions.

4. In this Article, the term "taxation" means taxes which are the subject of this Agreement.

Article 23

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 Agreement, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident. The case must be presented within three years from the first notification of the action giving rise to taxation not in accordance with the Agreement.

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

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

4. The competent authorities of the Contracting States shall settle the limitations provided for in Articles 10, 11 and 12.

5. 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 24

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of this Agreement in relation to the taxes which are the subject of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of this Agreement. No information as aforesaid shall be exchanged which would

2. In no case shall the provisions of this Article be construed as imposing upon either of the Contracting States the obligation to carry out administrative measures at variance with the regulations and practice of either Contracting State or which would be contrary to its sovereignty, security or public policy or to supply particulars which are not procurable under its own legislation or that of the State making application.

Article 25

Diplomatic and consular officials

Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

Article 26

Entry into force

1. This Agreement shall come into force when the Contracting States have notified each other through diplomatic channels that all legal requirements and procedures for giving effect to this Agreement have been satisfied.

2. This Agreement shall enter into force upon the date of such notification and its provisions shall have effect:

- a) in India, in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the Agreement enters into force; and
- b) in Switzerland, in respect of income arising in any fiscal year beginning on or after the first day of January next following the calendar year in which the Agreement enters into force.

3. The Agreement between the Government of India and the Swiss Federal Council concerning the taxation of enterprises operating aircraft signed at New Delhi on 28 August 1958 (in this Article called "the 1958 Agreement") shall cease to have effect with respect to taxes to which the Agreement applies when the provisions of this Agreement become effective in accordance with paragraph 2.

4. The 1958 Agreement shall terminate on the expiration of the last date on which it has effect in accordance with the foregoing provisions of this Article.

Article 27

Termination

This Agreement shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year, give notice of termination to the other Contracting State and, in such event this Agreement shall cease to be effective:

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

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

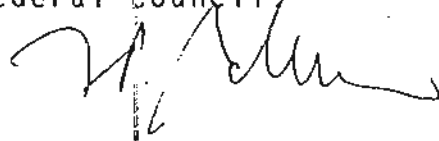
IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed the present Agreement.

Done in duplicate at New Delhi this 2nd day
of November .., one thousand nine hundred and ninety four ...
in the Hindi, German, and English languages, all the texts being
equally authentic, except in the case of doubt when the English
text shall prevail.

For the Government of
the Republic of India:



For the Swiss
Federal Council;



P R O T O C O L

to the Agreement between the Republic of India and the Swiss Confederation for the avoidance of double taxation with respect to taxes on income.

At the signing of the Agreement concluded to-day between the Government of the Republic of India and the Swiss Federal Council for the avoidance of double taxation with respect to taxes on income, the undersigned have agreed upon the following additional provisions which shall form an integral part of the said Agreement.

1. With reference to Article 5

It is understood that the remuneration for furnishing of services covered by the sub-paragraph 1) of paragraph 2 shall be taxed according to Article 7 or, on request of the enterprise, according to the rates provided for in paragraph 2, sub-paragraph a) of Article 12.

With respect to paragraph 3 of Article 5 it is understood that the maintenance of a stock of goods or merchandise for the purpose of delivery, or facilities used for delivery of goods and merchandise do not constitute a permanent establishment as long as the conditions of paragraphs 2 or 4 of the same Article are not fulfilled.

With respect to paragraph 4 of Article 5 it is understood that a person who habitually secures orders in a Contracting State wholly or almost wholly for the enterprise itself, shall be deemed to be a permanent establishment of that enterprise only if such person habitually represents to persons offering to buy goods or merchandise that acceptance of an order by such person constitutes the agreement of the enterprise to supply goods or merchandise under the terms and conditions specified in the

2. With reference to Article 7

With respect to paragraph 1 of Article 7 it is understood that the words "directly or indirectly" mean, for the purposes of this Article, that where a permanent establishment takes an active part in negotiating, concluding or fulfilling contracts entered into by the enterprise, then, notwithstanding that other parts of the enterprise have also participated in those transactions, there shall be attributed to the permanent establishment that proportion of profits of the enterprise arising out of those contracts as the contribution of the permanent establishment to those transactions bears to that of the enterprise as a whole. It is also understood that profits shall be regarded as attributable to the permanent establishment to the above-mentioned extent, even when the contracts in question are made directly with the head office of the enterprise rather than with the permanent establishment.

In the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, which are carried out by an enterprise having a permanent establishment, in a Contracting State the business profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the State where the permanent establishment is situated; the profits related to that part of the contract which is carried out outside that Contracting State by the head office of the enterprise shall be taxable only in the State of which the enterprise is a resident, provided that the amount payable is not covered under the provisions of Article 12.

3. With reference to Articles 10, 11 and 12

If after the signature of this Agreement under any Convention or Agreement between India and a third State which is a member of the OECD India should limit its taxation at source on dividends, interest, royalties or fees for included services to a rate lower or a scope more restricted than the rate or scope provided for in this Agreement on the said items of income, then, Switzerland and India shall enter into negotiations without undue delay in order to provide the same treatment to Switzerland as that provided to the third State.

4. With reference to Article 12

It is understood that gains derived from the alienation of a right or a property mentioned in paragraph 3 of Article 12 may be taxed according to Article 7 or Article 13. However, gains derived from the alienation of any such right or property which are contingent on the profits, productivity or use thereof may be taxed according to Article 12.

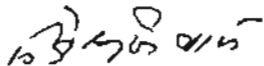
5. With reference to Article 23

With respect to paragraph 2 it is understood that if the mutual agreement procedure has been introduced within five years from the moment when the tax assessment became final, then any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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

one in duplicate at New Delhi..... this^{2nd}..... day of November., one thousand nine hundred and ninety-four.... in the Hindi, German and English languages, all the texts being equally authentic, except in the case of doubt when the English text shall prevail.

For the Government of
the Republic of India:



(T.S. SRINIVASAN)
Chairman,
Central Board of Direct Taxes
Ministry of Finance.

Notification No.: 9752
F.NO.501/7/73-FTD

For the Swiss Federal
Council:



(JEAN-PIERRE ZEHNDER)
Ambassador of Switzerland
in India.



(V.B. SRINIVASAN)
Joint Secretary (FT&TR)