

**AGREEMENT  
BETWEEN  
THE KINGDOM OF NEPAL  
AND  
THE REPUBLIC OF AUSTRIA  
FOR  
THE AVOIDANCE OF DOUBLE TAXATION  
AND  
THE PREVENTION OF FISCAL EVASION  
WITH RESPECT TO TAXES ON INCOME**

**HIS MAJESTY'S GOVERNMENT OF NEPAL  
AND  
THE REPUBLIC OF AUSTRIA  
DESIRING TO CONCLUDE AN AGREEMENT  
FOR THE AVOIDANCE  
OF  
DOUBLE TAXATION AND THE PREVENTION  
OF FISCAL EVASION  
WITH RESPECT TO TAXES ON INCOME  
HAVE AGREED AS FOLLOWS:**

**Article 1**  
**PERSONS COVERED**

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

**ARTICLE 2**  
**TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Agreement shall apply are in particular:
  - a) in Austria :
    - i) the income tax (die Einkommensteuer) :
    - ii) the corporation tax (die Koerperschaftsteuer)  
(hereinafter referred to as "Austrian Tax")
  - b) in Nepal:  
the Income Tax imposed under the Income Tax Act and the Finance Act.  
(hereinafter referred to as "Nepal Tax")
4. The Agreement shall apply also to any identical or substantially similar taxes on income which are imposed after the date of signature of the Agreement in addition to, or in place of, those referred to in paragraph 3. The competent authorities of the Contracting States shall notify each other of any substantial changes, which have been made in their respective taxation laws.

**Article 3**  
**GENERAL DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires:
  - a) i) the term "Austria" means the Republic of Austria;
  - ii) the term "Nepal" means the Kingdom of Nepal;
  - b) the term " a Contracting State" and "the other Contracting State" mean Nepal or Austria, as the context requires;
  - c) the term "person" includes an individual, a company and any other body of persons;
  - d) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
  - e) 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;

- f) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State except, when the ship or aircraft is operated solely between places in the other Contracting State;
  - g) the term "competent authority" means"
    - i) in Austria: the Federal Minister of Finance or his authorized representative;
    - ii) in Nepal: the Minister of Finance or his authorized representative;
  - h) the term "national" means:
    - i) any individual possessing the nationality of a Contracting State;
    - ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.
2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

#### **Article 4**

#### **RESIDENT**

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 tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
  - a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
  - b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
  - c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
  - d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall endeavor to settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

## **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 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, and
  - h) a farm or plantation.
3. The term "permanent establishment" likewise encompasses;
  - a) a building site, construction, assembly or installation project, or an installation or drilling rig or ship used for the exploration or development of natural resources, including supervisory activities in connection therewith, but only if that site, project, or use lasts or those activities last more than six months;
  - b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than 183 days within any twelve month period.
4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
  - a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
  - b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
  - e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
  - f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provision of paragraphs 1 and 2, where a person - other than agent of an independent status to whom paragraph 7 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person;

- a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
  - b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he delivers goods or merchandise on behalf of the enterprise.
6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except with regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.
  7. 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 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 principally on behalf of that enterprise, he shall not be considered an agent of an independent status within the meaning of this paragraph, if it is shown that the transactions between the agent and the enterprise were not made under arm's length conditions.
  8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.
  - 9.

## **Article 6**

### **INCOME FROM IMMOVABLE PROPERTY**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

## **Article 7**

### **BUSINESS PROFITS**

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise

may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar condition and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions, expenses allowable under the provisions of the domestic law and which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred whether in the State in which the permanent establishment is situated or elsewhere. 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 or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments, in return for the use of patents or other rights, or by way of commission 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. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

## **Article 8**

### **SHIPPING AND AIR TRANSPORT**

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

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

## **Article 9**

### **ASSOCIATED ENTERPRISES**

1. Where
  - a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
  - b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.
2. Where a Contracting State includes in the profits of an enterprise of that State-and taxes accordingly-profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement 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 recipient is the beneficial owner of the dividends the tax so charged shall not exceed:
  - a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the shares of the company paying the dividends;
  - b) 10 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the shares of the company paying the dividends;
  - c) 15 per cent of the gross amount of dividends in all other cases.

The competent authorities of the Contracting States shall, by mutual agreement, settle the mode of application of these limitations.

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

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

## **Article 11**

### **INTEREST**

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of interest the tax so charged shall not exceed 15 per cent of the gross amount of the interest. Provided, however, that where the interest is paid to a bank carrying on banking business, which is a resident of the other Contracting State and is the beneficial owner of the interest, the tax charged in the Contracting State in which the interest arises shall not exceed 10 per cent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived by the Government of the other Contracting State, including a local authority thereof, the Central Bank or any financial institution controlled by that Government, shall be exempt from tax in the first-mentioned State.
4. For the purpose of paragraph 3, the terms "the Central Bank" and "Financial institution controlled by the Government" mean;
  - a) In the case of Austria:
    - i) the Oesterreichische Nationalbank (Central Bank of Austria), and
    - ii) the Oesterreichische Kontrollbank AG;
  - b) In the case of Nepal:
    - i) Nepal Rastra Bank (Central Bank of Nepal);
    - ii) any organisation established in Nepal after the date of signature of this Agreement which is of a similar nature as the organisation established in Austria and referred to in

sub-subparagraph ii) of subparagraph a). The competent authorities shall by mutual agreement determine whether such organisations are of a similar nature;

- iii) any other financial institution, the capital of which is wholly owned by His Majesty's Government of Nepal, as may be agreed upon from time to time between the competent authorities of the Contracting States.
5. Interest arising in a Contracting State on a loan guaranteed by any of the bodies mentioned or referred to in paragraph 4, subparagraph a) or subparagraph b) and paid to a resident of the other Contracting State shall be taxable only in that other State.
6. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
7. The provisions of paragraph 1 and 2 shall not apply if the beneficial owner of the interest being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such cases, the provisions of Article 7 or Article 14, as the case may be, shall apply.
8. 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 or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
9. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## **Article 12**

### **ROYALTIES**

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 15 per cent of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films or films or tapes used for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right, property or contract in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such cases the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority, or a resident of that State. Where, however, the person paying the royalties whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties, are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been paid in the absence of such relationship, the provisions of this Article shall apply 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**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or of 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 any property other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the Contracting State of which the alienator is a resident.

### **Article 14**

#### **INDEPENDENT PERSONAL SERVICES**

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities or he is present in that other State for a period or periods exceeding in the aggregate 183 days in any twelve month period. If he has a fixed base or is present in that other State for the aforesaid period or periods the income may be taxed in that other State but only so much of it as is attributable to that fixed base or is derived in that other State during the aforesaid period or periods.

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

#### **Article 15**

##### **DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 16, 18, 19 and 20, 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 within any twelve month period, and
  - b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
  - c) the remuneration is not borne by a permanent establishment or a fixed base, which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

#### **Article 16**

##### **DIRECTORS' FEES**

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

#### **Article 17**

##### **ARTISTES AND SPORTSMEN**

1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.
3. Notwithstanding the provisions of paragraphs 1 and 2 income derived from activities referred to in paragraph 1 performed under a cultural agreement or arrangement between the Contracting States, shall be exempt from tax in the Contracting State in which the activities are exercised if the

visit to that State is wholly or substantially supported by funds of either Contracting State, a local authority or public institution thereof.

## **Article 18**

### **PENSIONS AND SOCIAL SECURITY PAYMENTS**

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment may be taxed in that State.
2. However, such pensions and other similar remuneration may also be taxed in the other Contracting State if the payment is made by a resident of that other State or a permanent establishment situated therein.
3. Notwithstanding the provisions of paragraphs 1 and 2, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or political subdivision or a local authority thereof shall be taxable only in that State.

## **Article 19**

### **GOVERNMENT SERVICE**

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

## **Article 20**

### **STUDENTS AND TRAINEES**

An individual who, immediately before visiting a Contracting State, was a resident of the other Contracting State and whose visit to the first mentioned Contracting State is solely for the purpose of:

- a) studying at a university, college or school or other recognised educational institution, or
- b) securing training to qualify him to practice a profession or trade, or

- c) studying or carrying out research as a recipient of a grant, allowance or award from a governmental, religious, charitable, scientific, literary or educational organisation, shall be exempt from tax in the first-mentioned State on:
  - i) remittance from abroad for the purpose of this maintenance, education, study, research, or training;
  - ii) the grant, allowance or award; and
  - iii) income which he derives from an employment which he exercises in this State for the purposes of practical training for not longer than a total of six months in any taxable year.

## **Article 21**

### **OTHER INCOME**

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may also be taxed in that other State.
4. Income derived by a resident of a Contracting State from the other Contracting State under a legal claim to maintenance may not be taxed in the first-mentioned State if such income would be exempt from tax according to the laws of the other Contracting State.

## **Article 22**

### **ELIMINATION OF DOUBLE TAXATION**

1. In the case of Austria double taxation shall be eliminated as follows:
  - a) Where a resident of Austria derives income which, in accordance with the provisions of this Agreement may be taxed in Nepal, Austria shall, subject to the provisions of subparagraphs b) and c) exempt such income from tax.
  - b) Where a resident of Austria derives items of income which in accordance with the provisions of paragraphs 2 of Articles 10, 11, 12 and 18 and paragraph 3 of Article 21 may be taxed in Nepal, Austria shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Nepal. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from Nepal.
  - c) Where in accordance with any provision of the Agreement income derived by a resident of Austria is exempt from tax in Austria, Austria may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

2. In the case of Nepal double taxation shall be eliminated as follows:

Where a resident of Nepal derives income from Austria which in accordance with the provisions of this Agreement, may be taxed in Austria the amount of Austrian tax payable in respect of that income, shall be allowed as a credit against the Nepal tax imposed on that resident in respect of that income. The credit shall not, however, exceed that part of the Nepal tax, which is attributable to such income.

3. For the purposes of this Article, the term "tax" means Nepal tax or Austrian tax, as the context requires, but shall not include any amount which is payable in respect of any default or omissions in relation to the taxes to which this Agreement applies or which represents a penalty imposed relating to these taxes.
4. For the purpose of allowance as credit in a Contracting State, the tax paid in the other Contracting State shall be deemed to include the tax which is otherwise payable in that other State but has been reduced or waived by that State under its legal provisions for tax incentives.

### **Article 23**

#### **NON-DISCRIMINATION**

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation of a permanent establishment, which an enterprise of a Contracting State has in the other Contracting State, shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, relief and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 9 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first- mentioned State to any taxation or any requirement connected therewith which is other or more burdensome in the taxation and connected requirements to which other similar enterprise of the first-mentioned State are or may be subjected.
5. In this Article the term "taxation" means taxes which are the subject of this Agreement.

### **Article 24**

#### **MUTUAL AGREEMENT PROCEDURE**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under

paragraph 1 of Article 23, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual Agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavor 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 this Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities, through consultations, shall develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article.

## **Article 25**

### **EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of this Agreement. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings, or in judicial decisions. Even in such cases the confidentiality of person-related data may be waived only insofar as this is necessary to safeguard predominant and legitimate interests of another person or predominant public interests.
2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:
  - a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
  - b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
  - c) to supply information, which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public) or to the basic rights granted by a State, in particular in the area of data protection.
3. Notwithstanding the provisions of paragraph 1 any exchange of information as is necessary for carrying out the provisions of the domestic laws of the Contracting States concerning taxes covered by this Agreement can be carried out only if an administrative arrangement between the Ministers of Finance is concluded which will also settle the mode of application of such exchange of information.

## **Article 26**

### **DIPLOMATIC AGENTS AND CONSULAR OFFICERS**

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

## **Article 27**

### **ENTRY INTO FORCE**

1. Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the entering into force of this Agreement. This Agreement shall enter into force on the first day of the third month next following that in which the later of these notifications took place.
2. This Agreement shall have effect:
  - a) in Austria:

in respect of the taxes levied for any fiscal year following the calendar year in which the Agreement enters into force;
  - b) in Nepal:

in respect of income derived on or after the first day of Nepalese fiscal year next following that to the entry into force of the Agreement.

## **Article 28**

### **TERMINATION**

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving written notice of termination on or before the thirtieth day of June of any calendar year following after the period of five years from the year in which the Agreement enters into force. In such case, the Agreement shall cease to have effect;

- (a) in Austria:

in respect of the taxes levied for any fiscal year beginning after December 31 in the calendar year in which the notice of termination has been given;
- (b) in Nepal:

in respect of income derived on or after the first day of the Nepalese fiscal year next following that in which the notice of termination is given.

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

DONE in duplicate in Kathmandu on the 15<sup>th</sup> day of December 2000 in the English language.

For His Majesty's Government of Nepal.

For the Republic of Austria.

.....

Dr. Bimal Prasad Koirala  
Secretary  
Ministry of Finance  
His Majesty's Government of Nepal.

.....

Dr. Johann DEMEL  
Ambassador  
Ministry of Foreign Affairs  
Republic of Austria.

## **PROTOCOL**

At the moment of signing the Agreement between the Republic of Austria and the Kingdom of Nepal for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to Taxes on Income the undersigned have agreed that the following provisions shall form an integral part of the Agreement.

### **1. Referring to the interpretation of the Agreement**

It is understood that provisions of the Agreement which are drafted according to the corresponding provisions of the OECD-Model Convention on Income and on Capital or the United Nations Model Double Taxation Convention between Developed and Developing Countries with respect to Taxes on Income shall generally be expected to have the same meaning as expressed in the OECD or UN Commentary thereon. The understanding in the preceding sentence will not apply with respect to any contrary interpretation agreed to by the competent authorities after the entry into force of the Agreement.

The Commentaries-as they may be revised from time to time-constitute a means of interpretation in the sense of the Vienna Convention of 23rd May 1969 on the Law of Treaties. In case of any divergence in the interpretation as expressed in the commentaries of the OECD and the UN Model, a common interpretation would have to be sought by mutual agreement according to Article 24, if necessary.

### **2. Referring to Article 5, paragraph 2, subparagraph h):**

It is understood that this provision only refers to activities which are treated as business income in the sense of Article 7 of this Agreement.

### **3. Referring to Article 7:**

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

**4. Referring to Article 22 paragraph 4:**

It is understood that paragraph 4 of Article 22 will not apply if the form of a transaction giving rise for the application of those provisions was mainly chosen with a view to avoid taxes.

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

DONE in duplicate in Kathmandu this 15<sup>th</sup> day of December 2000 in the English language.

For His Majesty's Government of Nepal.

For the Republic of Austria.

.....  
Dr. Bimal Prasad Koirala  
Secretary  
Ministry of Finance  
His Majesty's Government of Nepal.

.....  
Dr. Johann DEMEL  
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Ministry of Foreign Affairs  
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