

1982 Income and Capital Tax Convention and Final Protocol

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Status: In Force

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Republic of India and the Government of the Democratic Socialist Republic of Sri Lanka desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, have agreed as follows:

Article 1 Personal Scope

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

Article 2 Taxes Covered

1. This Convention shall apply to taxes on income and on capital imposed on behalf of each Contracting State irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.
3. The existing taxes to which this Convention shall apply are:--
 - (a) In Sri Lanka:
 - (i) the income tax, including the income tax based on the turnover of enterprises licensed by the Greater Colombo Economic Commission; and
 - (ii) the wealth tax;
(hereinafter referred to as "Sri Lanka tax")
 - (b) In India:
 - (i) the income tax including any surcharge thereon;
 - (ii) the surtax; and
 - (iii) the wealth tax.
(hereinafter referred to as "Indian tax")
4. This Convention shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any important changes which have been made in their respective taxation laws.

Article 3 General Definition

1. In this Convention, unless the context otherwise requires:
 - (a) the terms "a Contracting State" and "the other Contracting State" mean Sri Lanka or India as the context requires;
 - (b) the term "person" includes an individual a company and any other body of persons;
 - (c) the term "company" means any body corporate or any entity which is treated as a body corporate for the tax purposes;
 - (d) 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;
 - (e) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - (f) the term "national" means:
 - (i) an individual possessing the nationality of a Contracting State;
 - (ii) a legal person, partnership or an association deriving its status as such from the laws in force in a Contracting State;
 - (g) the term "competent authority" means:
 - (i) in the case of Sri Lanka, the Commissioner-General of Inland Revenue;

(ii) in the case of India, the Central Government in the Ministry of Finance (Department of Revenue).

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

Article 4 Fiscal Domicile

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the law 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. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

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

(a) he shall be deemed to be a resident of the State in which he has a permanent home available to him. If he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

(b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

Article 5 Permanent Establishment

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

2. The term "permanent establishment" shall include 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) an agricultural or farming estate or plantation;

(h) a building site or construction or assembly project which exists for more than 183 days;

(i) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel, where activities of that nature continue within the country for a period or periods aggregating more than 183 days within any twelve month period.

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

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

(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 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 on behalf of an enterprise of the other Contracting State--other than an agent of an independent status to whom paragraph (6) of this Article Applies--shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

5. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, 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 independent status to whom paragraph (6) of this Article applies.

6. 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 almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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

Article 9 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 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) of this Article 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) of this Article 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 profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to--

(a) that permanent establishment,

(b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment, or

(c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

The provisions of sub-paragraphs (b) and (c) above shall not apply if the enterprise proves that such sales or activities are not attributable to the permanent establishment.

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

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purpose 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 a specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on money 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 money 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) of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment shall, however, be such that the result will 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 purpose of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those articles shall not be effected by the provisions of this Article.

Article 8 Shipping and Air Transport

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

2. Notwithstanding the provisions of paragraph (1), profits derived from the operation of ships in international traffic may be taxed in the Contracting State in which such operation is carried on; but the tax so charged shall not exceed 50 per cent of the tax otherwise imposed by the international law of that State.

Provided that for the purpose of the calculation of the tax, such profits shall be deemed to be an amount not exceeding the rates presently provided in the taxation laws of the respective States for the computation of such profits.

3. The provisions of paragraphs (1) and (2) of this Article shall likewise apply in respect of profits from the participation in a pool, a joint business or an international operating agency of any kind by enterprises engaged in the operation of ships or aircraft in international traffic.

4. For the purpose of paragraph 1, interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as income from the operation of such aircraft, and the provisions of Article 11 shall not apply in relation to such interest.

5. If the place of effective management of a shipping enterprise is abroad 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 State of which the operator of the ship is a resident.

Article 9 Associated Enterprise

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 Convention and the competent authorities of the Contracting State 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 the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.
3. The term "dividends" as used in this Article means income from shares, 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) of this Article 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 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 subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11 Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph (2) of this Article interest arising in a Contracting State shall be exempt from tax in that State if:
 - (a) the payer of the interest is the Government of that Contracting State or a local authority thereof, or
 - (b) the interest is paid to the Government of the other Contracting State or local authority thereof or any agency or instrumentality (including a financial institution) wholly owned by that other Contracting State or local authority thereof.
4. The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the state in which the income arises.
5. The provisions of paragraphs (1) to (3) of this Article 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 and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.
6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, 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 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.
7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12 Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalty the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of or the right to the any copyright of literary, artistic or scientific work including cinematograph films, or tapes for television or broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs (1) and (2) of this Article 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 and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.
6. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payment shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13 Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in paragraph (2) of 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 including such gains from the alternation 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 stocks shares of a company may be taxed in the Contracting State in which they have been issued.
5. Gains from the alienation of any property other than that referred to in paragraphs (1) to (4) of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.
6. The term "alienation" means the sale, exchange, transfer, or relinquishment of the property or the extinguishment of any rights therein or the compulsory acquisition hereof under any law in force in the respective Contracting States.

Article 14 Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless his stay in the other Contracting State is for a period or periods exceeding in the aggregate 120 days within any 12 months period, when such income may also be taxed in the other Contracting State.
2. The term "professional services" includes 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 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment is exercisable only in that

State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting State.

2. Notwithstanding the provisions of paragraph 1, 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 12 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 in respect of an employment exercised abroad a ship or aircraft in international traffic, may be taxed only in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16 Directors' Fees

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

Article 17 Artistes and Athletes

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

Provided that such income shall not be taxed in the said Contracting State if the visit of the public entertainers or athletes to that State is directly or indirectly supported wholly or substantially, from the public funds of the Government of the other Contracting State.

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

3. For the purposes of this Article, the term "Government" includes a State Government, a political sub-division or a local authority of either Contracting State.

Article 18 Government Service

1. (a) Remuneration, other than a pension, paid by the Government of a Contracting State to an individual in respect of services rendered to that State or a local authority thereof shall be taxable only in that State.

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

(i) is a national of that State, or

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

2. Any pension paid by the Government of one of the Contracting States to any individual may be taxed in that Contracting State.

3. The provisions of Articles 15, 16 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof.

4. For the purposes of this Article, the term "Government" shall include any State Government or local authority of either Contracting State, the Reserve Bank of India and the Central Bank of Ceylon.

Article 19 Non-Government Pensions and Annuities

1. Any pension (other than a pension referred to in Article 18) or annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first-mentioned Contracting State.

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

3. The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 20 Professors and Teachers

A professor or teacher who make a temporary visit to a Contracting State for a period not exceeding two years for the purpose of teaching or conducting research at a university, college, school or other

educational institution, and who is, or immediately before such visit was a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State in respect of remuneration for such teaching or research.

Article 21 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 to grants, scholarships and remuneration from employment not covered by paragraph (1) of this Article a student or business apprentice described in paragraph (1) of this Article shall, in addition, be entitled during such education or training to the same exemption, reliefs or reductions in respect of taxes available to residents of the State which he is visiting.

Article 22 Other Income

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Article of this Agreement in respect of which he is subject to tax in that State shall be taxable only in that State.

Article 23 Capital

1. Capital represented by immovable property referred to in paragraph, (2) of Article 6 may be taxed in the Contracting State in which such property is situated.

2. Capital represented by movable property forming part of the business property of a permanent establishment of an enterprise may be taxed in the Contracting State in which the permanent establishment is situated.

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

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

Article 24 Elimination of Double Taxation

1. The laws in force in either of the Contracting States shall continue to govern the taxation of income and capital in the respective Contracting States except when express provision to the contrary is made in this Convention. When income or capital is subject to tax in both Contracting States, relief from double taxation shall be given in accordance with the following paragraphs of this Article.

2. Subject to the provisions of the law of India regarding the allowance as a credit against Indian tax of tax-payable in a territory outside India (which shall not affect the general principle hereof) Sri Lanka tax payable under the law of Sri Lanka and in accordance with this Convention whether directly or by deduction on profits, income or chargeable gains from sources within Sri Lanka (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) or capital in Sri Lanka shall be allowed as a credit against any Indian tax computed by reference to the same items of income or capital by referred to which the Sri Lanka tax is computed:

Provided that such credit not exceed Indian tax (as computed before allowing any such credit), which is appropriate to the income derived from sources within Sri Lanka or to capital in Sri Lanka, so however, that where such resident is a company by which surtax is payable in India, the credit aforesaid shall be allowed in the first instance against income tax payable by the company in India, and as to the balance, if any against surtax payable by it in India.

3. For the purposes of paragraph (2) of this Article, the term "Sri Lanka tax payable" shall be deemed to include any amount which would have been payable as Sri Lanka tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under:

(a) any of the following provisions, that is to say sections 11, 16, 17, 18, 19, 20, 21, 22 and 85 of the Sri Lanka Inland Revenue Act, No. 28 of 1979 so far as they were in force on, and have not been modified since, the date of the signature of this Convention, or have been modified only in minor respects so as not to affect their general character; or

(b) any agreement entered into under section 17 of the Greater Colombo Economic Commission Law No. 4 of 1978; or

(c) any other provisions which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

4. Subject to the provisions of the law of Sri Lanka regarding the allowance as a credit against Sri Lanka tax of tax payable in a territory outside Sri Lanka (which shall not affect the general principle hereof) Indian tax payable under the law of India and in accordance with the Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within India (excluding in the case of a dividend, tax-payable in respect of the profits out of which the dividend is paid) or capital in India shall be allowed as a credit against any Sri Lanka tax computed by reference to the same items of income or capital by reference to which the Sri Lanka's tax is computed:

Provided that such credit shall not exceed Sri Lanka tax (as computed before allowing any such credit), which is appropriate to the income derived from sources within India or to capital in India.

5. For the purpose of paragraph (4) of this Article, the term "Indian Tax payable" shall be deemed to include any amount which would have been payable as Indian tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under:

(a) any of the following provisions, that is to say sections 10(4), 10(4A), 10(15)(iv), 32A, 33A, 35C, 54E, 80CC, 80HH, 80J, 80K of the Income-Tax Act, 1961; or

(b) any other provisions which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities to be of a substantially similar character if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

Article 25 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 are or may be subjected. This provisions 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 on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs 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 (7) 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. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 26 Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph (1) of Article 25 of that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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

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

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. 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. In addition, a competent authority may devise appropriate unilateral procedures, conditions, methods and techniques to facilitate the above-mentioned bilateral actions and the implementation of the mutual agreement procedure.

Article 27 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 Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, if the information is originally regarded as secret in the transmitting State it 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 the Convention. 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. The competent authorities shall through consultation develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information shall be made, including where appropriate, exchanges of information regarding tax avoidance.

2. In no case shall the provisions of paragraph 1 be constructed 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 (order public).

Article 28 Diplomatic Agents and Consular Officials

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

Article 29 Entry Into Force

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Colombo as soon as possible.

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

(a) In Sri Lanka--

(i) in respect of income assessable for any year of assessment commencing on or after 1st April, 1980;

(ii) in respect of capital assessable for any year of assessment commencing on or after 1st April, 1980;

(b) In India--

(i) in respect of income assessable for any year of assessment commencing on or after 1st April, 1981;

(ii) in respect of capital assessable for any year of assessment commencing on or after 1st April, 1980;

3. The Agreement between the Government of Ceylon and the Government of India for relief from or the avoidance of double taxation of income, signed on 10th September, 1956, shall terminate and cease to have effect as respect taxes on income to which the present Convention applies in accordance with the provisions of paragraphs (2) of this Article.

Article 30 Termination

This Convention shall remain in force indefinitely but either Contracting State may, on or before June 30 in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through diplomatic channels, written notice of termination.

In such event, the Convention shall cease to have effect--

(a) In Sri Lanka--

(i) in respect of income assessable for any year of assessment commencing on or after 1st April in the calendar year next following that in which such notice is given;

(ii) in respect of capital assessable for any year of assessment commencing on or after 1st April in the calendar year next following that in which such notice is given.

(b) In India--

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

(ii) in respect of capital assessable for any year of assessment commencing on or after 1st April in the calendar year next following that in which such notice is given.

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

Done in duplicate at New Delhi this 27th day of January, 1982, in the Sinhala, Hindi and English languages, all texts being equally authentic. In the case of divergence of interpretation the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF INDIA:

Sd/-

(Pranab Mukherjee)

FOR THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA:

Sd/-

(Ronnie De Mal)

Final Protocol

The Government of the Republic of India and the Government of the Democratic Socialist Republic of Sri Lanka, having entered into a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, have agreed, at the time of signing the said Convention, on the following provisions which shall constitute an integral part thereof:

(a) The length of the period referred to in sub-paragraphs (h) and (i) of Article 5 shall be construed as identical to any period of longer duration incorporated in the Article on Permanent Establishment in relation to a building site, construction or assembly project or the furnishing of services, in any Convention for the avoidance of double taxation entered into by Sri Lanka after the signing of this Convention.

(b) the basis of taxing shipping profits set out in paragraph 2 of Article 8 shall not be less favourable than that provided in any Convention for the avoidance of double taxation entered into by Sri Lanka after the signing of this Convention.

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

Done in duplicate at New Delhi this 27th day of January, 1982, in the Sinhala, Hindi and English language, all texts being equally authentic. In the case of divergence of interpretation the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF INDIA:

Sd/-

(Pranab Mukherjee)

FOR THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA:

Sd/-

(Ronnie De Mal)

R. R. Khosla

Jt. Secretary