

MINISTRY OF FINANCE

(Department of Revenue)

(INCOME TAX)

NOTIFICATION

New Delhi, the 17th July, 2019

S.O. 2562(E).—Whereas, the Protocol, amending the Agreement between the Government of the Republic of India and the Government of the People's Republic of China for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which was signed at New Delhi, India on 18th July, 1994, has been signed at New Delhi on 26th November, 2018, as set out in the annexure appended to this notification (hereinafter referred to as the said amending Protocol);

And whereas, the date of entry into force of the said amending Protocol is the 5th day of June, 2019, being the thirtieth day after the later of the notifications of the completion of the procedures required by the respective laws for the entry into force of the said amending Protocol in accordance with paragraph 2 of Article 13 of the said amending Protocol;

And whereas, sub-paragraph (b) of paragraph 3 of Article 13 of the said amending Protocol provides that the provisions of the said amending Protocol shall have effect in India in respect of income derived in any fiscal year beginning on or after the first day of April following the calendar year in which this Protocol enters into force;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies that all the provisions of the said amending Protocol, as annexed hereto, shall have effect in the Union of India.

ANNEXURE

PROTOCOL AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND THE PROTOCOL THERETO SIGNED AT NEW DELHI ON 18TH JULY, 1994

The Government of the Republic of India and the Government of the People's Republic of China,

Desiring to amend the Agreement between the Government of the Republic of India and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and the Protocol thereto signed at New Delhi on 18th July, 1994 (hereinafter referred to as "the Agreement"),

Have agreed as follows:

Article 1

The title of the Agreement shall be replaced by the following:

"AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA FOR THE ELIMINATION OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND THE PREVENTION OF TAX EVASION AND AVOIDANCE".

Article 2

The preamble of the Agreement shall be replaced by the following:

"The Government of the Republic of India and the Government of the People's Republic of China,
Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,
Intending to eliminate double taxation with respect to taxes on income without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third States);
Have agreed as follows:"

Article 3

Article 1 of the Agreement shall be replaced by the following:

"ARTICLE 1

PERSONS COVERED

1. This Agreement shall apply to persons who are residents of one or both of the Contracting States.
2. For the purposes of this Agreement, income derived by or through an entity or arrangement that is established in either Contracting State and that is treated as wholly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State only to the extent that the income is treated, for the purposes of taxation by that State, as the income of a resident of that State.
3. This Agreement shall not affect the taxation, by a Contracting State, of its residents except with respect to the benefits granted under paragraph 2 of Article 9, paragraph 2 of Article 18 and Articles 19, 20, 21, 23, 24, 25 and 27."

Article 4

Sub-paragraph (a) of paragraph 3 of Article 2 (Taxes Covered) of the Agreement shall be replaced by the following:

"(a) In China:

- (i) the individual income tax;
 - (ii) the enterprise income tax;
- (hereinafter referred to as "Chinese tax")."

Article 5

Paragraph 3 of Article 4 (Resident) of the Agreement shall be replaced by the following:

"3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual

agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Agreement, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Agreement except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.”

Article 6

Article 5 (Permanent Establishment) of the Agreement shall be replaced by the following:

“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 in relation to a person providing storage facilities for others;
- (h) a farm, plantation or other place where agriculture, forestry, plantation or related activities are carried on;
- (i) an installation or structure used for the exploration or exploitation of natural resources, but only if so used for a period of more than 183 days.

3. The term “permanent establishment” likewise encompasses:

- (a) a building site or construction, installation or assembly project or supervisory activities in connection therewith, but only if such site, project or activities last more than 183 days.

For the sole purpose of determining whether the 183 day period referred to as above has been exceeded,

- (i) where an enterprise of a Contracting State carries on activities in the other Contracting State at a place that constitutes a building site or construction, installation or assembly project and these activities are carried on during one or more periods of time that in the aggregate do not exceed 183 days, and
- (ii) connected activities are carried on at the same building site or construction, installation or assembly project during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,

these different periods of time shall be added to the period of time during which the first-mentioned enterprise has carried on activities at that building site or construction, installation or assembly project.

- (b) the furnishing of services other than technical services as defined in Article 12 (Royalties and Fees for Technical Services), by an enterprise of a Contracting State through employees or other personnel in the other Contracting state, but only if activities of that nature continue for the same or connected project within that Contracting State for a period or periods aggregating more than 183 days within any twelve-month period commencing or ending in the fiscal year concerned.

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

5. Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 6, where a person is acting in a Contracting State on behalf of an enterprise of the other Contracting State and, in doing so,

- (a) habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are
 - (i) in the name of the enterprise, or
 - (ii) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or
 - (iii) for the provision of services by that enterprise; or
- (b) habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise,

that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for 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.

- 6. (a) Paragraph 5 shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first-mentioned State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.
- (b) For the purposes of this Article, a person or enterprise is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person or enterprise shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person or enterprise possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise or in the two enterprises.

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 7

Paragraph 1 of Article 7 (Business Profits) of the Agreement shall be replaced by the following:

“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 Contracting State, but only so much of them as is attributable to that permanent establishment.”

Article 8

Paragraph 3 of Article 11 (Interest) shall be replaced by the following:

“3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to the Government, a political subdivision or a local authority, the Central Bank or any financial institution wholly owned by the Government of the other Contracting State, or paid on loans guaranteed or insured by the Government, a political subdivision or a local authority, the Central Bank or any financial institution wholly owned by the Government of the other Contracting State, shall be exempt from tax in the first-mentioned State.”

Article 9

1. Sub-paragraph (a) of paragraph 1 of Article 23 (Methods for the Elimination of Double Taxation) of the Agreement shall be replaced by the following:

“(a) Where a resident of China derives income from India, the amount of tax on that income payable in India in accordance with the provisions of this Agreement (except to the extent that these provisions allow taxation by India solely because the income is also income derived by a resident of India) may be credited against the Chinese tax imposed on that resident. The amount of the credit, however, shall not exceed the amount of the Chinese tax on that income computed in accordance with the taxation laws and regulations of China.”

2. Paragraph 2 of Article 23 of the Agreement shall be replaced by the following:

“2. In India, double taxation shall be eliminated as follows:

Where a resident of India derives income, which may be taxed in China in accordance with the provisions of this Agreement (except to the extent that these provisions allow taxation by China solely because the income is also income derived by a resident of China), India shall allow as deduction from the tax on the income of that resident, an amount equal to the income – tax paid in China whether directly or by deduction. Such deduction shall not, however, exceed that part of the income-tax (as computed before the deduction is given) which is attributable, as the case may be, to the income which may be taxed in China.”

Article 10

Article 26 (Exchange of Information) of the Agreement shall be replaced by the following:

“ARTICLE 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information (including documents) as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 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) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

3. In no case shall the provisions of paragraphs 1 and 2 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 (including documents) 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*).
4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.”

Article 11

The following Article shall be inserted after Article 27 of the Agreement:

“ARTICLE 27A

ENTITLEMENT TO BENEFITS

Notwithstanding the other provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.”

Article 12

1. Paragraph 3 of the Protocol to the Agreement shall be deleted.
2. A new paragraph 3 of the Protocol to the Agreement shall be inserted as follows:
 - “ 3. For the purpose of paragraph 3 of Article 11(Interest):
 - (a) the term “Central Bank” means, in the case of China, the People’s Bank of China, and in the case of India, the Reserve Bank of India;
 - (b) the term “any financial institution wholly owned by the Government of the other Contracting State” means:
 - (i) in the case of China:
 - (A) the China Development Bank;
 - (B) the Agricultural Development Bank of China;
 - (C) the Export-Import Bank of China;
 - (D) the National Council for Social Security Fund;
 - (E) the China Export & Credit Insurance Corporation;
 - (F) the China Investment Corporation;
 - (G) any other institution wholly owned by the Government of China as may be agreed from time to time between the competent authorities of the Contracting States;
 - (ii) in the case of India:
 - (A) the Export-Import Bank of India;
 - (B) the National Housing Bank;
 - (C) the India Infrastructure Finance Company Limited;

- (D) the Export Credit Guarantee Corporation of India Limited;
- (E) the National Bank for Agricultural and Rural Development;
- (F) any other institution wholly owned by the Government of India as may be agreed from time to time between the competent authorities of the Contracting States.”

Article 13

1. Both Contracting States shall notify each other in writing through diplomatic channels that they have completed the procedures required by the respective laws for the entry into force of this Protocol.
2. This Protocol shall enter into force on the thirtieth day after the date of the later of the notifications referred to in paragraph 1 of this Article.
3. The provisions of this Protocol shall have effect:
 - (a) In China, in respect of income derived in any taxable year beginning on or after the first day of January following the calendar year in which this Protocol enters into force.
 - (b) In India, in respect of income derived in any fiscal year beginning on or after the first day of April following the calendar year in which this Protocol enters into force.

In witness thereof, the undersigned, duly authorised thereto, have signed this Protocol which shall be an integral part of the Agreement.

Done in duplicate at New Delhi this 26th day of November, 2018 in the Hindi, Chinese and English languages, all texts being equally authentic. In case of any divergence, the English text shall prevail.

**For the Government of
the Republic of India**

**For the Government of
the People's Republic of China**

**Sd/-
(Sushil Chandra)
Chairman,
Central Board of Direct Taxes**

**Sd/-
(REN Rongfa)
Deputy Commissioner,
State Administration of Taxation**

[Notification No.54/2019/F.No. 503/02/2008-FTD-II]

RAJAT BANSAL, Jt. Secy.