THIRD PROTOCOL
AMENDING THE AGREEMENT
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF INDIA
AND
THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of the Republic of Singapore,

Desiring to conclude a Third Protocol to amend the Agreement between the Government of the Republic of India and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at India on 24 January 1994, as amended by the Protocol signed at India on 29 June 2005 (hereinafter referred to as "the 2005 Protocol") and by the Second Protocol signed at India on 24 June 2011 (the Agreement so amended hereinafter referred to as "the Agreement"),

Have agreed as follows:

Article 1

1. The existing paragraph of Article 9 - Associated Enterprises of the Agreement shall be numbered as paragraph 1; and

2. After the said paragraph 1, the following paragraph shall be inserted:

"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 2

Article 13 - Capital Gains of the Agreement shall be amended, with effect from 1 April 2017:

(i) by deleting paragraph 4; and

(ii) by inserting the following paragraphs:

"4A. Gains from the alienation of shares acquired before 1 April 2017 in a company which is a resident of a Contracting State shall be taxable only in the Contracting State in which the alienator is a resident.

4B. Gains from the alienation of shares acquired on or after 1 April 2017 in a company which is a resident of a Contracting State may be taxed in that State.

4C. However, the gains referred to in paragraph 4B of this Article which arise during the period beginning on 1 April 2017 and ending on 31 March 2019 may be taxed in the State of which the company whose shares are being alienated is a resident at a tax rate that shall not exceed 50% of the tax rate applicable on such gains in that State.

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

Article 3

The Agreement is amended by adding after Article 24, the following Article, with effect from 1 April 2017:

"Article 24A

1. A resident of a Contracting State shall not be entitled to the benefits of paragraph 4A or paragraph 4C of Article 13 of this Agreement if its affairs were arranged with the primary purpose to take advantage of the benefits in the said paragraph 4A or paragraph 4C of Article 13 of this Agreement, as the case may be.

2. A shell or conduit company that claims it is a resident of a Contracting State shall not be entitled to the benefits of paragraph 4A or paragraph 4C of Article 13 of this Agreement. A shell or conduit company is any legal entity falling within the definition of resident with negligible or nil business operations or with no real and continuous business activities carried out in that Contracting State.

3. A resident of a Contracting State is deemed to be a shell or conduit company if its annual expenditure on operations in that Contracting State is less than S$ 200,000 in Singapore or Indian Rs. 5,000,000 in India, as the case may be:

(a) in the case of paragraph 4A of Article 13 of this Agreement, for each of the 12-month periods in the immediately preceding period of 24 months from the date on which the gains arise;

(b) in the case of paragraph 4C of Article 13 of this Agreement, for the immediately preceding period of 12 months from the date on which the gains arise.

4. A resident of a Contracting State is deemed not to be a shell or conduit company if:

(a) it is listed on a recognised stock exchange of the Contracting State; or

(b) its annual expenditure on operations in that Contracting State is equal to or more than S$ 200,000 in Singapore or Indian Rs. 5,000,000 in India, as the case may be:

(i) in the case of paragraph 4A of Article 13 of this Agreement, for each of the 12-month periods in the immediately preceding period of 24 months from the date on which the gains arise;

(ii) in the case of paragraph 4C of Article 13 of this Agreement, for the immediately preceding period of 12 months from the date on which the gains arise.

5. For the purpose of paragraph 4(a) of this Article, a recognised stock exchange means:

(a) in the case of Singapore, the securities market operated by the Singapore Exchange Limited, Singapore Exchange Securities Trading Limited and The Central Depository (Pte) Limited; and

(b) in the case of India, a stock exchange recognised by the Securities and Exchange Board of India.

Explanation: The cases of legal entities not having bona fide business activities shall be covered by paragraph 1 of this Article."

Article 4

Articles 1, 3, 5 and 6 of the 2005 Protocol shall be deleted, with effect from 1 April 2017.

Article 5

The Agreement is amended by adding after Article 28, the following Article:

"Article 28A
MISCELLANEOUS

This Agreement shall not prevent a Contracting State from applying its domestic law and measures concerning the prevention of tax avoidance or tax evasion."

Article 6

Each of the Contracting States shall complete the procedures required by its law for the bringing into force of this Protocol and notify the other State about such completion of the procedures. This Protocol shall enter into force on the date of the later of these notifications. If this Protocol does not enter into force as at 31 March 2017 due to either of the aforesaid notifications remaining pending, this Protocol shall enter into force on 1 April 2017.

Article 7

This Protocol, which shall form an integral part of the Agreement, shall remain in force as long as the Agreement remains in force and shall apply as long as the Agreement itself is applicable.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto by their respective Governments, have signed this Protocol.

DONE in duplicate at New Delhi on this 30th day of December, 2016, in the English and Hindi languages, both texts being equally authentic. In the case of divergence between the two texts, the English text shall be the operative one.

FOR THE GOVERNMENT OF THE REPUBLIC OF INDIA

(Sushil Chandra)
Chairman, Central Board of Direct Taxes

FOR THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE

(Lim Thuan Kuan)
High Commissioner of the Republic of Singapore to India