-COPY OF-
INCOME TAX NOTIFICATION
NO. 48/2011
DATED 2-9-2011

India enters DTAA with Taipei us 90A of the Income Tax Act, 1961

WHEREAS the agreement between India-Taipei Association in Taipei and Taipei Economic and Cultural Center in New Delhi for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (hereinafter referred to as the "agreement") was signed in India on the 12th day of July, 2011.

WHEREAS in terms of article 29 of the agreement, both India-Taipei Association in Taipei and Taipei Economic and Cultural Center in New Delhi are required to communicate to each other about the completion of the procedures required by the laws in their respective territories for the entry into force of the agreement.

WHEREAS the said agreement shall come into force on the 12th day of August, 2011, being the date of the later of the notifications after completion of the procedures as required by the laws of the respective territories for the entry into force of the agreement, in accordance with the provisions specified in article 29 of the agreement.

Whereas sub-section (1) of section 90A of the Income-tax Act, 1961 empowers the Central Government to make such provisions as may be necessary for adopting and implementing the agreement made between any specified association in India and any specified territory outside India.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 90A of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby adopts the agreement between India-Taipei Association in Taipei and Taipei Economic and Cultural Center in New Delhi for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and notifies that all the provisions of the said agreement annexed hereto shall be given effect to in the Union of India with effect from the 1st day of April, 2012.

AGREEMENT BETWEEN INDIA-TAIPEI ASSOCIATION IN TAIPEI AND TAIPEI ECONOMIC AND CULTURAL CENTER IN NEW DELHI FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

India-Taipei Association in Taipei and Taipei Economic and Cultural Center in New Delhi, 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 territories.

Article 2 : **TAXES COVERED –** *1.* This Agreement shall apply to taxes on income imposed on behalf of each territory or of its sub-divisions 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 and taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which the Agreement shall apply are in particular:

(*a*) in the territory in which the taxation law administered by the Ministry of Finance of India is applied : the income-tax, including any surcharge thereon;

(*b*) in the territory in which the taxation law administered by the Ministry of Finance in Taipei is applied :

(*i*) the profit seeking enterprise income-tax;

(*ii*) the individual consolidated income-tax; and

(*iii*) the income basic tax, including the supplements levied thereon.

4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the territories shall notify each other of any significant changes that 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*) the term “territory” means the territory referred to in paragraph 3(*a*) or 3(*b*) of Article 2, as the case may be. The terms “other territory” and “territories” shall be construed accordingly;

(*b*) the term “person” includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective territories;

(*c*) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;

(*d*) the term “enterprise” applies to the carrying on of any business;

(*e*) the terms “enterprise of a territory” and “enterprise of the other territory” mean respectively an enterprise carried on by a resident of a territory and an enterprise carried on by a resident of the other territory;

(*f*) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a territory, except when the ship or aircraft is operated solely between places in the other territory;

(*g*) the term “competent authority” means:

(*i*) in the case of the territory in which the taxation law administered by the Ministry of Finance of India is applied, the Finance Minister of India or his authorized representative;

(*ii*) in the case of the territory in which the taxation law administered by the Ministry of Finance in Taipei is applied, the Finance Minister or his authorized representative;

(*h*) the term “tax” means the tax referred to in paragraph 3(*a*) and 3(*b*) of Article 2 as the case may be, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a penalty or fine imposed relating to those taxes; (*i*) the term “fiscal year” means:

(*i*) in the territory referred to in paragraph 3(*a*) of Article 2: the financial year beginning on the first day of April;

(*ii*) in the territory referred to in paragraph 3(*b*) of Article 2: the financial year beginning on the first day of January.

2. As regards the application of the Agreement at any time by a territory, 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 territory for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that territory prevailing over a meaning given to the term under other laws of that territory.

Article 4 : **RESIDENT –** *1.* For the purposes of this Agreement, the term “resident of a territory” means any person who, under the laws of that territory, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature, and also includes that territory and any sub-division or local authority thereof.

2. A person is not a resident of a territory for the purposes of this Agreement if that person is liable to tax in that territory in respect only of income from sources in that territory, provided that this paragraph shall not apply to individuals who are residents of the territory referred to in paragraph 3(*b*) of Article 2, as long as resident individuals are taxed only in respect of income from sources in that territory.

3. Where by reason of the provisions of paragraph 1 an individual is a resident of both territories, then his status shall be determined as follows:

(*a*) he shall be deemed to be a resident only of the territory in which he has a permanent home available to him; if he has a permanent home available to him in both territories, he shall be deemed to be a resident only of the territory with which his personal and economic relations are closer (centre of vital interests);

(*b*) if the territory 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 territory, he shall be deemed to be a resident only of the territory in which he has an habitual abode;

(*c*) if he has a habitual abode in both territories or in neither of them, the competent authorities of the territories shall settle the question by mutual agreement.

4. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both territories, then it shall be deemed to be a resident only of the territory in which its place of effective management is situated. If the territory in which its place of effective management is situated cannot be determined, then the competent authorities of the territories shall settle the question by mutual agreement.

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 sales outlet;

(*g*) a warehouse in relation to a person providing storage facilities for others;

(*h*) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on; and

(*i*) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. (*a*) A building site or construction, installation or assembly project or supervisory activities in connection therewith constitutes a permanent establishment only if such site, project or activities last more than 270 days.

(*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 connected project) within the territory for a period or periods aggregating more than 182 days within any 12 month period constitutes a permanent establishment.

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 sub-paragraphs (*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 provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 7 applies – is acting in a territory on behalf of an enterprise of the other territory, that enterprise shall be deemed to have a permanent establishment in the first-mentioned territory in respect of any activities which that person undertakes for the enterprise, if such a person:

(*a*) has and habitually exercises in that territory 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*) habitually secures orders in the first-mentioned territory, wholly or almost wholly for the enterprise itself.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a territory shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other territory if it collects premiums in that other territory or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a territory merely because it carries on business in that territory 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.

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

Article 6 : **INCOME FROM IMMOVABLE PROPERTY –** *1.* Income derived by a resident of a territory from immovable property situated in the other territory may be taxed in that other territory.

2. The term “immovable property” shall have the meaning which it has under the law of the territory 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 territory shall be taxable only in that territory unless the enterprise carries on business in the other territory 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 territory 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 territory carries on business in the other territory through a permanent establishment situated therein, there shall in each territory 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 determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the territory in which the permanent establishment is situated or elsewhere, in accordance with the provisions of and subject to the limitations of the tax laws of that territory. 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 or other charges for specific services performed or for management, or, except in the case of banking enterprises, 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 or other charges 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 territory 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 territory 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 derived by an enterprise of a territory from the operation of ships or aircraft in international traffic shall be taxable only in that territory.

2. For the purpose of this Article, profits derived by a transportation enterprise from the operation of ships or aircraft in international traffic include :

(*a*) profits derived from the rental on a full (time or voyage) basis of ships or aircraft; and

(*b*) profits from the use, maintenance or rental of containers (including trailers and other equipment for the transport of containers) used for the transport of goods or merchandise, unless the containers are used solely within the other territory;

where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircrafts in international traffic.

3. For the purposes of this Article interest on investments directly connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft if they are integral to the carrying on of such business, and the provisions of Article 11 shall not apply in relation to such interest.

4. 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 territory participates directly or indirectly in the management, control or capital of an enterprise of the other territory, or

(*b*) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a territory and an enterprise of the other territory,

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 territory includes in the profits of an enterprise of the territory – and taxes accordingly – profits on which an enterprise of the other territory has been charged to tax in that other territory and the profits so included are profits which would have accrued to the enterprise of the first-mentioned territory if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other territory 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 territories shall if necessary consult each other.

Article 10 : **DIVIDENDS –** *1.* Dividends paid by a company which is a resident of a territory to a resident of the other territory may be taxed in that other territory.

2. However, such dividends may also be taxed in the territory of which the company paying the dividends is a resident and according to the laws of that territory, but if the beneficial owner of the dividends is a resident of the other territory, the tax so charged shall not exceed 12.5 per cent of the gross amount of the dividends. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares on 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 territory 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 territory, carries on business in the other territory of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other territory 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 territory derives profits or income from the other territory, that other territory 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 territory 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 territory, 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 territory.

Article 11 : **INTEREST –** *1.* Interest arising in a territory and paid to a resident of the other territory may be taxed in that other territory.

2. However, such interest may also be taxed in the territory in which it arises, and according to the laws of that territory, but if the beneficial owner of the interest is a resident of the other territory, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a territory shall be exempt from tax in that territory, provided that it is derived and beneficially owned by:

(*a*) the authority administering a territory, a sub-division or a local authority of the other territory; or

(*b*) Central Banks and Export-Import Banks of the territories referred to in paragraph 3(*a*) and 3(*b*) of Article 2; or

(*c*) any other institution as may be identified and accepted from time to time by the competent authorities of both of the territories referred to in paragraph 3(*a*) and 3(*b*) of Article 2.

4. 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.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a territory, carries on business in the other territory in which the interest arises, through a permanent establishment situated therein, or performs in that other territory independent personal services from a fixed base situated therein, and the debt-claims in respect of which the interest 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.

6. Interest shall be deemed to arise in a territory when the payer is a resident of that territory. Where, however, the person paying the interest, whether he is a resident of a territory or not, has in a territory 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 territory in which the permanent establishment or fixed base 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 territory, due regard being had to the other provisions of this Agreement.

Article 12 : **ROYALTIES AND FEES FOR TECHNICAL SERVICES –** Royalties or fees for technical services arising in a territory and paid to a resident of the other territory may be taxed in that other territory.

2. However, such royalties or fees for technical services may also be taxed in the territory in which they arise, and according to the laws of that territory, but if the beneficial owner of the royalties or fees for technical services is a resident of the other territory, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or fees for technical services.

3.(*a*) 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 television or radio 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.

(*b*) The term "fees for technical services" as used in this Article means payments of any kind, other than those mentioned in Articles 14 and 15 of this Agreement as consideration for managerial or technical or consultancy services, including the provision of services of technical or other personnel.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a territory, carries on business in the other territory in which the royalties or fees for technical services arise, through a permanent establishment situated therein, or performs in that other territory independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties or fees for technical services 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.(*a*) Royalties or fees for technical services shall be deemed to arise in a territory when the payer is a resident of that territory. Where, however, the person paying the royalties or fees for technical services, whether he is a resident of a territory or not, has in a territory a permanent establishment or a fixed base in connection with which the liability to pay the royalties or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the territory in which the permanent establishment or fixed base is situated.

(*b*) Where under sub-paragraph (*a*) royalties or fees for technical services do not arise in one of the territories, and the royalties relate to the use of, or the right to use, the right or property, or the fees for technical services relate to services performed, in one of the territories, the royalties or fees for technical services shall be deemed to arise in that territory.

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 or fees for technical services, 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 payments shall remain taxable according to the laws of each territory, due regard being had to the other provisions of this Agreement.

Article 13 : **CAPITAL GAINS –** *1.* Gains derived by a resident of a territory from the alienation of immovable property referred to in Article 6 and situated in the other territory may be taxed in that other territory.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a territory has in the other territory or of movable property pertaining to a fixed base available to a resident of a territory in the other territory 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 territory.

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 territory of which the alienator is a resident.

4. Gains derived by a resident of a territory from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other territory may be taxed in that other territory.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a territory may be taxed in that territory.

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

Article 14 : **INDEPENDENT PERSONAL SERVICES –** *1.* Income derived by an individual who is a resident of a territory from the performance of professional services or other activities of an independent character shall be taxable only in that territory except in the following circumstances, when such income may also be taxed in the other territory:

(*a*) if he has a fixed base regularly available to him in the other territory for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other territory; or

(*b*) if his stay in the other territory is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other territory may be taxed in that other territory.

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, surgeons, dentists and accountants.

Article 15 : **DEPENDENT PERSONAL SERVICES –** *1.* Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a territory in respect of an employment shall be taxable only in that territory unless the employment is exercised in the other territory. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other territory.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a territory in respect of an employment exercised in the other territory shall be taxable only in the first-mentioned territory if:

(*a*) the recipient is present in the other territory for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned, and

(*b*) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other territory, and

(*c*) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other territory.

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, by an enterprise of a territory may be taxed in that territory.

Article 16 : **DIRECTORS’ FEES –** Directors’ fees and other similar payments derived by a resident of a territory in his capacity as a member of the board of directors of a company which is a resident of the other territory may be taxed in that other territory.

Article 17 : **ARTISTES AND SPORTSPERSONS –** *1.* Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a territory as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other territory, may be taxed in that other territory.

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

3. The provisions of paragraphs 1 and 2, shall not apply to income from activities performed in a territory by entertainers or sportspersons if the activities are substantially

supported by public funds of one or both of the territories or of sub-divisions or local authorities thereof. In such a case, the income shall be taxable only in the territory of which the entertainer or sportsperson is a resident.

Article 18 : **PENSIONS –** Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a territory in consideration of past employment shall be taxable only in that territory.

Article 19 : **GOVERNMENT SERVICE** *1.*(*a*) Salaries, wages and other similar remuneration, other than a pension, paid by a territory or a sub-division or a local authority thereof to an individual in respect of services rendered to that territory or sub-division or authority shall be taxable only in that territory.

(*b*) However, such salaries, wages and other similar remuneration shall be taxable only in the other territory if the services are rendered in that territory and the individual is a resident of that territory who:

(*i*) is a national of that territory; or

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

2.(*a*) Any pension paid by, or out of funds created by, a territory or a sub-division or a local authority thereof to an individual in respect of services rendered to that territory or sub-division or authority shall be taxable only in that territory.

(*b*) However, such pension shall be taxable only in the other territory if the individual is a resident of, and a national of, that other territory.

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 territory or a sub-division or a local authority thereof.

Article 20 : **PROFESSORS, TEACHERS AND RESEARCH SCHOLARS –** *1.* A professor, teacher or research scholar who is or was a resident of the territory immediately before visiting the other territory for the purpose of teaching or engaging in research, or both, at a university, college or other similar approved institution in that other territory shall be exempt from tax in that other territory on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other territory.

2. This Article shall apply to income from research only if such research is undertaken by the individual in the public interest and not primarily for the private benefit of a person or persons.

3. For the purposes of this Article, an individual shall be deemed to be a resident of a territory if he is resident in that territory in the fiscal year in which he visits the other territory or in the immediately preceding fiscal year.

Article 21 : **STUDENTS –** *1.* A student who is or was a resident of one of the territories immediately before visiting the other territory and who is present in that other territory solely for the purpose of his education or training, shall besides grants, loans and scholarships be exempt from tax in that other territory on:

(*a*) payments made to him by persons residing outside that other territory for the purposes of his maintenance, education or training; and

(*b*) remuneration which he derives from an employment which he exercises in the other territory if the employment is directly related to his studies.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article, for more than six consecutive years from the date of his first arrival in that other territory.

Article 22 : **OTHER INCOME –** *1.* Items of income of a resident of a territory, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that territory.

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 territory, carries on business in the other territory through a permanent establishment situated therein, or performs in that other territory 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 paragraph 1, if a resident of a territory derives income from sources within the other territory in form of lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any nature whatsoever, such income may be taxed in the other territory.

Article 23 : **METHODS FOR ELIMINATION OF DOUBLE TAXATION –** Double taxation shall be eliminated as follows:

1. In the territory referred to in paragraph 3(*a*) of Article 2:

(*a*) Where a resident of the territory referred to in paragraph 3(*a*) of Article 2 derives income which, in accordance with the provisions of this Agreement, may be taxed in the territory referred to in paragraph 3(*b*) of Article 2, the territory referred to in paragraph

3(*a*) of Article 2 shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in the territory referred to in paragraph 3(*b*) of Article 2.

Such deduction shall not, however, exceed that part of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in the territory referred to in paragraph 3(*b*) of Article 2.

(*b*) Where in accordance with any provision of the Agreement income derived by a resident of the territory referred to in paragraph 3(*a*) of Article 2 is exempt from tax in the territory referred to in paragraph 3(*a*) of Article 2, the territory referred to in paragraph 3(*a*) of Article 2 may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

2. In the territory referred to in paragraph 3(*b*) of Article 2:

(*a*) Where a resident of the territory referred to in paragraph 3(*b*) of Article 2 derives income from the other territory, the amount of tax on that income paid in that other territory (but excluding, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) and in accordance with the provisions of this Agreement, shall be credited against the tax levied in the first-mentioned territory on that resident.

The amount of credit, however, shall not exceed the amount of the tax in the first-mentioned territory on that income computed in accordance with its taxation laws and regulations.

(*b*) Where in accordance with any provision of the Agreement income derived by a resident of the territory referred to in paragraph 3(*b*) of Article 2 is exempt from tax in the territory referred to in paragraph 3(*b*) of Article 2, the territory referred to in paragraph 3(*b*) of Article 2 may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

Article 24 : **NON-DISCRIMINATION –** *1.* Nationals of a territory shall not be subjected in the other territory 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 territory 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 territories.

2. The taxation on a permanent establishment which an enterprise of a territory has in the other territory shall not be less favorably levied in that other territory than the taxation levied on enterprises of that other territory carrying on the same activities. This provision shall not be construed as obliging a territory to grant to residents of the other territory any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents. This provision shall not be construed as preventing a territory from charging the profits of a permanent

establishment which a company of the other territory has in the first-mentioned territory at a rate of tax which is higher than that imposed on the profits of a similar company of the first mentioned territory, nor as being in conflict with the provisions of paragraph 3 of Article 7.

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 territory to a resident of the other territory 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 territory.

4. Enterprises of a territory, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other territory, shall not be subjected in the first-mentioned territory 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 territory are or may be subjected.

5. The provisions of this Article shall apply to taxes which are covered by this Agreement.

Article 25 : **MUTUAL AGREEMENT PROCEDURE :** *1.* Where a person considers that the actions of one or both of the territories 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 territories, present his case to the competent authority of the territory of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the territory 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 Agreement.

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

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

4. The competent authorities of the territories may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach an agreement to have an oral exchange of opinions,

such exchange may take place through a commission consisting of representatives of the competent authorities of the territories.

Article 26 : **EXCHANGE OF INFORMATION –** *1.* The competent authorities of the territories shall exchange such information (including documents or certified copies of the 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 territories, or of their sub-divisions 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 territory shall be treated as secret in the same manner as information obtained under the domestic laws of that territory 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 territory may be used for other purposes when such information may be used for such other purposes under the laws of both territories and the competent authority of the supplying territory authorizes such use.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a territory the obligation:

(*a*) to carry out administrative measures at variance with the laws and administrative practice of that or of the other territory;

(*b*) to supply information (including documents or certified copies of the documents) which is not obtainable under the laws or in the normal course of the administration of that or of the other territory;

(*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 territory in accordance with this Article, the other territory shall use its information gathering measures to obtain the requested information, even though that other territory 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 territory 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 territory 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 27 : **ASSISTANCE IN THE COLLECTION OF TAXES –** *1.* Each of the territories shall endeavour to collect, as if it were its own tax, any tax referred to in Article 2, which has been imposed by the other territory and the collection of which is necessary to ensure that any exemption or reduction of tax granted under this Agreement by that other territory shall not be enjoyed by persons not entitled to such benefits.

2. In no case shall the provisions of this Article be construed so as to impose on a territory the obligation:

(*a*) to carry out administrative measures at variance with the laws and administrative practice of that or of the other territory;

(*b*) to carry out measures which would be contrary to public policy (ordre public);

(*c*) to provide assistance if the other territory has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;

(*d*) to provide assistance in those cases where the administrative burden for that territory is clearly disproportionate to the benefit to be derived by the other territory.

Article 28 : **LIMITATION OF BENEFITS –** *1.* Notwithstanding the provisions of any other Article of this Agreement, a resident of a territory shall not be entitled to the benefits of this Agreement if the primary purpose or one of the primary purposes of such resident or a person connected with such resident was to obtain the benefits of this Agreement.

2. The cases of legal entities not having *bona fide* business activities shall be; covered by the provisions of this Article.

Article 29 : **ENTRY INTO FORCE –** *1.* India-Taipei Association in Taipei and Taipei Economic and Cultural Center in New Delhi shall notify each other in writing, about the completion of the procedures required by the laws in their respective territories for the entry into force of this Agreement.

2. This Agreement shall enter into force on the date of the later of these written notifications referred to in paragraph 1 of this Article.

3. The provisions of this Agreement shall have effect:

(*a*) In the territory referred to in paragraph 3(*a*) of Article 2, in respect of income derived in any fiscal year beginning on or after the first day of April next following the calendar year in which the Agreement enters into force; and

(*b*) In the territory referred to in paragraph 3(*b*) of Article 2, in relation to income derived in any year of income beginning on or after the first day of January in the calendar year next following that in which the Agreement enters into force.

Article 30 : **TERMINATION –** This Agreement shall remain in force indefinitely until terminated by either the India-Taipei Association in Taipei or the Taipei Economic and Cultural Center in New Delhi by giving a written notice of termination to the other at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect:

(*a*) in the territory referred to in paragraph 3(*a*) of Article 2, in respect of income derived in any fiscal year on or after the first day of April next following the calendar year in which the notice is given;

(*b*) in the territory referred to in paragraph 3(*b*) of Article 2, in relation to income derived in any year of income beginning on or after the first day of January in the calendar year next following that in which the notice of termination is given.

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

DONE in duplicate at New Delhi this 12th day of July, 2011, each in the Hindi, Chinese and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

PROTOCOL

India-Taipei Association in Taipei and Taipei Economic and Cultural Center in New Delhi on signing at New Delhi on the 12th day of July, 2011, the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, have agreed upon the following provisions which shall be an integral part of the Agreement:

1. It is understood that if the domestic law of a territory is more beneficial to a resident of the other territory than the provisions of this Agreement, then the provisions of the domestic law of the first-mentioned territory shall apply to the extent they are more beneficial to such a resident.

2. With respect to Article 2, in the territory referred to in paragraph 3(*b*) of Article 2, it is understood that nothing in the Agreement will affect the imposition of the Land Value Increment Tax under Land Tax Act.

3. In respect of sub-paragraphs (*a*) and (*b*) of paragraph 4 of Article 5 on 'Permanent Establishment', it is understood that if the Agreement for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to taxes on income between the Republic of India and the People's Republic of China is revised and the revised Agreement between the Republic of India and the People's Republic of China omits the words 'or delivery' from these two sub-paragraphs, then, a corresponding revision of these two sub-paragraphs shall be automatically effected in this Agreement and the words 'or delivery' shall stand omitted from these two sub-paragraphs, with effect from the date on which the revised Agreement for the Avoidance of Double Taxation and Prevention of Fiscal Evasion between the Republic of India and the People's Republic of China enters into force.

4. It is further understood that in respect of paragraph 5 of Article 5 on "Permanent Establishment", if the Agreement for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to taxes on income between the Republic of India and the People's Republic of China is revised and the revised Agreement between the Republic of India and the People's Republic of China includes provisions to the effect that a person other than an agent of in independent status to whom paragraph 7 applies acting in a Contracting State on behalf of an enterprise of the other Contracting State shall constitute a permanent establishment in the first-mentioned Contracting State in respect of activities he undertakes for the enterprise, if he 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, then a corresponding revision of paragraph 5 of Article 5 shall be automatically effected in this Agreement by inserting similar provision with effect from the date on which the revised Agreement between the Republic of India and the People's Republic of China enters into force. The exact formulation of the provisions to be inserted in this Agreement shall be finalized by exchange of letters.

5. With respect to Article 23, it is understood that the laws in force in either of the territories shall continue to govern the taxation of income in the respective territories except when express provision to the contrary is made in this Agreement. When income is subject to tax in both territories, relief from double taxation shall be given in accordance with the provisions of Article 23.

6. With respect to Article 23, it is further understood that the territory referred to in paragraph 3(*a*) of Article 2 shall not allow as a deduction from the tax on the income of its resident, Land Value Increment Tax under Land Tax Act imposed in the territory referred to in paragraph 3(*b*) of Article 2.

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

DONE in duplicate at New Delhi this 12th day of July, 2011, each in the Hindi, Chinese and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.
[F.NO. 500/02/2001-FTD-II]