

NOTIFICATION NO. 54/2011

DATED 3-10-2011

Whereas, an Agreement between the Government of the Republic of India and Government of the British Virgin Islands for the exchange of information relating to taxes was signed at London, UK on the 9th day of February, 2011;

And whereas, the date of entry into force of the said Agreement is the 22nd day of August, 2011, being the date of later of the notifications of completion of the procedures as required by the respective laws for entry into force of the said Agreement, in accordance with Article 14 of the said Agreement;

And whereas, sub-paragraph (a) of Article 14 of the said Agreement provides that the provisions of the said Agreement shall have effect with respect to criminal tax matters on that date and sub-paragraph (b) of Article 14 of the said Agreement provides that the provisions of the said Agreement shall have effect with respect to all other matters covered in Article 1, for taxable periods beginning on or after that date, or where there is no taxable period, for all charges to tax arising on or after that date;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Agreement, as set out in the Annexure hereto, shall be given effect to in the Union of India with respect to criminal tax matters immediately and with respect to all other matters covered in Article 1, for taxable periods beginning on or after the 22nd day of August, 2011 or where there is no taxable period, for all charges to tax arising on or after the 22nd day of August, 2011.

ANNEX

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS, FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES

Whereas India and the British Virgin Islands ("the Contracting Parties") wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes;

Whereas it is acknowledged that the Contracting Parties are competent to negotiate and conclude a tax information exchange agreement;

Now, therefore, the Contracting Parties have agreed to conclude the following Agreement which contains obligations on the part of the Contracting Parties only.

ARTICLE 1

OBJECT AND SCOPE OF THE AGREEMENT

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning the taxes and the tax matters covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, verification, enforcement, recovery or collection of tax claims with respect to persons subject to such taxes, or the investigation or prosecution of tax

matters in relation to such persons, information shall be exchanged in accordance with the provisions of this Agreement.

ARTICLE 2

JURISDICTION

To enable the appropriate implementation of this Agreement, information shall be provided in accordance with this Agreement by the competent authority of the Requested Party:

- (a) without regard to whether the person to whom the information relates is a resident or citizen of a Party, or whether the person by whom the information is held is a resident or citizen of a Party; and
- (b) provided that the information is present within the territory, or in the possession or control of a person subject to the jurisdiction, of the Requested Party.

ARTICLE 3

TAXES COVERED

1. The taxes which are the subject of this Agreement are:
 - (a) in India taxes of every kind and description imposed by the Central Government, irrespective of the manner in which they are levied;
 - (b) in the British Virgin Island, taxes of every kind and description imposed by the Central Government irrespective of the manner in which they are levied.
2. This Agreement shall also apply to any identical or substantially similar taxes imposed by either territory after the date of signature of this Agreement in addition to, or in place of, any of the taxes listed in paragraph 1. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by this Agreement.

ARTICLE 4

DEFINITIONS

1. In this Agreement-
 - (a) "British Virgin Islands" means the territory of the Virgin islands as referred to in the Virgin islands Constitution Order 2007;
 - (b) "India" means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Convention on the Law of the Sea;
 - (c) "citizen" means:
 - (i) in relation to India, a citizen of India deriving the status as such from any law in force in India;
 - (ii) in relation to the British Virgin Islands, any person who belongs to the British Virgin Islands by virtue of the Virgin Islands Constitution Order 2007 (Statutory Instrument 2007 No. 1678) or has a certificate of residence of the British Virgin Islands by virtue of the Immigration and Passport Ordinance (Cap. 130);

- (d) "collective investment scheme or fund" means any pooled investment vehicle irrespective of legal form;
- (e) "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (f) "competent authority" means in the case of India, the Finance Minister, Government of India, or its authorized representative; and in the case of the British Virgin Islands, the Financial Secretary or a person or authority designated by him in writing;
- (g) "Contracting Party" means India or the British Virgin Islands as the context requires;
- (h) "criminal laws" means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes;
- (i) "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under tax laws or the criminal laws of the Requesting Party;
- (j) "information" means any fact, statement, document or record in whatever form;
- (k) "information gathering measures" means judicial, regulatory or administrative laws and procedures enabling a Contracting Party to obtain and provide the information requested;
- (l) "person" includes an individual, a company, a body of persons and any entity which is taxable under the taxation laws in force in the respective Contracting Parties;
- (m) "public collective investment scheme or fund" means any collective investment scheme or fund, in which the purchase, sale or redemption of shares, units or other interests is not implicitly or explicitly restricted to a limited group of investors;
- (n) "publicly traded company" means any company whose principal class of shares is listed on a recognised stock exchange provided its' listed shares can be readily purchased or sold by the public. Shares can be purchased or sold "by the public" if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- (o) "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;
- (p) "recognised stock exchange" means the National Stock Exchange of India, the Bombay Stock Exchange of India, and any other stock exchange which the competent authorities agree to recognise for the purpose of this Agreement.
- (q) "Requested Party" means the party to this Agreement which is requested to provide information or has provided information in response to a request;
- (r) "Requesting Party" means the party to this Agreement submitting a request for information to, or having received information from, the Requested Party;
- (s) "tax" means any tax covered by this Agreement.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 13 of this Agreement, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

ARTICLE 5

EXCHANGE OF INFORMATION UPON REQUEST

1. The competent authority of the Requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the Requested Party needs such information for its own tax purposes or whether the conduct being investigated would constitute a crime under the laws of the Requested Party if such conduct occurred in the Requested Party.
2. If the information in possession of the competent authority of the Requested Party is not sufficient to enable it to comply with the request for the information, the Requested Party shall use all relevant information gathering measures to provide the Requesting Party with the information requested, notwithstanding that the Requested Party may not need such information for its own tax purposes.
3. If specifically requested by the competent authority of the Requesting Party, the competent authority of the Requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each Contracting Party shall ensure that its competent authority, for the purposes of this Agreement, has the authority to obtain and provide upon request:
 - (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
 - (b) Information regarding the legal and beneficial ownership of companies, partnerships, collective investment funds or schemes, trusts, foundations and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of collective investment funds or schemes, information on shares, units and other interests; in the case of trusts, information on settlors, trustees and beneficiaries; in the case of foundations, information on founders, members of the foundation council and beneficiaries; and equivalent information in case of entities that are neither trusts nor foundations.
5. Notwithstanding the preceding paragraphs, this Agreement does not create an obligation on the Contracting Parties to obtain or provide:
 - (a) ownership information with respect to publicly traded companies or public collective investment funds or schemes, unless such information can be obtained without giving rise to disproportionate difficulties;
 - (b) information relating to a time period which is beyond the legally required time period for retaining the information in the jurisdiction of the Requested Party and where that information is in fact no longer kept.
6. The competent authority of the Requesting Party shall provide the following information to the competent authority of the Requested Party when making a request for information under this Agreement in order to demonstrate the foreseeable relevance of the information to the request:
 - (a) the identity of the person under examination or investigation;
 - (b) the period for which the information is requested;

- (c) the nature and type of the information requested and the form in which the Requesting Party would prefer to receive the information;
- (d) the tax purposes for which the information is sought;
- (e) reasonable grounds for believing that the information requested is present in the territory of the Requested Party or is in the possession or control of a person subject to the jurisdiction of the Requested Party;
- (f) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- (g) a statement that the request is in conformity with this Agreement and the laws and administrative practices of the Requesting Party, and that if the requested information were within the jurisdiction of the Requesting Party then the competent authority of the Requesting Party would be able to obtain the information under the laws, of the Requesting Party or in the normal course of administrative practice;
- (h) a statement that the Requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

7. The competent authority of the Requested Party shall forward the requested information as promptly as possible to the competent authority of the Requesting Party. To ensure a prompt response, the competent authority of the Requested Party shall:

- (a) confirm the receipt of a request in writing to the competent authority of the Requesting Party and shall notify the competent authority of the Requesting Party of any deficiencies in the request within 60 days of receipt of the request; and
- (b) if the competent authority of the Requested Party has been unable to obtain and provide the information requested within 90 days of receipt of the request, or if obstacles are encountered in furnishing the information, or if the competent authority of the Requested Party refuses to provide the information, it shall immediately inform the competent authority of the Requesting Party in writing explaining the reasons for its inability to obtain and provide the information or the details of obstacles encountered or reasons for its refusal.

ARTICLE 6

TAX EXAMINATIONS ABROAD

1. The Requested Party may, to the extent permitted under its domestic laws, following reasonable notice from the Requesting Party, allow representatives of the competent authority of the Requesting Party to enter the territory of the Requested Party in connection with a request to interview individuals and examine records with the prior written consent of the persons concerned. The competent authority of the Requesting Party shall notify the competent authority of the Requested Party of the time and place of the intended meeting with the individuals concerned.

2. At the request of the competent authority of the Requesting Party, the competent authority of the Requested Party may, in accordance with its domestic laws, permit representatives of the competent authority of the Requesting Party to be present at the appropriate part of a tax examination in the territory of the Requested Party.

3. If the request referred to in paragraph 2 is granted, the competent authority of the Requested Party conducting the examination shall, as soon as possible, notify the competent authority of the Requesting Party of the time and place of the examination, the authority or person authorised to carry out the examination and the procedures and conditions required by the Requested Party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the Requested Party conducting the examination in accordance with its domestic laws.

ARTICLE 7

POSSIBILITY OF DECLINING A REQUEST FOR INFORMATION

1. The competent authority of the Requested Party may decline to assist:

- (a) where the request is not made in conformity with this Agreement,
- (b) where the Requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
- (c) where the disclosure of the information requested would be contrary to the public policy (ordre public) of the Requested Party.

2. This Agreement shall not impose upon a Contracting Party any obligation to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Information described in paragraph 4 of Article 5 shall not by reason of that fact alone constitute such a secret or process.

3. (a) The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information which would reveal confidential communications between a client and an attorney, solicitor or barrister where such communications are:

- (i) produced for the purposes of seeking or providing legal advice; or
- (ii) produced for the purposes of use in existing or contemplated legal proceedings.

(b) Information held with the intention of furthering a criminal purpose is not subject to legal privilege, and nothing in this Article shall prevent an attorney, solicitor or barrister from providing the name and address of a client where doing so would not constitute a breach of legal privilege.

A request for information shall not be refused on the ground that the tax liability giving rise to the request is disputed by the taxpayer.

5. The Requested Party shall not be required to obtain and provide information which if the requested information was within the jurisdiction of the Requesting Party, the competent authority of the Requesting Party would not be able to obtain under its laws or in the normal course of administrative practice.

6. The Requested Party may decline a request for information if the information is requested by the Requesting Party to administer or enforce a provision of the tax law of the Requesting Party or any requirement connected therewith, which discriminates against a citizen of the Requested Party as compared with a citizen of the Requesting Party in the same circumstances.

ARTICLE 8

CONFIDENTIALITY

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons and authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relations to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. The information may not be disclosed to any other person or authority or any other jurisdiction (including a foreign Government) without the express written consent of the competent authority of the Requested Party.

ARTICLE 9

SAFEGUARDS

Nothing in this Agreement shall affect the rights and safeguards secured to persons by the laws or administrative practice of the Requested Party. The rights and safeguards shall not be applied by the Requested Party in a manner that unduly prevents or delays effective exchange of information.

ARTICLE 10

ADMINISTRATIVE COSTS

1. Incidence of ordinary costs incurred in the course of responding to a request for information will be borne by the Requested Party. Such ordinary costs would normally cover internal administration costs and any minor external costs.
2. All other costs that are not ordinary costs are considered extraordinary costs and will be borne by the Requesting Party. Extraordinary costs include, but are not limited to, the following:
 - (a) reasonable fees charged by third parties for carrying out research;
 - (b) reasonable fees charged by third parties for copying documents;
 - (c) reasonable costs of engaging interpreters, translators or other agreed experts;
 - (d) reasonable costs of conveying documents to the Requesting Party;
 - (e) reasonable litigation costs of the Requested Party in relation to a specific request for information; and
 - (f) reasonable costs for obtaining depositions or testimony.
3. The competent authorities of the Contracting Parties will consult each other in any particular case where extraordinary costs are likely to exceed \$500USD to determine whether the Requesting Party will continue to pursue the request and bear the cost.

ARTICLE 11

IMPLEMENTING LEGISLATION

The Contracting Parties shall (where they have not already done so) enact any legislation necessary to comply with, and give effect to, the terms of this Agreement.

ARTICLE 12

LANGUAGE

Requests for assistance and responses thereto shall be drawn up in English.

ARTICLE 13

MUTUAL AGREEMENT PROCEDURE

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best endeavours to resolve the matter by mutual agreement.
2. In addition to the endeavours referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually determine the procedures to be used under Articles 5, 6 and 10.

The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of this Agreement.

ARTICLE 14

ENTRY INTO FORCE

Each of the Contracting Parties shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the last notification and shall thereupon have effect:

- (a) with respect to criminal tax matters on that date; and
- (b) with respect to all other matters covered in Article 1 for taxable periods beginning on or after that date, or where there is no taxable period, for all charges to tax arising on or after that date.

ARTICLE 15

TERMINATION

1. This Agreement shall remain in force until terminated by either Contracting Party.
2. Either Contracting Party may terminate this Agreement by giving notice of termination in writing through appropriate channels after the expiration of a period of three years from the date of its entry into force. Such termination shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notice of termination by the other Contracting Party.
3. If the Agreement is terminated the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement. All requests received up to the effective date of termination shall be dealt with in accordance with the terms of this Agreement.

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

DONE in duplicate at London on this Ninth day of February 2011, each in Hindi and English languages, both texts being equally authentic. In case of divergence of interpretation, the English text shall prevail

[F.NO. 503/10/2009-FTD-I],