

MINISTRY OF FINANCE**(Department of Revenue)****NOTIFICATION**

New Delhi, the 30th August, 2017

(INCOME-TAX)

S.O. 2826(E).—Whereas the Protocol amending the Agreement, signed at Ha Noi on the 7th day of September, 1994, between the Government of the Republic of India and the Government of the Socialist Republic of Viet Nam for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, was signed at Ha Noi, Viet Nam on the 3rd day of September, 2016 (hereinafter referred to as the “the said Protocol”);

And whereas the date of entry into force of the said Protocol is the 21st day of February, 2017, being the date of the later of the notifications of the completion of domestic requirements for the entry into force of the said Protocol, in accordance with Article 3 of the said Protocol;

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 Protocol, as set out in the Annexure hereto, shall be given effect to in the Union of India.

[Notification No. 82/2017/ F.No.503/5/2009-FTD-II]

RAJAT BANSAL, Jt Secy.

ANNEXURE**PROTOCOL AMENDING****THE AGREEMENT****BETWEEN****THE GOVERNMENT OF THE REPUBLIC OF INDIA****AND****THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIET NAM 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 Socialist Republic of Viet Nam,

Desiring to amend the Agreement between the Government of the Republic of India and the Government of the Socialist Republic of Viet Nam for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed at Ha Noi on the 7th day of September, 1994 (in this Protocol referred to as “the Agreement”),

Have agreed as follows:

Article 1

The text of Article 27 of the Agreement is deleted and replaced by the following:

*“Article 27***EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of the Agreement or of the domestic laws of the Contracting States concerning taxes covered by the agreement, insofar as the taxation thereunder is not

contrary to the Agreement, in particular for the prevention of fraud or evasion of such taxes. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of the State. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Agreement. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made, including, where appropriate, exchange of information regarding tax avoidance. 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.

2. The exchange of information or documents shall be either on a routine basis or on request with reference to particular cases or both. The competent authorities of the Contracting States shall agree from time to time on the list of the information or documents which shall be furnished on a routine basis.

3. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws or administrative practice of that or of the other Contracting State;
- (b) to supply information or documents which are 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 or documents 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.

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 2

A new Article 27A of the Agreement shall be inserted:

“Article 27A ASSISTANCE IN THE COLLECTION OF TAXES

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term "revenue claim" as used in this Article means an amount owed in respect of 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 this Agreement or any other instrument to

which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

- (a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
- (b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy (*ordre public*);
- (c) to provide assistance if the other Contracting State 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 State is clearly disproportionate to the benefit to be derived by the other Contracting State.”.

Article 3

The Contracting States shall notify each other in writing through diplomatic channel of the completion of their domestic requirements for the entry into force of this Protocol. The Protocol shall enter into force on the date of the later of these notifications.

Article 4

The 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, have signed this Protocol.

DONE in duplicate at Ha Noi, on this 3rd day of September, 2016, in English, Hindi and Vietnamese languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF
THE REPUBLIC OF INDIA

FOR THE GOVERNMENT OF
THE SOCIALIST REPUBLIC OF VIET NAM

(Parvathaneni Harish)
Ambassador Extraordinary and
Plenipotentiary Republic of India to S.R. Vietnam

(Do Hoang Anh Tuan)
Vice Minister of Ministry of Finance.