

**AGREEMENT  
BETWEEN  
HIS MAJESTY'S GOVERNMENT OF NEPAL  
AND  
THE GOVERNMENT OF THE REPUBLIC OF INDIA  
FOR  
THE AVOIDANCE OF DOUBLE TAXATION  
AND  
THE PREVENTION OF FISCAL EVASION WITH RESPECT  
TO TAXES ON INCOME**

His Majesty's Government of Nepal and the Government of the Republic of India,

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:

**CHAPTER - I  
SCOPE OF THE AGREEMENT**

**Article - 1  
PERSONAL SCOPE**

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

**Article - 2  
TAXES COVERED**

1. The taxes to which this agreement shall apply are:
  - (a) In the case of India:
    - (i) The income-tax including any surcharge thereon imposed under the Income-tax Act, 1961 (43 of 1961),
    - (ii) The surtax imposed under the Companies (profits) Surtax Act, 1964 (7 of 1964),
  - (b) In the case of Nepal:
    - (i) Income-tax imposed under the Income-tax Act, 2031 (hereinafter referred to as "Nepal tax".)
2. The Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Agreement in addition to, or authorities of the Contracting States shall notify each other or any substantial changes which are made in their respective taxation laws.

**CHAPTER II  
DEFINITIONS**

**Article 3  
GENERAL DEFINITIONS**

1. In this agreement, unless the context otherwise requires:
  - a) the term "a contracting state" and "the other contracting state" mean India or Nepal, as the context requires;

- b) the term "Tax" means Indian tax or Nepal tax, as the context requires, 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 imposed relating to those taxes;
  - c) the term "person" includes an individual, a company and any other entity which is treated as a taxable unit under the taxation laws in force in the respective contracting States;
  - d) the term "company" means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective contracting States;
  - e) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a contracting state and an enterprise carried on by a resident of the other contracting State;
  - f) the term "competent authority" means in the case of India the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representative and in the case of Nepal, His Majesty's Government, Ministry of Finance, or their authorized representative;
  - g) the term "national" means any individual, possessing the nationality of a contracting State and any legal persons, partnership or association deriving its status from the laws in force in the Contracting state;
  - h) the term "international traffic" means any transport by an aircraft operated by an enterprise of a contracting State, except when the aircraft is operated solely between places in the other contracting State;
2. As regards the application of the Agreement by a contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies.

#### **Article 4 RESIDENT**

1. For the purposes of this Agreement, the term "resident of a contracting State" means any person who under the laws of that State, is liable to tax therein by reason of his domicile, residence place of management or any other criterion of a similar nature.
2. Where by reason of the provisions of paragraph 1, an individual is a resident of both contracting States, then his status shall be determined as follows:
  - (a) he shall be deemed to be a resident of the state in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State in which his economic activities are concentrated;
  - (b) if he has not a permanent home available to him in either State, he shall be deemed to be resident of the State in which he has an habitual abode;
  - (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the state in which his economic activities are concentrated;
  - (d) in cases of dispute, the competent authorities of the contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both contracting States, then it shall be deemed to be a resident of the state in which its place of effective management is situated.

## **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 the enterprise is wholly or partly carried on
2. The term "permanent establishment" includes especially:
  - (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop;
  - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
  - (g) a building site or construction of assembly project, but only where such site, project or activity continues for a period or periods aggregating more than 183 days in any twelve -month period;
  - (h) the furnishing of services by an enterprise through employees or other personnel, where activities continue within the country for a period or periods aggregating more than 183 days in any twelve-month period.
3. notwithstanding the preceding provisions of the Article, the term "permanent establishment" shall be deemed not to include:
  - (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
  - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
  - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
  - (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.
4. Notwithstanding the provisions of paragraph 1 and 2, where a person - other than an agent of independent status to whom paragraph 5 applies is acting on behalf of an enterprise and has, and habitually exercises, in a contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to the purchase of goods or merchandise for the enterprise.
5. An enterprise of a contracting State shall not be deemed to have a permanent establishment in the other contracting State merely because it carries on business in that other State 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.

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

### **CHAPTER III TAXATION OF INCOME**

#### **Article 6 INCOME FROM IMMOVABLE PROPERTY**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other state.
2. The term "Immovable property" shall have the meaning which it has under the law of the Contracting State 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 also 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 Contracting state shall be taxable only in that state unless the enterprise carries on business in the other contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other state 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 Contracting States carries on business in the other contracting State through a permanent establishment situated therein, there shall in each Contracting State 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. (a) in the determination of the profits of a permanent establishment, there shall be allowed as deductions, expenses of the enterprise which are incurred for the purpose of the permanent establishment, including only those executive and general administrative expenses incurred, whether in the state in which the permanent establishment is situated or elsewhere which are allowed under the provisions of the domestic law of the Contracting State in which the permanent establishment is situated.

(b) 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, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on monies lent to the permanent establishment. Likewise, no account shall be taken in the determination of the profits of a permanent establishment of 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 for specific services performed or for management, or except in the case of a banking enterprise by way of interest on monies lent to the head office of the enterprise or any of its other offices.

4. In so far as it has been customary in a Contracting state 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 Contracting State 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 purpose 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 AIR TRANSPORT**

1. Profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in that State.
2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.
3. For the purposes of this Article, interest on funds connected with the operation of aircraft in international traffic shall be regarded as income/profits derived from the operation of such aircraft and the provisions of Article 11 shall not apply in relation to such interest.
4. The term "operation of aircraft" shall mean business of transportation by air of passengers, mail, livestock or goods carried on by the owners of lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft and any other activity directly connected with such transportation.

**ARTICLE 9  
ASSOCIATED ENTERPRISES**

Where :

- a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other contracting State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a contracting State and an enterprise of the other Contracting State.

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.

**ARTICLE 10  
DIVIDENDS**

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed :
  - (a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which
    - owns at least ten per cent of the shares of the company paying the dividends ;
  - (b) 15 per cent of the gross amount of the dividends in all other cases.

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 or 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 state 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 contracting state, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein or performs in that other State 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 of fixed base. In such case, the provision of Article 7, or Article 13, as the case may be shall apply.
5. Where a company which is a resident of a Contracting State derives profits or income from the other contracting state, that other state may not impose any tax on the dividends paid by the company except in so far as such dividends are paid to a resident of that other state or in so far 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 State, not 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 State.

**ARTICLE 11**  
**INTEREST**

1. Interest arising in Contracting State and paid to a resident of the other contracting state may be taxed in that other state.
2. However, such interest may also be taxed in the Contracting state in which it arises and according to the laws of that state, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

Provided, however, that where the interest is paid to a bank carrying on bonfide banking business, which is resident of the other Contracting State and is the beneficial owner of the interest, the tax charged in the contracting states in which the interest arises shall not exceed 10 percent of the gross amount of interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting state shall be exempt from tax in that State provided it is derived and beneficially owned by :
  - (i) the government, a political sub-division or a local authority of the other Contracting State; or
  - (ii) the Central Bank of the other Contracting State.
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 income from 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 Contracting state, carries on business in the other contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim 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 13, as the case may be, shall apply.
6. Interest shall be deemed to arise in a contracting state when the payer is that Contracting state itself, a political sub-division, a local authority or a resident of that state. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State 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 Contracting State in which the permanent establishment or fixed base is situated.
7. Where, by reasons 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 to the last mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each contracting state, due regard being had to the other provisions of this Agreement.

## **ARTICLE 12 ROYALTIES**

1. Royalties arising in a Contracting state and paid to a resident of the other Contracting state may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 15 per cent of the gross amount of the royalties.
3. 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 radio, or television 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.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other contracting State in which the royalties arise, through a permanent establishment, situated therein, or performs in that other state independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 13, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting state when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the state in which the permanent establishment or fixed base is situated.
6. Where, by reason of special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of royalties, 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 Contracting State, due regard being had to the other provisions of this Agreement.

## **ARTICLE 13 INDEPENDENT PERSONAL SERVICES**

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that state except in the following circumstances when such income may also be taxed in the other Contracting State:
  - (a) if he has a fixed base regularly available to him in the other Contracting state 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 Contracting State; or
  - (b) if his stay in the other Contracting state is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant "previous year" or "year of income" as the case may be; in that case only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

2. The term "professional services" includes independent scientific, literary, artistic, educational or teaching activities, as well as the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists and accountants.

#### **ARTICLE 14 DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 15, 16, 17, 18, 19, and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that state unless the employment is exercised, in the other contracting state. If the employment is so exercised such remuneration as is derived there from may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :
  - (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant "previous year" or "year of income", as the case may be, and
  - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State;
  - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard an aircraft operated in international traffic by an enterprise of a contracting State shall be taxable only in that State.

#### **ARTICLE 15 DIRECTORS' FEES**

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the Board of Directors of a company which is a resident of the other Contracting State may be taxed in that other State.

#### **ARTICLE 16 INCOME EARNED BY ENTERTAINERS AND ATHLETES**

1. Notwithstanding the provisions of Articles 13 and 14, income derived by a resident of a Contracting State as an entertainer such as a theater, motion picture, radio or television artist or musician or as an athlete, from his personal activities as such exercised in the other Contracting State may be taxed in that other State.
2. While income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or an athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 13 and 14, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.
3. Notwithstanding the provisions of paragraph 1, income derived by an entertainer or an athlete. Who is a resident of a Contracting State from his personal activities as such exercised in the other Contracting State, shall be taxable only in the first-mentioned contracting state, if the activities in the other Contracting State are supported wholly or substantially from the public funds of the first-mentioned Contracting State, including any of its political sub-divisions or local authorities.

4. Notwithstanding the provisions of paragraph 2 and Articles 7, 13 and 14, where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such in a Contracting State accrues not to the entertainer or athlete himself but to another person, that income shall be taxable only in the other Contracting State, if that other person is supported wholly or substantially from the public funds of that other state, including any of its political sub-division or local authorities.

**ARTICLE 17**  
**REMUNERATION AND PENSIONS IN RESPECT OF GOVERNMENT SERVICE**

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.  
  
(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who :
  - (i) is a national of that State, or
  - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. (a) Any pension paid by, or out of funds created by a Contracting State or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority shall be taxable only in that State.  
  
(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of that other State.
3. The provisions of Articles 14, 15 and 16 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division or a local authority thereof.

**ARTICLE 18**  
**NON- GOVERNMENT PENSIONS AND ANNUITIES**

1. Any pension, other than a pension referred to in Article 17, or any annuity derived by a resident of a Contracting State from sources within the other Contracting State may be taxed only in the first-mentioned Contracting State.
2. The term "pension" means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.
3. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

**ARTICLE 19**  
**PAYMENTS RECEIVED BY STUDENTS AND APPRENTICES**

1. A student or business apprentice who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other State solely for the purpose of his education or training, shall be exempt from tax in that other State on:
  - (a) Payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training; and
  - (b) Remuneration from employment in that other State, in an amount not exceeding Rs. 18,000 (Indian currency) or its equivalent in Nepalese currency during any "previous year" or the "year of income", as the case may be, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

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 three consecutive years from the date of his first arrival in that other Contracting State.

**ARTICLE 20**  
**PAYMENTS RECEIVED BY PROFESSORS, TEACHERS AND RESEARCH SCHOLARS**

1. A professor or teacher who is or was a resident of one of the Contracting State immediately before visiting the other Contracting State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other Contracting State shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other State.
2. This article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.
3. For the purposes of this Article and Article 19, an individual shall be deemed to be a resident of a Contracting State if he is a resident in that Contracting State in the "previous year" or the "year of income", as the case may be, in which he visits the other Contracting State or in the immediately preceding "previous year" or the "year of income."
4. For the purposes of paragraph 1, "approved institution" means an institution which has been approved in this regard by the competent authority of the concerned Contracting State.

**ARTICLE 21**  
**OTHER INCOME**

1. Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing articles of this Agreement, shall be taxable only in that Contracting State.
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 Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State 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 of fixed base. In such case, the provisions of Article 7 or Article 13, as the case may be, shall apply.

**CHAPTER IV**  
**METHOD OF ELIMINATION OF DOUBLE TAXATION**

**ARTICLE 22**  
**ELIMINATION OF DOUBLE TAXATION**

1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting State except where provisions to the contrary are made in this Agreement. Where income is subject to tax in both Contracting States, relief from double taxation shall be given in accordance with this Article.

2. Subject to the provisions of the law of Nepal regarding the allowance as a credit against Nepal's tax of tax payable in a territory outside Nepal (which shall not affect the general principle hereof) Indian tax payable under the law of India and in accordance with the provisions of this Agreement, whether directly or by deduction, on income from sources within India shall be allowed as a credit against any Nepal tax computed by reference to the same items of income by reference to which the Indian tax is computed.
3. For the purpose of the credit referred to in paragraph (2), the term "Indian tax payable" shall be deemed to include any amount by which tax has been reduced by the special incentive measures under-
  - (i) sections 10 (4), 10 (4A), 10 (6) (viiia), 10 (15) IV, 10 (28), 10A, 32A, 33A, 80HH, 80HHA, 80-I" and 80-L of the Indian Income Tax Act , 1961 (43 of 1961), and
  - (ii) any other provision which may subsequently be enacted granting a reduction of tax which the competent authorities of the Contracting State agree to be for the purposes of economic development.
4. Subject to the provisions of the law of India regarding the allowance as a credit against Indian tax of tax payable in a territory outside India (which shall not affect the general principle here of) Nepal tax payable under the law of Nepal, so however, that where such resident is a company by which surtax is payable in India, the credit aforesaid shall be allowed in the first instance against income tax payable by the company in India, and as to the balance, if any, against surtax payable by it in India.
5. For the purpose of paragraph (4) of this Article, the term "Nepal tax payable" shall be deemed to include any amount which would have been payable as Nepal tax for any year but for an exemption or education of tax granted for that year or any part thereof under :
  - (a) sub-section (2) of Section 42 of the Nepal Income-tax Act, 2031 (1974), so far as they were in force on, and have not been modified since, the date of the signature of this agreement, or have been modified only in minor respects so as not to affect their general character; or
  - (b) any other provisions which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.
6. Where under this Agreement a resident of a Contracting State is exempt from tax in that Contracting State in respect of income Contracting State may, in calculating tax on the remaining income of that person, apply the rate of tax which would have been applicable if the income exempted from tax in accordance with this Agreement had not been so exempted.

## **CHAPTER V SPECIAL PROVISIONS**

### **ARTICLE 23 NON-DISCRIMINATION**

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is to are or more burdensome than the taxation and connected requirement to which nationals of that other State in the same circumstances are or may be subjected.
2. The taxation on a permanent establishment which an enterprise of a contracting State has in the other contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities in the same circumstances.

3. Nothing contained in this article shall be construed as obliging a Contracting State to grant to persons not resident in that State any persons allowances, relief's, reduction and deductions for taxation purposes which are by law available only to persons who are so resident.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or partly owned or Controlled, directly or indirectly, by one of more resents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome that the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may by subjected in the same circumstances.
5. In this article, the term "taxation" means taxes which are the subject of this Agreement.

#### **ARTICLE 24 MUTUAL AGREEMENT PROCEDURE**

1. Where a resident of Contracting State considers that the actions of one or both of the Contracting States or will result for him in taxation not in accordance with this Agreement he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident. This case notice of the action which gives rise to taxation not in accordance with the Agreement.
2. The competent authority shall andeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the care by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any limits in the national laws of the Contracting States.
3. The competent authorities of the Contracting States 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 o-the Contracting States 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 representatives of the competent authorities of the Contracting States.

#### **ARTICLE 25 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, in so far 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 that 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 secessions, 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.

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 of 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 could be contrary to public policy.

## **CHAPTER VI FINAL PROVISIONS**

### **ARTICLE 27 ENTRY INTO FORCE**

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

- a) in India, in respect of income arising in any previous year beginning on or after the first day of April next following the calendar year in which the notice of termination is given;
- (b) in Nepal, in respect of income arising in any year of income beginning on or after the 1st day of Nepalese fiscal year next following the calendar year in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed the present Agreement.

Done in duplicate at KATHMANDU, on this eighteenth day of January one thousand nine hundred and eighty seven A. D. In Nepalese, Hindi and English languages. All the texts being equally authentic. In case of divergence in interpretation, the English text shall prevail.