

L.N. 46 OF 1995

**INCOME TAX ACT
(CAP. 123)**

**Double Taxation Relief (Taxes on Income)
(Republic of India) Order, 1995**

IN exercise of the powers conferred by section 76 of the Income Tax Act, the Minister of Finance has made the following order:-

1. This order may be cited as the Double Taxation Relief (Taxes on Income) (Republic of India) Order, 1995.

Citation

2. It is hereby declared:-

Arrangements to
have effect

(a) that the arrangements specified in the Agreement set out in the Schedule to this Order have been made with the Government of the Republic of India with a view to affording relief from double taxation in relation to the following taxes imposed by the laws of the Republic of India:

the income tax including any surcharge thereon;

(b) that it is expedient that those arrangements should have effect ;

(c) that the Agreement has entered into force on the 8th February, 1995.

SCHEDULE
AGREEMENT
BETWEEN MALTA
AND THE REPUBLIC OF INDIA
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

The Government of Malta 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 1

SCOPE OF 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 existing taxes to which this Agreement shall apply are in particular:
 - (a) in Malta:
the income tax,
(hereinafter referred to as “Malta tax”);
 - (b) in India:

the income tax (including any surcharge thereon);
(hereinafter referred to as “Indian tax”).

(2) This 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 in place of, the taxes referred to in paragraph (1). The competent authorities of the Contracting States shall notify each other of any significant changes which are made in their respective taxation laws.

(3) Notwithstanding the other provisions of this Article, this Agreement shall not apply to tax paid or payable in Malta in accordance with the provisions of subsection (11) of section 31 of the Income Tax Act (Cap. 123), concerning the chargeable income of any person engaged in the production of petroleum produced in Malta, or any substantially similar provision which is imposed after the date of signature of this Agreement.

CHAPTER II

DEFINITIONS

ARTICLE 3

General Definitions

(1) For the purposes of this Agreement, unless the context otherwise requires:

(a) The term “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 jurisdictions, according to the Indian law and in accordance with international law/ the U.N. Convention on the Law of the Sea;

(b) the term “Malta”, when used in a geographical sense, means the Island of Malta, the Island of Gozo and the other Islands of the Maltese Archipelago including the territorial waters thereof, and any area outside the territorial sea of Malta which, in accordance with international law, has been or may hereafter be designated, under the law of Malta concerning the Continental Shelf, as an area within which the rights of Malta with respect to the seabed and subsoil and their natural resources may be exercised;

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

(d) 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 Malta, the Minister responsible for finance or his authorised representative;

(e) the term “a Contracting State” and “the other Contracting State” mean India or Malta as the context requires;

(f) the term “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;

(g) the term “fiscal year” in relation to Indian tax means “previous year” as defined in the Income Tax Act, 1961 (43 of 1961) and in relation to Malta tax means the year immediately preceding the “year of assessment” as defined in the Income Tax Act (Cap. 123);

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

(i) the term “national” means any individual possessing the nationality of a Contracting State and any legal person, partnership or association deriving its status from the laws in force in the Contracting State;

(j) 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 Contracting States;

(k) the term “tax” means Indian tax or Malta 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.

(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 this 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 Contracting 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 Contracting State with which his personal and economic relations are closer (centre of vital interests);

(b) if the State in which he has his centre of vital interests cannot be determined, or if he has no permanent home available to him in either State, he shall be deemed to be a resident of the Contracting 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 Contracting State of which he is a national;

(d) if he is a national of both States or of neither of them, 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 Contracting 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, quarry or any other place of extraction of natural resources including an offshore drilling site;

(g) a building site or construction or assembly project or supervisory activities in connection therewith, where such site, project or activities (together with other such sites, projects or activities, if any) continues for a period of more than six months.

(3) 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.

(4) A person engaged in a Contracting State in exploration of the seabed and its sub-oil or in exploitation of natural resources situated there as well as in activities which are complementary or auxiliary to such activities, is deemed to exercise such activities through a permanent establishment in that State.

(5) An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if:

(a) substantial equipment is in that other State being used or installed by, for or under contract with the enterprise;

(b) it carries on supervisory activities in that State in connection with the use of equipment referred to in sub-paragraph (a).

(6) 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 on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name 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.

(7) 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, where 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 the enterprise, he shall not be considered as agent of an independent status if the transactions between the agent and the enterprise were not made under arm's length conditions.

(8) 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 State (whether through a permanent establishment or otherwise), shall not of itself constitute either company 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 or to explore for, 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 directly or indirectly attributable to that permanent establishment. The words “directly or indirectly” mean, for the purposes of this Article, that where a permanent establishment takes an active part in negotiating, concluding or fulfilling contracts entered into by the enterprise, then, notwithstanding that other part of the enterprise have also participated in those transactions, there shall be attributed to the permanent establishment that proportion of profits of the enterprise arising out of those contracts as the contribution of the permanent establishment to those transactions bears to that of the enterprise as a whole.

(2) Subject to the provisions of paragraph (3), where an enterprise of a Contracting State 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 or with other associated enterprises with which it deals.

(3) In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise, being expenses which are incurred for the purposes of the permanent establishment (including executive and general administrative expenses so incurred) and which would be deductible if the permanent establishment were an independent entity which paid those expenses, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere in accordance with the provisions of an subject to the limitation of the taxation laws of that State.

(4) Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including the determination of such liability by the exercise of discretion or the making of an estimate by the competent authority of that State in cases in which, from the information available tot he competent authority of that State, it is not possible or not practicable to ascertain the profits to be attributed to a permanent establishment, provided that law shall be applied, so far as the information available to the competent authority permits, consistently with the principles of 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 a good and sufficient reason to the contrary.

(7) The provisions of this Article shall not affect the provisions of the law of a Contracting State regarding the taxation of profits from the business of insurance.

(8) 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 Contracting State from the operation by that enterprise of ships or aircraft in international traffic shall be taxable only in that State.

(2) For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall mean profits derived by an enterprise described in paragraph (1) from the transportation by sea or air respectively of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of ships or aircraft including:

- (a) the sale of tickets for such transportation on behalf of other enterprises;
- (b) other activity directly connected with such transportation; and
- (c) the rental of ships or aircraft incidental to any activity directly connected with such transportation.

(3) Profits of an enterprise of a Contracting State described in paragraph (1) from the use, maintenance, or rental of containers (including trailers, barges and related equipment for the transport of containers) used in connection with the operation of ships or aircraft in international traffic shall be taxable only in that State.

(4) The provisions of paragraphs (1) and (3) shall also apply to profits from participation in a pool, a joint business, or an international operating agency.

(5) For the purposes of this Article interest on funds 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, and the provisions of Article 11 (Interest) shall not apply in relation to such interest.

ARTICLE 9

Associated Enterprises

(1) 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.

(2) Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of such liability by the exercise of a discretion or the making of an estimate competent authority of that State in cases which, from the information available to the competent authority of that State, it is not possible or not practicable to determine the income to be attributed to an enterprise, provided that that law shall be applied, so far as the information available to the competent authority permits, consistently with the principles of this Article.

(3) Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to that enterprise of the first mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

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:

(a) where the dividends are paid by a company resident of India to a resident of Malta who is the beneficial owner thereof, the Indian tax so charged shall not exceed:

(i) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least 25 per cent of the shares of the company paying the dividends; and

(ii) 15 per cent of the gross amount of the dividends in all other cases;

(b) where the dividends are paid by a company which is a resident of Malta to a resident of India who is the beneficial owner thereof Malta tax on the gross amount of the dividends shall not exceed that chargeable on the profits out of which the dividends are paid.

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, “jouissance” shares or “jouissance” rights, mining shares, founders’ 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 that 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 or fixed base. In such a case the provisions of Article 7 or Article 15, 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 insofar as such dividends are paid to a resident of that other State 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 State, 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 State.

ARTICLE 11

Interest

(1) Interest 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 interest may 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 10 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph (2), interest arising in a Contracting State shall be exempt from tax in that State if it is derived by the Government of the other Contracting State or a local authority thereof or any agency or instrumentality wholly owned and controlled by that government or local authority.

(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.

(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 15, as the case may be, shall apply.

(6) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, 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 shall be deemed to arise in the State 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 on 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 and Fees for Included Services

(1) Royalties and fees for included services 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 and fees for included services 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 or fees for included services the tax so charged shall not exceed 15 per cent of the gross amount of the royalties or fees for included services.

(3) The term “royalties” in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:

(a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark or other like property or right;

(b) the use of, or the right to use, any industrial, commercial or scientific equipment;

(c) the supply of scientific, technical, industrial or commercial knowledge or information;

(d) the use of, or the right to use:

(i) motion picture films;

(ii) films or video tapes for use in connection with television; or

(iii) tapes for use in connection with radio broadcasting; or

(e) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

(4) The term “fees for included services” in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:

(a) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in sub-paragraph (a) of paragraph (3), or any such equipment as is mentioned in sub-paragraph (b) of paragraph (3), or any such knowledge or information as is mentioned in sub-paragraph (c) of paragraph (3);

(b) rendering of any technical or consultancy services (including the provision of technical or other personnel) if such services make available technical knowledge, (experience, skill, know-how or process or consist of the development and transfer of a technical plan or technical design.

(5) The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the royalties or fees for included services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for included services 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 or fees for included services are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

(6) Royalties and fees for included services shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for included services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the liability to pay the royalties or fees for included services was incurred, and such royalties or fees for included services 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.

(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 royalties or fees for included 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 Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 13

Technical Fees

(1) Technical fees arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other State.

(2) However, such technical fees 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 technical fees, the tax so charged shall not exceed 10 per cent of the gross amount of the technical fees.

(3) The term “technical fees” as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.

(4) The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise through a permanent establishment situated therein, or performs in that other State independent personal services, and the technical fees are effectively connected with such permanent establishment or such services. In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

(5) Technical fees shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a statutory body thereof, or a resident of that State. Where, however, the person paying the technical fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by that permanent establishment, then such technical fees shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

(6) Where, by reason of a special relationship between the payer and the recipient or between both of them and some other person, the amount of the technical fees paid exceeds, for whatever reason, 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 law of each Contracting State due regard being had to the other provisions of this Agreement.

ARTICLE 14

Alienation of Property

(1) Income from gains from the alienation of immovable property, as defined in paragraph (2) of Article 6, may be taxed in the Contracting State in which such property is situated.

(2) Income from gains from the alienation of shares or comparable interests in a company, the assets of which consist wholly or principally of immovable property, may be taxed in the Contracting State in which the assets or the principal assets of the company are situated.

(3) Income from gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such income or gains arising from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State.

(4) Income from 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 Contracting State of which the alienator is a resident.

(5) Income from gains from the alienation of shares other than those mentioned in paragraph (2) in a company which is a resident of a Contracting State may be taxed in that State.

(6) Income from gains from the alienation of any property other than referred to in paragraphs (1), (2), (3), (4) and (5) shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15

Independent Personal Services

(1) Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State. However, such income may be taxed in the other Contracting State in the following circumstances:

(a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities in which case only so much of the income as is attributed 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 90 days during any fiscal year.

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

ARTICLE 16

Dependent Personal Services

(1) Subject to the provisions of Articles 17, 19, 20 and 21, 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 therefrom 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 fiscal year concerned, 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 a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed only in that State.

ARTICLE 17

Directors' Fees

Directors' fees and similar payments derived by a resident of one of the Contracting States in his capacity as a member of the board of directors, or other comparable body however described, of a company which is a resident of the other Contracting State, may be taxed in that other Contracting State.

ARTICLE 18

Income Earned by Artistes and Athletes

(1) Notwithstanding the provisions of Articles 15 and 16, income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste or a musician or as an athlete from his personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting State.

(2) Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16, 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 subdivisions or local authorities.

(4) Notwithstanding the provisions of paragraph (2) and Articles 7, 15 and 16, 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 subdivisions or local authorities.

ARTICLE 19

Pensions

(1) Subject to the provisions of paragraph (2) of Article 20, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

(2) Notwithstanding the provisions of paragraph (1), pensions and other payments made under the social security legislation of a Contracting State shall be taxable only in that State.

ARTICLE 20

Government Service

(1) (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof, to an individual in respect of services rendered to that State or subdivision 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 purposes of rendering the services.

(2) (a) Any pension paid by, or out of funds created by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision 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 national of, that State.

(3) The provisions of Articles 16, 17 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with any business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 21

Remuneration received by Teachers

(1) Remuneration which a professor or teacher who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State for a period not exceeding two years for the purpose of carrying out advanced study or research or for teaching at a university, college, school or other educational institution receives for such work shall not be taxed in that State, provided that such remuneration is derived by him from outside that 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.

ARTICLE 22

Payments received by Students and Trainees

An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in the other State solely:

(a) as a student at a recognized university, college, school or other similar recognized educational institution in that other State; or

(b) as a business or technical apprentice; or

(c) as a recipient of a grant, allowance or award for the primary purpose of study, research or training from the government of either State or from a scientific, educational, religious, or charitable organisation or under a technical assistance programme entered into by the Government of either State,

shall be exempt from tax in that other State on:

(a) all remittances from abroad for the purposes of his maintenance, education, study, research or training;

(b) the amount of such grant, allowance or award; and

(c) any remuneration not exceeding an amount equivalent to US\$3,000 during any fiscal year in respect of services in that other State provided the services are performed in connection with his study, research or training or are necessary for the purpose of his maintenance.

ARTICLE 23

Other Income

(1) Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that 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 or fixed base. In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

(3) Notwithstanding the provisions of paragraphs (1) and (2) items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Convention and arising in the other Contracting State may also be taxed in that other State.

CHAPTER 1V

ELIMINATION OF DOUBLE TAXATION

ARTICLE 24

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 States except where express provision to the contrary is made in this Agreement.

(2) In the case of India double taxation shall be eliminated as follows:

Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Malta, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in Malta whether directly or by deduction. Such deduction in either case shall not, however, exceed that part of the income tax (as computed before the deduction is given) which is attributable, as the case may be, to the income which may be taxed in Malta.

(3) For the purposes of paragraph (2), the term “income tax paid in Malta” shall be deemed to include the amount of Malta tax which would, under the laws of Malta and in accordance with this Agreement, have been payable on any income derived from sources in Malta had the income not been taxed at a reduced rate or exempted from Malta tax in accordance with:

(a) the Aids to Industries Ordinance, 1959 and the Industrial Development Act, 1988 in so far as they were in force on, and have not been modified since, the date of 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 in the Income Tax Act (Cap.123) or in any other legislation which may subsequently be introduced in Malta in modification of, or in addition to, the existing special incentive laws so far as they are agreed by the competent authorities of the Contracting States to be of a Substantially similar character.

(4) In the case of Malta, double taxation shall be eliminated as follows:

Subject to the provisions of the law of Malta regarding the allowance of a credit against Malta tax in respect of foreign tax, where, in accordance with the provisions of this Agreement, there is included in a Malta assessment income from sources within India, the Indian tax on such income shall be allowed as a credit against the relative Malta tax payable thereon.

(5) For the purposes of the deduction referred to in paragraph (4), the term “Indian tax on such income” shall be deemed to include any amount which would have been payable as Indian tax under the laws of India and in accordance with this Agreement for any year but for an exemption from; or reduction of, tax granted for that year under:

(a) Section 10(4), 10(4B), 10(6) (viiia), 10(15) (iv), 10 A, 10 B, 80 1A, 80HHC, 80HHD, 80HHE of the income Tax Act, 1961 (43 of 1961), 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 its general character: or

(b) any other provisions which may be enacted hereafter granting a deduction in computing the taxable income or an exemption or reduction from tax which the competent authorities of the Contracting States agree to be for the purposes of the economic development of India, 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 the Agreement provides that income arising in a Contracting State shall be relieved from tax in that State, either in full or in part, and, under the law in force in the other Contracting State, such income is subject to tax by reference to the amount thereof which is remitted to or received in that other State and not by reference to the full amount thereof, then the relief to be allowed in the first-mentioned State shall apply only to so much of the income as is remitted to or received in the other State.

(7) Income which, in accordance with the provisions of this Agreement, is not to be subjected to tax in a Contracting State, may be taken into account for calculating the rate of tax to be imposed in that Contracting State.

CHAPTER V

SPECIAL PROVISIONS

ARTICLE 25

Non-discrimination

(1) Nationals of a Contracting State shall not be subjected in the other Contracting State 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 State in the same circumstances 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 Contracting States.

(2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities in the same circumstances or under the same conditions. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which an enterprise of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar enterprise of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph (3) of Article 7 of this Agreement.

(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 fees for included services and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State 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 State.

(4) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirements connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected in the same circumstances.

(5) Nothing in this Article shall be construed as obliging a Contracting State to grant to individuals who are residents of the other Contracting State any personal allowances, reliefs and reductions for tax purposes on account of civil status, family responsibilities or any other personal circumstances which it grants to its own residents.

(6) In this Article, the term "taxation" means taxes which are the subject of this Agreement.

ARTICLE 26

Mutual Agreement Procedure

(1) Where a person considers that the actions of one or both of the Contracting States 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 States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph (1) of Article 25, to that of the Contracting State 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 an appropriate solution, to resolve the case 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 time 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 of 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 reach 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 Contracting States.

ARTICLE 27

Exchange of Information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this 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 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 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.

(2) 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 and administrative practice of that or of the other Contracting State;

(b) to supply information which is 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 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*).

ARTICLE 28

Diplomatic and Consular Officials

Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular officials under the general rules of international law or under the provisions of special agreements.

CHAPTER VI

FINAL PROVISIONS

ARTICLE 29

Entry into Force

(1) The Governments of the Contracting States shall notify each other that the legal requirements for the entry into force of this Agreement have been complied with.

(2) The Agreement shall enter into force thirty days after the date of the late of the notifications referred to in paragraph (1) and its provisions shall have effect:

(a) in Malta:

as regards income for any “fiscal year” beginning on or after the first day of January of the calendar year next following that in which this Agreement enters into force;

(b) in India:

as regards income for any “fiscal year” beginning on or after the first day of April of the calendar year next following that in which this Agreement enters into force.

ARTICLE 30

Termination

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiration of a period of five years from the date of its entry into force. In such event, the Agreement shall cease to have effect:

(a) in Malta:

as regards income for any "fiscal year" beginning on or after the first day of January of the calendar year next following that in which the notice of termination is given;

(b) in India:

as regards income for any "fiscal year" beginning on or after the first day of April of the calendar year next following that in which the notice of termination is given.

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

DONE at Valletta, Malta this twenty eighth day of September, 1994, in duplicate in the English and Hindi languages, both texts being equally authentic. In case of divergence between the two texts the English text shall be the operative one.

FOR THE GOVERNMENT OF
MALTA

John Dalli
Minister of Finance

FOR THE GOVERNMENT OF THE
REPUBLIC OF INDIA

Malavalli Venkatappa
Chandrashekara Murthy
Minister of State for Revenue
and Expenditure