PROTOCOL
AMENDING THE CONVENTION
BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA
AND THE GOVERNMENT OF JAPAN
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of India and the Government of Japan,

Desiring to amend the Convention between the Government of the Republic of India and the Government of Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at New Delhi on 7th March, 1989, as amended by the Protocol signed at Tokyo on 24th February, 2006 (hereinafter referred to as "the Convention"),

Have agreed as follows:

ARTICLE 1

Paragraphs 3 and 4 of Article 11 of the Convention shall be deleted and replaced by the following:

"3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be taxable only in the other Contracting State if:

(a) the interest is derived and beneficially owned by the Government of that other Contracting State, a political sub-division or local authority thereof, or the central bank of that other Contracting State or any financial institution wholly owned by that Government; or

(b) the interest is derived and beneficially owned by a resident of that other Contracting State with respect to debt-claims guaranteed, insured or indirectly financed by the Government of that other Contracting State, a political sub-division or local authority thereof, or the central bank of that other Contracting State or any financial institution wholly owned by that Government.

4. For the purposes of paragraph 3, the terms "the central bank" and "financial institution wholly owned by that Government" mean:

(a) in the case of Japan:

(i) the Bank of Japan;

(ii) the Japan Bank for International Cooperation;

(iii) the Japan International Cooperation Agency;

(iv) the Nippon Export and Investment Insurance; and

(v) such other financial institution the capital of which is wholly owned by the Government of Japan as may be agreed upon from time to time between the Governments of the Contracting States;

(b) in the case of India:

(i) Reserve Bank of India;

(ii) Export-Import Bank of India;

(iii) General Insurance Corporation of India;

(iv) New India Assurance Company Limited; and

(v) such other financial institution the capital of which is wholly owned by the Government of India as may be agreed upon from time to time between the Governments of the Contracting States."

ARTICLE 2

Article 26 of the Convention shall be deleted and replaced by the following:

"Article 26

1. The competent authorities of the Contracting States shall exchange such information (including documents or certified copies of the documents) as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political sub-divisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both Contracting States and the competent authority of the supplying Contracting State authorises such use.

3. In no case shall the provisions of paragraphs 1 and 2 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.

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other Contracting State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person."

ARTICLE 3

A new Article shall be added after Article 26 of the Convention as follows:

"Article 26A

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

2. The term "revenue claim" as used in this Article means an amount owed in respect of the taxes covered by Article 2 and the following taxes imposed on behalf of the Contracting States, or of their political sub-divisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount:

(a) in Japan:

(i) the consumption tax;

(ii) the inheritance tax; and

(iii) the gift tax;

(b) in India:

(i) the wealth tax;

(ii) the excise duty;

(iii) the service tax;

(iv) the sales tax; and

(v) the value added tax;

(c) any other tax agreed upon between the Governments of the Contracting States.

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

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

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

6. Notwithstanding the provisions of paragraph 5, acts carried out by a Contracting State in the collection of a revenue claim accepted by that Contracting State for purposes of paragraph 3 or 4, which, if they were carried out by the other Contracting State, would have the effect of suspending or interrupting the time limits applicable to the revenue claim according to the laws of that other Contracting State, shall have such effect under the laws of that other Contracting State. The first-mentioned Contracting State shall inform the other Contracting State about such acts.

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

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

(a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned Contracting State that is enforceable under the laws of that Contracting State and is owed by a person who, at that time, cannot, under the laws of that Contracting State, prevent its collection, or

(b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned Contracting State in respect of which that Contracting State may, under its laws, take measures of conservancy with a view to ensure its collection

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

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

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

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

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

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

ARTICLE 4

1. This Protocol shall be approved in accordance with the legal procedures of each of the Contracting States and shall enter into force on the thirtieth day after the date of exchange of diplomatic notes indicating such approval.

2. The provisions of paragraphs 3 and 4 of Article 11 of the Convention, as amended by Article 1 of this Protocol shall have effect:

(a) in Japan:

(i) with respect to taxes levied on the basis of a taxable year, for taxes for any taxable years beginning on or after 1st January of the calendar year next following that in which the Protocol enters into force; and

(ii) with respect to taxes not levied on the basis of a taxable year, for taxes levied on or after 1st January of the calendar year next following that in which the Protocol enters into force; and

(b) in India:

(i) with respect to taxes withheld at source, for amounts paid or credited on or after 1st April of the calendar year next following that in which the Protocol enters into force; and

(ii) with respect to taxes on income for any previous year beginning on or after 1st April of the calendar year next following that in which the Protocol enters into force.

3. The provisions of Article 26 of the Convention, as amended by Article 2 of this Protocol, and Article 26A of the Convention, as added by Article 3 of the Protocol, shall have effect from the date of entry into force of the Protocol, without regard to the date on which the taxes are levied or the taxable year to which the taxes relate.

4. This Protocol shall remain in effect as long as the Convention remains in force.

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

DONE in duplicate at New Delhi this eleventh day of December, 2015, in the Hindi, Japanese and English languages, all texts being equally authentic. In case of any divergence of interpretations, the English text shall prevail.

FOR THE GOVERNMENT OF
THE REPUBLIC OF INDIA:

(HASMUKH ADHIA)
REVENUE SECRETARY

FOR THE GOVERNMENT OF
JAPAN:

(KENJI HIRAMATSU)
AMBASSADOR EXTRAORDINARY
AND PLENIPOTENTIARY OF JAPAN
TO THE REPUBLIC OF INDIA