

PROTOCOL
AMENDING THE AGREEMENT AND THE PROTOCOL
BETWEEN
THE GOVERNMENT OF THE KINGDOM OF BELGIUM
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,
WHICH WERE SIGNED AT BRUSSELS ON 26TH APRIL 1993.

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THE KINGDOM OF BELGIUM,
the Flemish Community,
the French Community,
the German-speaking Community,
the Flemish Region,
the Walloon Region,
and the Brussels-Capital Region,
on the one hand,

AND

THE REPUBLIC OF INDIA,
on the other hand,

DESIRING to conclude a Protocol (hereinafter referred to as "Amending Protocol") amending the Agreement and the Protocol between the Government of the Kingdom of Belgium 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, which were signed at Brussels on 26th April, 1993 and which entered into force on 1st October, 1997 (hereinafter referred to as "the Agreement");

HAVE AGREED AS FOLLOWS:

ARTICLE 1

1. Paragraph 1, (d) of Article 3 (General definitions) of the Agreement shall be deleted and replaced by the following:

“(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 Belgium, as the case may be, the Minister of Finance of the federal Government and/or of the Government of a Region and/or of a Community, or his authorised representative;”

2. The following sub-paragraph (k) shall be inserted after sub-paragraph (j) of paragraph 1 of Article 3 of the Agreement :

“(k) the term “criminal tax matters” means tax matters involving intentional conduct, whether before or after the entry into force of this Agreement, which is liable to prosecution under the criminal laws and/or the tax laws of the applicant Party.”

ARTICLE 2

Article 26 (Exchange of Information) of the Agreement shall be deleted and replaced by the following Article:

“Article 26

Exchange of information

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 Agreement 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 subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. 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 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 States and the competent authority of the supplying 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 (ordre public).
4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person."

ARTICLE 3

Article 27 (Aid and Assistance in Recovery) of the Agreement shall be deleted and replaced by the following Article:

"Article 27

Assistance in the Collection of Taxes

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.
2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, together with interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.
4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.
5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.
6. Proceedings with respect to the existence, validity or amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.
7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be
 - a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
 - b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection,the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.
8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:
 - a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - b) to carry out measures which would be contrary to public policy (ordre public);

- c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.”

ARTICLE 4

1. The Governments of the Contracting States shall notify each other through diplomatic channels that all legal requirements and procedures for giving effect to this Amending Protocol have been satisfied.
2. The Amending Protocol, which shall form an integral part of the Agreement, shall enter into force on the date of the later of the notifications referred to in paragraph 1 and its provisions shall have effect :
 - a) for criminal tax matters, on that date; and
 - b) for all other matters covered in Articles 1, 2 and 3, on that date, but only in respect of taxable periods beginning on or after that date or, where there is no taxable period, all charges to tax arising on or after that date.

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

DONE in duplicate at New Delhi this ^{9th}..... day of March 2017..... in the Hindi, French, Dutch and English languages, all texts being equally authentic. In case of divergence between the texts, the English text shall be the operative one.

FOR THE KINGDOM OF BELGIUM:

For the Flemish Community:

For the French Community:

For the German-speaking Community:

For the Flemish Region:

For the Walloon Region:

For the Brussels-Capital Region:

FOR THE REPUBLIC OF INDIA:


(Jan Luykx)

Ambassador of Belgium to India


(Sushil Chandra)
Chairman, Central Board of Direct Taxes