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"INTERNATIONAL TAXATION ASPECTS THAT AFFECT MANAGEMENT OF THE TAX ADMINISTRATIONS"

Subtopic 1.2

"EFFECTIVE IMPLEMENTATION OF ANTI-ABUSE PROVISIONS IN TAX TREATIES FOR THE AVOIDANCE OF DOUBLE TAXATION"

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Effective implementation of anti-abuse provisions in DTAAs

Summary

Every country wants to protect its tax base and ensure that the tax provisions are not abused by taxpayers. In this paper, India has highlighted the role played by anti-abuse provisions in Double Taxation Avoidance Agreements (DTAAs). The paper discusses the approach adopted by India, recently, in negotiating its DTAAs with regard to such anti-abuse provisions. The paper also discusses whether these anti-abuse provisions, in treaty context, have been successful or whether new approaches are needed to combat new forms of treaty abuses. The paper also discusses the General Anti Abuse Rules (GAAR) that India has introduced recently in its domestic laws.

Introduction

In the current market scenario taxpayers and tax administration are in a constant quest to meet the challenges thrown upon them due to slowdown of global economy. Taxpayers are looking to find ways to increase the wealth of the shareholders and at the same time tax administrations are looking to tackle base erosion and profit shifting with increased vigor. Tax administrations around the world are of the view that some of the practices carried out by taxpayers, in order to increase the wealth of their shareholders, are abusive. In this context the Commentary on the Articles of the United Nations Model Double Taxation Convention between Developed and Developing Countries ("UN Convention"), in paragraph 8 of commentary on Article 1, comments as under:

> "8. Provisions of tax treaties are drafted in general terms and taxpayers may be tempted to apply these provisions in a narrow technical way so as to obtain benefits in circumstances where the Contracting States did not intend that these benefits be provided. Such improper uses of tax treaties are a source of concern to all countries but particularly for countries that have limited experience in dealing with sophisticated tax-avoidance strategies."

Subsequently, the UN commentary proceeds to highlight various approaches used by countries to prevent and address the improper use of tax treaties. These include:

- Specific legislative anti-abuse rules found in domestic law
- General legislative anti-abuse rules found in domestic law
- Judicial doctrines that are part of domestic law
- Specific anti-abuse rules found in tax treaties
- General anti-abuse rules in tax treaties
- The interpretation of tax treaty provisions

The last three approaches are within the scope of this paper. In this paper these approaches will be discussed in the context of Indian experience. An effort is also made later on, in the paper, to discuss the General legislative anti-abuse rules introduced by India recently.

Specific anti-abuse rules found in tax treaties

Some form of treaty abuses can be addressed through specific treaty provisions. India has been regularly using these provisions in its tax treaties. These provisions are discussed below:

(i) In the case of agency PE, under Paragraph 5 of Article 5, India prefers to have two additional conditions which are not there in OECD Model Tax Convention. One of these two additional conditions can be found in UN Model. OECD Model Tax convention consider an agency PE only when an agent has and habitually exercises in the State an authority to conclude contracts in the name of the enterprise of the other State. India prefers to include a condition that even if there is no such authority, but if the agent habitually maintains in the State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise of the other State, there will be an agency PE for the enterprise of the other State. This condition finds a place in UN Model as well. Further, India also prefers to include an additional third condition that if agent habitually secures orders in the first mentioned State, wholly or almost wholly for the enterprise itself, then also there will be agency PE. During tax treaty negotiations, India makes efforts to include these three conditions in agency PE provision.

(ii) The concept of “beneficial owner”, in Article 10 (Dividend), 11 (interest) and 12 (royalty), is accepted by most of the countries and can be seen in both OECD and UN model. The purpose of this provision is to ensure that the benefit of concessional tax rates in these Articles becomes available to the residents of other contracting state, only if they are the beneficial owners.

(iii) Both OECD and UN model contain a paragraph 6 in Article 11(interest) and 12 (royalty) that provides that in case of interest or royalty payments between persons having special relationship, such as that existing between associate enterprises as well as relationship based on marriage and family, the benefit of concessional tax rate in the country of source will be limited only to the amount determined in accordance with the arm’s length rule. The excess part of payments shall remain taxable according to the laws of each contracting state.

(iv) Both the OECD as well as UN model do not have rule on giving right to tax capital gains on alienation of shares to a country in which the company (whose shares are alienated) is a resident, however, India prefers to include the same in its DTAAs. This provision prevents double non taxation of Capital Gains.

(v) Rule on “star companies” in paragraph 2 of Article 17, which allows source country taxation even when the income, in respect of personal activities exercised by an entertainer or a sportsperson, accrues to another person, can be seen in both OECD and UN model and is acceptable to all the countries.

From the above it can be seen that there are some specific anti- abuse rules which are common in both OECD and UN Models, such as beneficial ownership rule in Articles 10, 11 and 12, special relationship rule in Articles 11(6) and 12(6), star company rule in Article 17(2). India, like other countries, has been consistently including these rules in all its DTAAs. In addition, India prefers to include some specific anti-abuse rules which are neither in OECD or UN Model. These are more liberal agency PE rule and source based taxation of capital gains on alienation of shares. India has been trying to include these rules in all its latest DTAAs.

In last five years, India's new DTAAs with Estonia, Ethiopia, Finland, Georgia, Lithuania, Luxembourg, Mozambique, Myanmar, Nepal, Norway, Serbia, Syrian Arab Republic, Taiwan, Tajikistan, Tanzania and United States of Mexico have entered into force. Rule concerning source based taxation of capitals gains on alienation of shares has been incorporated in all of these 16 new DTAAs that India has entered in last five years. The liberal agency PE rule has been included in 14 of these new 16 new DTAAs that India has entered in last five years (except in DTAAs with Serbia and Tajikistan)

However, these specific rules would cover only those situations which are directly covered in these provisions. It is quite clear that specific provision cannot by its nature cover all possible situation of tax abuse. A dishonest taxpayer would always devise a tax avoidance strategy which is similar to strategy which the specific rules try to cover but does not actually falls under it. For these reasons, while inclusion of specific anti-abuse rules in tax treaties is the most appropriate approach to deal with certain situations, it cannot, by itself, provide a comprehensive solution to treaty abuses.

General anti-abuse rules found in tax treaties

The General anti-abuse rules can be found in tax treaties in the form of "Limitation of Benefit" Article. India has been including this Article in all its new DTAAs. Extract of this provision in the DTAAs that India has concluded with other countries, is given in Annexure 1. From that annexure it can be seen that there are various forms of this Article. In some treaties this is a very long and detailed Article as can be seen in India's DTAAs with Armenia, Iceland, United States of Mexico, Tanzania and Tajikistan. Off-late India has preferred much simpler version, as can be seen from India's DTAA with Luxembourg. This is reproduced below

LIMITATION OF BENEFITS –

1. Nothing in this Agreement shall affect the application of the domestic provision to prevent tax evasion.

2. An enterprise of a Contracting State shall not be entitled to the benefits of this Agreement if the main purpose or one of the main purposes of the creation of such enterprise was to obtain the benefits under this Agreement that would not otherwise be available.

3. The case of legal entities not having bona fide business activities shall be covered by the provisions of this Article.

Most of the new provisions of "Limitation of Benefit" Article are worded around the above example. In some treaties the test is only "main purpose" test instead of "one of main purpose" test.

The DTAA between India and Swiss Confederation was revised recently and in the revised provisions there is anti-abuse provision. This provision is limited to Articles 10, 11 and 12. Thus there can be a situation when the two countries apply general anti-abuse provisions to only a few Articles of the treaty.

Since India has started including this provision only recently, most of our old DTAAs do not have this provision. Some may consider that including "Limitation of Benefit" provision in the new treaties could be interpreted as an implicit recognition that, absent such a provision, the countries cannot use general approaches to deal with improper uses of tax treaties. India does not agree with such an interpretation. Both UN and OECD commentary makes it clear that benefit of DTAAs can be denied when there is abuse, even without specific or general anti-abuse provisions. Thus, India believes that the purpose of DTAAs, which is to avoid double taxation and prevent fiscal evasion, has to be kept in mind while giving effect to it.

The interpretation of tax treaty provisions

Article 31 of the Vienna Convention on the Law of Treaties makes it clear that there is an obligation to interpret the provision of treaties in good faith. Thus even in the absence of any General or specific anti-abuse provisions in the treaty, the provisions of tax treaties are to be interpreted after taking into account their context, the treaty's objective and its purpose. Both OECD and UN commentary makes it clear that if the following two elements are present in a transaction or an arrangement; it would constitute an abuse of the provisions of a tax treaty:

- A main purpose for entering into the transaction or arrangement was to secure a more favourable tax position; and
- Obtaining that more favourable treatment would be contrary to the object and purpose of the relevant provisions.

The determination of whether a main purpose for entering into transactions or arrangements is to obtain tax advantages should be based on an objective determination, based on all the relevant facts and circumstances, of whether without these tax advantages, a reasonable taxpayer would have entered into the same transactions or arrangements.

Are these three approaches working?

There is no doubt that the above approaches are a good deterrent for treaty abuses and they have been successful as well. However, India is of the view that even with the above mentioned approaches, the abuse of treaties is still continuing. Time has come when countries have to sit down and note the changes that technology and time has brought in last many years.

The concept of PE was developed 100 years back at a time when the economy and business activities were fixed and immobile to eliminate international double taxation and promote a relatively balanced sharing of tax revenue. India believes that current definition of PE (which is many decades old) is not an effective measure of economic activity in the digital age when people and businesses have became increasingly more mobile and cannot therefore be used in determination of taxing right of source country.

Now, an enterprise can carry out business of US$ 100 billion in source country without physical presence in that country. These changes renewed threat to the usefulness of the PE concept which is 100 years old. The PE principle which is based on the physical presence test has not changed in the last many decades. The more or less static and old PE concept has thrown new challenges of erosion of tax base and distorted balance of revenue sharing to consumer countries. India believes that if physical presence test (on which PE principle is based) is not diluted, it will pose a serious threat to fiscal sovereignty of both developed and developing countries. To illustrate, at present business could be conducted through website (onsite sales) with server located in tax havens, giving no right of taxation to countries who are contributing to the business of the onsite sales. The same logic could be extended to any e commerce activity where the main equipment could be located in a tax haven or at a place which is not under any country's geographic boundaries, in order to deny source based taxation to any country.

In order to prevent such treaty abuse, there is need for significant dilution of concept of physical presence requirement under the PE. There is need to examine new PE fictions like virtual PE, a quantitative economic presence test, base erosion approach, etc. in order to have a neutral tax system which should not yield different tax consequences based on different ways of conducting a business in a source country.

The concept of virtual PE would not require a physical nexus but it would still require a connection of the business to the territory of source country that is sufficiently close, effective and rational. This means that taxing nexus would operate as a permanent establishment "fiction" by allowing source country to tax on the basis of a virtual

permanent establishment. Finding of virtual permanent establishment could be based on following three proxy tests:

- An enterprise must benefit in one way or another, from the source country.
- The enterprises must have operation within the source country.
- The enterprises in-state activities are continuous and systematic, as part of overall business of the enterprise within the state.

To begin with, the concept of virtual PE may be applied to business sectors where high mobility, impermanence and lack of physical locations are predominant along with a threshold that core or mainstream business activities will be subject to source country taxation.

The quantitative economic presence test is an alternative to concept of Virtual PE that enables source countries to tax above threshold sales (for example gross revenue in excess of US $ 1 million) despite the absence of any physical presence. There could be another variant of quantitative economic presence test which will require a test of purposeful, systematic and focused performance of core business activity in the market of source country in addition to threshold of sales.

Base erosion approach seeks to maintain the permanent establishment principle and seeks to modify its application to allow source country certain rights to levy withholding tax on payments from a payer located in source country to a non-resident enterprise subject to certain conditions.

The conclusion that flows from above discussion is that permanent establishment threshold for purpose of the current Article 5 of the UN and OECD Model Tax Convention is no longer valid and there is an urgent need to re-conceptualize the notion of “Permanent establishment” in the light of changes brought about by increased globalization and the related development in electronic commerce.

Other areas which are contributing to treaty abuses are followings:

- In determining the place of effective management, the place where main and substantial activity of the entity is carried on, is not taken into account
- Article 13(4) which gives taxing rights to source country on indirect transfer of capital asset, i.e., through alienation of shares deriving more than 50% of their value directly or indirectly from immovable property situated in the source country, has not been extended to indirect transfer of other assets. This has resulted in non taxation of capital gains on transfer of shares of a company resident in tax havens where the underlying assets are in the source country
- The artificial distinction between “liable to tax” and “subject to tax” has resulted in a situation where the entities which are tax exempt in the resident State are covered under the definition of “liable to tax” and tax treaty benefits are extended to these entities promoting double non taxation, which tax treaties should generally aim to avoid.

OECD has already started working on "Base Erosion and Profit Sharing" project which is a welcome move and India hope that this project would identify all the issues of treaty abuses and would also find a reasonable solution. India is happy to be part of this project and is already making some useful contribution to its working.

General aspect of General Anti Avoidance Rules [GAAR] in Indian domestic laws

Although the scope of this paper was limited to anti-abuse provisions in tax treaties, however, India has been requested to share its experience about anti-abuse provision in the form of GAAR in its domestic laws.

GAAR applies when an avoidance transaction is technically in compliance with the taxing statute but still does not conform to the legislative intent. A transaction can be structured in a number of ways, having the same economic effect, making "form" of the transaction very different from the "substance" of the transaction. If only due to such restructuring the transaction does not become taxable, even after applying the judicial doctrine of anti-avoidance, it would be unfair to those taxpayers who may not be willing to indulge in structuring of transactions or lack resources to do so. This will be against the principles of horizontal equity of taxation, the cornerstone of tax policy. GAAR provisions are thus conceptually applied only when normal tax provisions are not applicable, including the judicial anti-avoidance rules, and thus are inherently general in nature. Still all the major mature tax administrations have GAAR provisions in its legislation as it has been realized that a number of taxpayers may circumvent the tax laws by creating a "form" which is different from "substance" and the GAAR provisions are needed to ensure that these transactions continue to be within the tax net.

In India, GAAR was first proposed in the Draft Direct Taxes Code (DTC) 2009 released for public comments in August, 2009. At that time the need for GAAR was summarized in the Discussion paper to the DTC 2009, which is reproduced as under:-

"24.1 Tax avoidance, like tax evasion, seriously undermines the achievements of the public finance objective of collecting revenues in an efficient, equitable and effective manner. Sectors that provide a greater opportunity for tax avoidance tend to cause distortions in the allocation of resources. Since the better-off sections are more endowed to resort to such practices, tax avoidance also leads to cross-subsidization of the rich. Therefore, there is a strong general presumption in the literature on tax policy that all tax avoidance, like tax evasion, is economically undesirable and inequitable. On considerations of economic efficiency and fiscal justice, a taxpayer should not be allowed to use legal constructions or transactions to violate horizontal equity.

24.2 In the past, the response to tax avoidance has been the introduction of legislative amendments to deal with specific instances of tax avoidance. Since the liberalization of the Indian economy, increasingly sophisticated forms of tax avoidance are being adopted by the taxpayers and their advisers. The problem has been further compounded by tax avoidance arrangements spanning across several tax jurisdictions.

This has led to severe erosion of the tax base. Further, appellate authorities and courts have been placing a heavy onus on the Revenue when dealing with matters of tax avoidance even though the relevant facts are in the exclusive knowledge of the taxpayer and he chooses not to reveal them.

24.3 In view of the above, it is necessary and desirable to introduce a general anti-avoidance rule which will serve as a deterrent against such practices. This is also consistent with the international trend."

After inputs from stakeholders, Government issued a Revised Discussion Paper on DTC in June, 2010 in which, inter-alia, the GAAR proposals were discussed in light of public feedback and it was stated as follows:

> "Apprehensions have been expressed that the GAAR provision is sweeping in nature and may be invoked by the Assessing Officer in a routine manner. Apprehensions have also been raised that there is no distinction between tax mitigation and tax avoidance as any arrangement to obtain a tax benefit may be considered as an impermissible avoidance arrangement. It has been represented that to avoid arbitrary application of the provisions, further legislative and administrative safeguards be provided. Besides suitable threshold limits for invoking GAAR should be considered.
>
> GAAR legislation exists in a number of countries. Jurisdictions which do not have GAAR legislation impose significant additional information and disclosure requirements on tax practitioners regarding advance intimation and registration of tax shelters with the tax administration. These can be investigated and potentially abusive arrangements can be declared impermissible. A statutory GAAR can act as an effective deterrent and compliance tool against tax avoidance in an environment of moderate tax rates.
>
> The proposed GAAR provisions do not envisage that every arrangement for tax mitigation would be liable to be classified as an impermissible avoidance arrangement. It is only in a case where the arrangement, besides obtaining a tax benefit for the assessee, is also covered by one of the four conditions i.e. it is not at arms-length or it represents misuse or abuse of the provisions of the Code or it lacks commercial substance or it is entered or carried on in a manner not normally employed for bona-fide business purposes, the GAAR provisions would come into effect.

The following safeguards are also proposed for invoking GAAR provisions:-

i) The Central Board of Direct Taxes will issue guidelines to provide for the circumstances under which GAAR may be invoked.
ii) GAAR provisions will be invoked only in respect of an arrangement where tax avoidance is beyond a specified threshold limit.
iii) The forum of Dispute Resolution Panel (DRP) would be available where GAAR provisions are invoked."

GAAR provisions were part of the Direct Taxes Code Bill 2010 (DTC) introduced in Parliament in August, 2010. The GAAR provisions (originally proposed in DTC) were finally proposed through Finance Bill, 2012. Some changes were introduced at the time of passage of bill in order to incorporate, to the extent possible, the recommendations of Standing Committee of Parliament. Finally the bill was enacted and the provisions of GAAR were incorporated in the Income-tax Act (Chapter X-A, sections 95 to 102). The procedural provisions relating to mechanism for invocation of GAAR and passing of the assessment order in consequence thereof were incorporated in section 144BA. They were proposed to be applicable for incomes of Financial year 2013-2014 and subsequent years. Please note that Indian financial year starts on 1st April and ends on 31st March of the following year.

However, there were still some concerns in the mind of the stakeholders about proper implementation of GAAR. A number of representations were received against the provisions relating to GAAR. An Expert Committee was constituted by the Government with broad terms of reference including consultation with stakeholders and finalising the GAAR guidelines and a road map for implementation. The Expert Committee's recommendations included suggestions for legislative amendments, formulation of rules and prescribing guidelines for implementation of GAAR. The major recommendations of the Expert Committee were accepted by the Government, with some modifications.

Some of the recommendations accepted by the Government required amendment in the provisions of Chapter X-A and section 144BA. These have already been proposed in the Finance Bill 2013, which is before the Parliament for approval.

In order to give effect to the recommendations the following amendments have been proposed:-

(A) The provisions of Chapter X-A and section 144BA will come into force with effect from Financial Year 2015-2016 as against Financial Year 2013-2014.

(B) An arrangement, the main purpose of which is to obtain a tax benefit, would be considered as an impermissible avoidance arrangement. The current provision of section 96 providing that it should be "the main purpose or one of the main purposes" has been proposed to be amended accordingly.

(C) The factors like, period or time for which the arrangement had existed; the fact of payment of taxes by the assessee; and the fact that an exit route was provided by the arrangement, would be relevant but not sufficient to determine whether the arrangement is an impermissible avoidance arrangement. The current provisions of section 97 which provided that these factors would not be relevant has been proposed to be amended accordingly.

(D) An arrangement shall also be deemed to be lacking commercial substance, if it does not have a significant effect upon the business risks, or net cash flows of any party to the arrangement apart from any effect attributable to the tax benefit that would be

obtained but for the application of Chapter X-A. The current provisions as contained in section 97 are proposed to be amended to provide that an arrangement shall also be deemed to lack commercial substance if the condition provided above is satisfied.

(E) The Approving Panel shall consist of a Chairperson who is or has been a Judge of a High Court; one Member of the Indian Revenue Service not below the rank of Chief Commissioner of Income-tax; and one Member who shall be an academic or scholar having special knowledge of matters such as direct taxes, business accounts and international trade practices. The current provision of section 144BA ,that the Approving Panel shall consist of not less than three members being income-tax authorities and an officer of the Indian Legal Service has been proposed to be amended accordingly. Thus the new Approving Panel would have one member from tax department and two members from outside the department.

(F) The directions issued by the Approving Panel shall be binding on the assessee as well as the income-tax authorities and no appeal against such directions can be made under the provisions of the Act. The current provisions of section 144BA providing that the direction of the Approving Panel will be binding only on the Assessing Officer have been proposed to be amended accordingly.

(G) The Central Government may constitute one or more Approving Panels as may be necessary and the term of the Approving Panel shall be ordinarily for one year and may be extended from time to time up to a period of three years. The provisions of section 144BA have been proposed to be amended accordingly.

(H) The two separate definitions in the current provisions of section 102, namely, “associated person” and “connected person” will be combined and there will be only one inclusive provision defining a ‘connected person’. The provisions of section 102 have been proposed to be amended accordingly.

The Finance Bill 2013 is pending before the Parliament and the process of enactment is expected to be completed by the end of May 2013.

From above it can be seen that while India has included provisions of GAAR in its Income-tax Act, it will start implementing these provisions only from Financial Year 2015-2016, if the proposed amendments are approved by the Parliament.

CONCLUSION

It is clear that while tax administrations ensure that provisions of domestic laws as well as tax treaties are not abused, dishonest taxpayers would always find ways to circumvent those provisions. The specific anti- abuse or general anti-abuse provisions in tax treaties have still not been able to tackle this problem completely. Tax payers are making use of advanced technology to deny the source country the right of taxation. There is an urgent need for all countries to sit down and think out of box solutions to the threat posed by base erosion and profit shifting. OECD has taken a good initiative in this regard. It is hoped that consensus would emerge from this project so that necessary changes required, in protecting the tax bases and preventing treaty abuses, could be found and implemented early.

Annexure 1: LOB provisions in DTAAs that India has entered into
India-Armenia DTAA, LOB

1. Except as otherwise provided in this, Article, a resident of a Contracting State who derives income from the other Contracting State shall be entitled to all the benefits of this Convention otherwise accorded to residents of a Contracting State only if such resident is a "qualified person" as defined in paragraph 2 and meets the other conditions of this Convention for the obtaining of such benefits.

2. A resident of a Contracting State is a qualified person for a fiscal year only if such resident is either:

(a) an individual;

(b) a qualified governmental entity;

(c) a company, if

_(*i*) the principle class of its shares is listed on a recognized stock exchange specified in sub-paragraph (*a*) or (*b*) of paragraph 6 and is regularly traded on one or more recognized stock exchanges; or

(*ii*) at least 50 per cent of the aggregate vote and value of the shares in the company is owned directly or indirectly by five or fewer companies entitled to benefits under sub-division (*i*) of this sub-paragraph, provided that, in the case of indirect ownership, each intermediate owner is a resident of either Contracting State;

(*d*) A charity or other tax-exempt entity, provided that, in the case of a pension trust or any other organization that is established exclusively to provide pension or other similar benefits, more than 50 per cent of the person's beneficiaries, members or participants are individuals resident in either Contracting State; or

(*e*) a person other than an individual, if :

(*i*) on at least half the days of the fiscal year persons that are qualified persons by reason of sub-paragraph (*a*), (*b*) or (*d*) or sub-division (*c*)(*i*) of this paragraph own, directly or indirectly, at least 50 per cent of the aggregate vote and value of the shares or other beneficial interests in the person; and

(*ii*) less than 50 per cent of the person's gross income for the taxable year is paid or accrued, directly or indirectly, to persons who are not residents of either Contracting State in the form of payments that are deductible for purposes of the taxes covered by this Convention in the person's State of residence (but not including arm's length payments in the ordinary course of business for serviced or tangible property and payments in respect of financial obligations to a bank, provided that where such a bank is not a resident of a Contracting State such payment is attributable to a permanent establishment of that bank located in one of the Contracting States).

3. (*a*) A resident of a Contracting State will be entitled to benefits of the Convention with respect of an item of income, derived from the other State, regardless of whether the resident is a qualified person, if the resident is actively carrying on business in the first-mentioned State (other than the business of making or managing investments for the resident's own account, unless these activities are banking, insurance or securities

activities carried on by a bank, insurance company or registered securities dealer), the income derived from the other Contracting State is derived in connection with, or is incidental to, that business and that resident satisfies the other conditions of this Convention for the obtaining of such benefits.
(*b*) If the resident or any of its associated enterprises carries on a business activity in the other Contracting State which gives rise to an item of income, sub-paragraph (*a*) shall apply to such item only if the business activity in the first-mentioned State is substantial in relation to business carried on in the other State. Whether a business activity is substantial for purposes of this paragraph will be determined based on all the facts and circumstances.
(*c*) In determining whether a person is actively carrying on business in a Contracting State under sub-paragraph (*a*), activities conducted by a partnership in which that person is a partner and activities conducted by persons connected to such person shall be deemed to be conducted by such person. A person shall be connected to another if one possesses at least 50 per cent of the beneficial interest in the other (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company's shares) or another person possesses, directly or indirectly, at least 50 per cent of the beneficial interest (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company's shares) in each person. In any case, a person shall be considered to be connected to another if, based on all the facts and circumstances, one has control of the other or both are under the control of the same person or persons.

4. Notwithstanding the preceding provisions of this Article, if a company that is a resident of a Contracting State, or a company that controls such a company, has outstanding a class of shares.

(*a*) which is subject to terms or other arrangements which entitle its holders to a portion of the income of the company derived from the other Contracting State that is larger than the portion such holders would receive absent such terms of arrangements ("the disproportionate part of the income"); and
(*b*) 50 per cent or more of the voting power and value of which is owned by persons who are not qualified persons.

The benefits of this Convention shall not apply to the disproportionate part of the income.

5. A resident of a Contracting State that is neither a qualified person pursuant to the provisions of paragraph 2 or entitled to benefits under paragraph 3 or 4 shall, nevertheless, be granted benefits of the Convention if the competent authority of that other Contracting State determines that the establishment, acquisition or maintenance of such person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under the Convention.

6. For the purposes of this Article the term “recognized stock exchange” means:

(*a*) in India, a stock exchange which is for the time being recognized by the Central Government under section 4 of the Securities Contracts (Regulation) Act, 1956;

(*b*) in Armenia, ARMMEX; and

(*c*) any other stock exchange which the competent authorities agree to recognise for the purposes of this article.

India-Estonia DTAA, LOB

1. Nothing in this Agreement shall affect the application of the domestic provisions to prevent tax evasion or tax avoidance.

2. Benefits of this Agreement shall not be available to a resident of a Contracting State, or with respect to any transaction undertaken by such a resident, if the main purpose or one of the main purposes of the creation or existence of such a resident or of the transaction undertaken by him, was to obtain benefits under this Agreement that would not otherwise be available.

3. The case of legal entities not having *bona fide* business activities shall be covered by the provisions of this Article.

4. Where by reason of this Article a resident of a Contracting State is denied the benefits of this Agreement in the other Contracting State, the competent authority of the other Contracting State shall notify the competent authority of the first-mentioned Contracting State.

India-Ethiopia DTAA, LOB

1. The provisions of this Agreement shall in no case prevent a Contracting State from the application of the provisions of its domestic law and measures concerning tax avoidance or evasion, whether or not described as such.

2. A resident of a Contracting State shall not be entitled to the benefits of this Agreement if its affairs were arranged in such a manner as if it was the main purpose or one of the main purposes to take the benefits of this Agreement.

3. The case of legal entities not having bonafide business activities shall be covered by the provisions of this Article.

India-Finland DTAA LOB

1. A person that is a resident of a Contracting State and derives income from the other Contracting State shall not be entitled to relief from taxation otherwise provided for in this Agreement if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of such items of income to take advantage of the provisions of this Agreement.

2. In making a determination under paragraph 1, the appropriate competent authority or authorities shall be entitled to consider, among other factors, the amount and nature of the income, circumstances in which the income was derived, the stated intention of the parties to the transaction, and the identity and residence of the persons who in law or in fact, directly or indirectly, control or beneficially own (*i*) the income or (*ii*) the persons who are resident(s) of the Contracting State(s) and who are concerned with the payment or receipt of such income.

India-Georgia DTAA, LOB

1. Nothing in this Agreement shal1 affect the application of the domestic provisions to prevent tax evasion or tax avoidance.

2. Benefits of this Agreement shall not be available to a resident of a Contracting State, or with respect to any transaction undertaken, by such a resident, if the main purpose or one of the main purposes of the creation or existence of such a resident or of the transaction undertaken by him, was to obtain benefits under this Agreement that would not otherwise be available.

3. The case of legal entities not having *bona fide* business activities shall be covered by the provisions of this Article.

4. Where by reason of this Article a resident of a Contracting State is denied the benefits of this Agreement in the other Contracting State, the competent authority of the other Contracting State shall notify the competent authority of the first-mentioned Contracting State.

India-Iceland DTAA, LOB

1. Except as otherwise provided in this Article, a person (other than an individual), which is a resident of a Contracting State and which derives income from the other Contracting State shall be entitled to all the benefits of this Agreement otherwise accorded to residents of a Contracting State only if such a person is a qualified person as defined in paragraph 2 and meets the other conditions of this Agreement for the obtaining of any of such benefits.

2. A person of a Contracting State is a qualified person for a fiscal year only if such a person is either:

(*a*) governmental entity; or

(*b*) a company incorporated in either of the Contracting States, if

(*i*) the principal class of its shares is listed on a recognised stock exchange as defined in paragraph 5 of this Article are is regularly trad on, one or more recognised stock exchanges; or

(*ii*) at least 50% of the aggregate vote or value of the shares in the company is owned directly or indirectly by one or more individual

residents of either of the Contracting States or/and by other persons incorporated in either of the Contracting States, at least 50% of the aggregate vote or value of the shares or beneficial interest of which is owned directly or indirectly by one or more individual residents of either of the Contracting States; or

(*c*) a partnership or association of persons, at least 50% of whose beneficial interests is owned by one or more individuals residents of either of the Contracting States or/and by other persons incorporated in either of the Contracting States, at least 50% of the aggregate vote or value of the shares or beneficial interest of which is owned directly or indirectly by one or more individual residents of either of the Contracting States ; or

(*d*) a charitable institution or other tax exempt entity whose main activities are carried on in either of the Contracting States ;

provided that the persons mentioned above will not be entitled to the benefits of the Agreement if more than 50% of the person's gross income for the taxable year is paid or payable directly or indirectly to persons who are not residents of either of the Contracting States in the form of payments that are deductible for the purpose of computation of tax covered by this Agreement in the person's State of residence (but not including arm's length payment in the ordinary course of business for services' or tangible property and payments in respect of financial obligations to a bank incurred in connection with a transaction entered into with the permanent establishment of the bank situated in either of the Contracting States).

3. The provisions of paragraphs 1 and 2 shall not apply and a resident of a Contracting State will be entitled to benefits of the Agreement with respect to an item of income derived from the other Contracting State, if the person actively carries on business in the State of residence (other than the business of making or managing investments for the resident's own account unless these activities are banking, insurance or security activities) and the income derived from the other Contracting States is derived in connection with or is incidental to that business and that resident satisfies the other conditions of this Agreement for the obtaining of such benefits.

4. A resident of a Contracting State shall nevertheless be granted the benefits of the Agreement if the competent authority of the other Contracting State determines that the establishment or acquisition or maintenance of such person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under the Agreement.

5. For the purposes of this Article the term "recognised stock exchange" means

(*a*) in India :

(*i*) the National Stock Exchange ;

(*ii*) the Bombay Stock Exchange ;

(*iii*) any other stock exchange recognised by the Securities and Exchange Board of India ;

(*b*) in Iceland :

(*i*) the Icelandic stock exchange ;

(*ii*) the stock exchanges of Amsterdam, Brussels, Copenhagen, Frankfurt, Hamburg, Helsinki, London, Oslo, Paris, Stockholm, Sydney, Tokyo and Toronto; and

(*c*) any other stock exchange which the competent authorities agree to recognise for the purposes of this Article.

6. Notwithstanding anything contained in paragraphs 2 to 5 above, any person shall not be entitled to the benefits of this Agreement, if its affairs were arranged in such a manner as if it was the main purpose or one of the main purposes to avoid taxes to which this Agreement applies.

India-Kuwait DTAA, LOB

A resident of a Contracting State shall not be entitled to the benefits of this Agreement if its affairs were arranged with the primary purpose to take benefits of this Agreement. The case of legal entities not having *bona fide* business activities shall be covered by the provisions of this Article.

India-Lithuania DTAA, LOB

1. Benefits of this Agreement shall not be available to a resident of a Contracting State, or with respect to any transaction undertaken by such a resident, if the main purpose of the creation or existence of such a resident or of the transaction undertaken by him, was to obtain the benefits under this Agreement that would not otherwise be available.

2. Where by reason of the provisions of paragraph 1 a resident of a Contracting State is denied the benefits of this Agreement in the other Contracting State, the competent authority of the other Contracting State shall notify the competent authority of the first-mentioned Contracting State.

India-Luxembourg DTAA, LOB

1. Nothing in this Agreement shall affect the application of the domestic provision to prevent tax evasion.

2. An enterprise of a Contracting State shall not be entitled to the benefits of this Agreement if the main purpose or one of the main purposes of the creation of such enterprise was to obtain the benefits under this Agreement that would not otherwise be available.

3. The case of legal entities not having *bona fide* business activities shall be covered by the provisions of this Article.

India-Malaysia DTAA, LOB

1. The provisions of this Agreement shall in no case prevent a Contracting State from the application of the provisions of its domestic law and measures concerning tax avoidance or evasion, whether or not described as such.
2. A resident of a Contracting State shall not be entitled to the benefits of this Agreement if its affairs were arranged in such a manner as if it was the main purpose or one of the main purposes to take the benefits of this Agreement.

3. The case of legal entities not having bonafide business activities shall be covered by the provisions of this Article.

India-Mozambique DTAA, LOB

Notwithstanding the provisions of any other Article of this Agreement, a resident of a Contracting State shall not be entitled to the benefits of this Agreement, if its affairs were arranged in such a manner as if it was the primary purpose or one of the primary purposes was to take the benefits of this Agreement. The case of legal entities not having *bona fide* business activities shall be covered by the provisions of this Article.

India-Myanmar DTAA, LOB

1. A resident of a Contracting State shall not be entitled to the benefits of this Agreement if its affairs were arranged in such a manner as if it was the main purpose or one of the main purposes to take the benefits of this Agreement.
2. The case of legal entities not having *bona fide* business activities shall be covered by the provisions of this Article.

India-Namibia DTAA, LOB

1. If, in accordance with the provisions of this Convention, the right of India to tax income is limited and according to the Namibian tax laws, the income is regarded as income from foreign sources and, therefore, exempted from Namibian tax, India may tax such income as if this Convention did not exist.

2. If, in accordance with the provisions of this Convention, the right of Namibia to tax income from Namibian sources or deemed to be from Namibian sources is limited and if such income is in accordance with the Indian tax laws not taxed in India, Namibia may tax such income as if this Convention did not exist.

India-Nepal DTAA, LOB

A resident of a Contracting State shall not be entitled to the benefits of this Agreement if its affairs were arranged in such a manner as if it was the main purpose or one of the main purposes to take the benefits of this Agreement. The case of legal entities not having bona fide business activities shall be covered by the provisions of this Article.

India-Norway DTAA, LOB

Benefits of this Agreement shall not be available to a resident of a Contracting State, or with respect to any transaction undertaken by such a resident, if the main purpose or one of the main purposes of the creation or existence of such a resident or of the transaction undertaken by him, was to obtain the benefits under this Agreement that would not otherwise be available.

India- Saudi Arabia DTAA, LOB

1. Nothing in this Convention shall affect the application of the domestic provisions to prevent tax evasion.

2. An enterprise of a ContractingState shall not be entitled to the benefits of this Convention if the main purpose or one of the main purposes of the creation of such enterprise was to obtain the benefits under this convention that would not otherwise be available.

3. The case of legal entities not having *bona fide* business activities shall be covered by the provisions of this Article.

India-Singapore DTAA, LOB

1. A resident of a Contracting State shall not be entitled to the benefits of Article 1 of this Protocol if its affairs were arranged with the primary purpose to take advantage of the benefits in Article 1 of this Protocol.

2. A shell/conduit company that claims it is a resident of a Contracting State shall not be entitled to the benefits of Article 1 of this Protocol. A shell/conduit company is any legal entity falling within the definition of resident with negligible or *nil* business operations or with no real and continuous business activities carried out in that Contracting State.

3. A resident of a Contracting State is deemed to be a shell/conduit company if its total annual expenditure on operations in that Contracting State is less than S$200,000 or Indian Rs. 50,00,000 in the respective Contracting State as the case may be, in the immediately preceding period of 24 months from the date the gains arise.

4. A resident of a Contracting State is deemed not to be a shell/conduit company if—

(*a*) it is listed on a recognised stock exchange of the Contracting State; or

(*b*) its total annual expenditure on operations in that Contracting State is equal to or more than S$200,000 or Indian Rs. 50,00,000 in the respective Contracting State as the case may be, in the immediately preceding period of 24 months from the date the gains arise.

Explanation.—The cases of legal entities not having *bona fide* business activities shall be covered by Article 3.1 of this Protocol.

India- Swiss Confederation DTAA,

With reference to Articles 10, 11, 12 and 22

The provisions of Articles 10, 11, 12 and 22 shall not apply in respect to any dividend, interest, royalty, fees for technical services or other income paid under, or as part of a conduit arrangement. The term "conduit arrangement" means a transaction or series of transactions which is structured in such a way that a resident of a Contracting State entitled to the benefits of the Agreement receives an item of income arising in the other Contracting State but that resident pays, directly or indirectly, all or substantially all of that income (at any time or in any form) to another person who is not a resident of either Contracting State and who, if it received that item of income directly from the other Contracting State, would not be entitled under a Convention or Agreement for the avoidance of double taxation between the State in which that other person is resident and the Contracting State in which the income arises, or otherwise, to benefits with respect to that item of income which are equivalent to, or more favourable than, those available under this Agreement to a resident of a Contracting State; and the main purpose of such structuring is obtaining benefits under this Agreement.

In respect of Articles 10 (Dividends), 11 (Interest) and 12 (Royalties and fees for technical services), if under any Convention, Agreement or Protocol between India and a third State which is a member of the OECD signed after the signature of this Amending Protocol, India limits its taxation at source on dividends, interest, royalties or fees for technical services to a rate lower than the rate provided for in this Agreement on the said items of income, the same rate as provided for in that Convention, Agreement or Protocol on the said items of income shall also apply between both Contracting States under this Agreement as from the date on which such Convention, Agreement or Protocol enters into force.

If after the date of signature this Amending Protocol, India under any Convention, Agreement or Protocol with a third State which is a member of the OECD, restricts the scope in respect of royalties or fees for technical services than the scope for these items of income provided for in Article 12 of this Agreement, then Switzerland and India shall enter into negotiations without undue delay in order to provide the same treatment to Switzerland as that provided to the third State.

India-Syrian Arab Republic DTAA, LOB

A resident of a Contracting State shall not be entitled to the benefit of any reduction in or exemption from tax provided for in this Agreement if its affairs were arranged in such a manner that the primary purpose was to obtain the benefits under this Agreement.

The cases of legal entities not having *bona fide* business activities shall be covered by the provisions of this article.

India-Taiwan DTAA – LOB

1. Notwithstanding the provisions of any other Article of this Agreement, a resident of a territory shall not be entitled to the benefits of this Agreement if the primary purpose or one of the primary purposes of such resident or a person connected with such resident was to obtain the benefits of this Agreement.

2. The cases of legal entities not having bona fide business activities shall be covered by the provisions of this Article.

India-Tajikistan DTAA, LOB

1. Except as otherwise provided in this Article, a person (other than an individual), which is a resident of a Contracting State and which derives income from the other Contracting State shall be entitled to all the benefits of this Agreement otherwise accorded to residents of a Contracting State only if such a person is a qualified person as defined in paragraph 2 and meets the other conditions of this Agreement for the obtaining of any of such benefits.

2. A person of a contracting state is a qualified person for a fiscal year only if such a person is either:
   (a) Governmental entity; or
   (b) a company incorporated in either of the Contracting States, if -
      (i) the principal class of its shares is listed on a recognised stock exchange as defined in paragraph 5 of this Article and is regularly traded on one or more recognised stock exchanges, or
      (ii) at least 50% of the aggregate vote or value of the shares in the company is owned directly or indirectly by one or more individuals residents of either of the Contracting States or/and by other persons incorporated in either of the Contracting States, atleast 50% of the aggregate vote or value of the shares or beneficial interest of which is owned directly or indirectly by one or more individuals residents of either of the Contracting States, or
   (c) a partnership or association of persons, at least 50% or more of whose beneficial interests is owned by one or more individuals residents of either of the Contracting States or/and by other persons incorporated in either of the Contracting States, at least 50% of the aggregate vote or value of the shares or beneficial interest of which is owned directly or indirectly by one or more individuals residents of either of the Contracting States, or
   (d) A charitable institution or other tax exempt entity whose main activities are carried on in either of the Contracting States:

Provided that the persons mentioned above will not be entitled to the benefits of the Agreement if more than 50% of the person's gross income for the taxable year is paid or payable directly or indirectly to persons who are not residents of either of the Contracting States in the form of payments that are deductible for the purpose of computation of tax covered by this Agreement in the person's state of residence (but not including arm's length payment in the ordinary course of business for services or tangible property and payments in respect of financial obligations to a bank incurred in connection with a transaction entered into with the Permanent Establishment of the bank situated in either of the Contracting States).

3. The provisions of Paragraph 1 and 2 shall not apply and a resident of a Contracting State will be entitled to benefits of the Agreement with respect to an item of income derived from the other. State, if the person actively carries on business in the State of residence (other than the business of making or managing investments for the resident's own account unless these activities are banking, insurance or security activities) and the income derived from the other Contracting States is derived in connection with or is incidental to that business and that resident satisfies the other conditions of this Agreement for the obtaining of such benefits.

4. A resident of a Contracting State shall nevertheless be granted the benefits of the Agreement if the Competent Authority of the other Contracting State determines that the establishment or acquisition or maintenance of such person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under the Agreement.

5. For the purposes of this Article the term 'recognised stock exchange' means

(a) in India, a Stock Exchange which is for the time being recognized by the Central Government under section 4 of the Securities Contracts (Regulation) Act, 1956;

(b) in Tajikistan, The Stock Exchange of Tajikistan as recognized by the Securities and Exchange Act;

(c) any other stock exchange which the Competent Authorities agree to recognise for the purposes of this Article.

6. Notwithstanding anything contained in paragraphs 2 to 5 above, any person shall not be entitled to the benefits of this Agreement, if its affairs were arranged in such a manner as if it was the main purpose or one of the main purposes to avoid taxes to which this Agreement applies.

India-Tanzania DTAA, LOB

1. Except as otherwise provided in this Article, a person (other than an individual), which is a resident of a Contracting State and which derives income from the other Contracting State shall be entitled to all the benefits of this Agreement otherwise accorded to residents of a Contracting State only if such a person has the qualifications as defined in paragraph 2 and meets the other conditions of this Agreement for the obtaining of any of such benefits.

2. A person of a contracting state is a qualified person for a year of income only if such a person is either:

(a) Governmental entity; or

(b) A company incorporated in either of the Contracting States, if -

(i) the principal class of its shares is listed on a recognized stock exchange as defined in paragraph 5 of this Article and is regularly traded on one or more recognised stock exchanges, or

(ii) at least 50 per cent of the aggregate vote or value of the shares in the company is owned directly or indirectly by one or more individual residents of either of the Contracting States and/or by other persons incorporated in either of the Contracting States, at least 50 per cent of the aggregate vote or value of the shares or beneficial interest of which is owned directly or indirectly by one or more individual residents of either of the Contracting States, or

(c) A partnership or association of persons, at least 50 per cent or more of whose beneficial interests is owned by one or more individual residents of either of the Contracting States or/and by other persons incorporated in either of the Contracting States, at least 50 per cent of the aggregate vote or value of the shares or beneficial interest of which is owned directly or indirectly by one or more individual residents of either of the Contracting States, or

(d) A charitable institution or other tax exempt entity whose main activities are carried on in either of the Contracting States.

provided that the persons mentioned above will not be entitled to the benefits of the Agreement if more than 50 per cent of the person’s gross income for the taxable year is paid or payable directly or indirectly to persons who are not residents of either of the Contracting States in the form of payments that are deductible for the purpose of computation of tax covered by this Agreement in the person’s state of residence (but not including arm’s length payment in the ordinary course of business for services or tangible property and payments in respect of financial obligations to a bank incurred in connection with a transaction entered into with the permanent establishment of the bank situated in either of the Contracting States).

3. The provisions of Paragraph 1 and 2 shall not apply and a resident of a Contracting State will be entitled to benefits of the Agreement with respect to an item of income derived from the other State, if the person actively carries on business in the State of residence (other than the business of making or managing investments for the resident’s own account unless these activities are banking, insurance or security activities) and the income derived from the other Contracting States is derived in connection with or is incidental to that business and that resident satisfies the other conditions of this Agreement for the obtaining of such benefits.

4. A resident of a Contracting State shall nevertheless be granted the benefits of the Agreement if the Competent Authority of the other Contracting State determines that the establishment or acquisition or maintenance of such person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under the Agreement.

5. For the purposes of this Article the term 'recognised stock exchange' means:
 (a) in India, a stock exchange which is for the time being recognised by the Central Government under Section 4 of the Securities Contracts (Regulation) Act,1956;
 (b) in Tanzania, the "Dar es Salaam Stock Exchange" or any other exchange recognised by the Capital Markets and Securities Authority under the Capital Markets and Securities Authority Act, Cap. 79; and
 (c) any other stock exchange which the Competent Authorities agree to recognise for the purposes of this Article.

6. Notwithstanding anything contained in paragraphs 2 to 5 above, any person shall not be entitled to the benefits of this Agreement, if its affairs were arranged in such a manner as if it was the main purpose or one of the main purposes to avoid taxes to which this Agreement applies.

India-UAE DTAA, LOB

An entity which is a resident of a Contracting State shall not be entitled to the benefits of this Agreement if the main purpose or one of the main purposes of the creation of such entity was to obtain the benefits of this Agreement that would not be otherwise available. The cases of legal entities not having *bona fide* business activities shall be covered by this Article

India-United Mexican State DTAA, LOB

1. Except as otherwise provided in this Article, a person (other than an individual), which is a resident of a Contracting State and which derives income from the other Contracting State shall be entitled to all the benefits of this Agreement otherwise accorded to residents of a Contracting State only if such a person has the qualifications as defined in paragraph 2 and meets the other conditions of this Agreement for the obtaining of any such benefits.

2. A person of a Contracting State is a qualified person for a fiscal year only if such person is either :
(*a*) Government entity; or
(*b*) a company incorporated in either of the Contracting States, if
 (*i*) the principal class of its shares is listed on a recognized stock exchange as defined in paragraph 5 of this Article and is regularly traded on one or more recognized stock exchanges, or

(*ii*) at least 50 per cent of the aggregate vote or value of the shares in the company is owned directly or indirectly by one or more individuals residents of either of the Contracting States or/and by other persons incorporated in either of the Contracting States, at least 50 per cent of the aggregate vote or value of the shares or beneficial interest of which is owned directly or indirectly by one or more individuals residents of either of the Contracting States; or

(*c*) a partnership or association of persons, at least 50 per cent or more of whose beneficial interests is owned by one or more individuals residents of either of the Contracting States or/and by other persons incorporated in either of the Contracting States, at least 50 per cent of the aggregate vote or value of the shares or beneficial interest of which is owned directly or indirectly by one or more individuals residents of either of the Contracting States; or

(*d*) A charitable institution or other tax exempt entity whose main activities are carried on in either of the Contracting States :

Provided that the persons mentioned above will not be entitled to the benefits of the Agreement if more than 50 per cent of the person's gross income for the taxable year is paid or payable directly or indirectly to persons who are not residents of either of the Contracting States in the form of payments that are deductible for the purpose of computation of tax covered by this Agreement in the person's state of residence (but not including arm's length payment in the ordinary course of business for services or tangible property and payments in respect of financial obligations to a bank incurred in connection with a transaction entered into with the permanent establishment of the bank situated in either of the Contracting States).

3. A resident of a Contracting State shall nevertheless be granted the benefits of the Agreement if the Competent Authority of the other Contracting State determines that the said resident actively carries out business in the other State and that the establishment or acquisition or maintenance of such person and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under the Agreement.

4. Before a resident of a Contracting State is denied relief from taxation in the other Contracting State by reason of paragraph 1, 2 or 3, the competent authorities of the Contracting States shall consult each other.

5. For the purposes of this Article the term 'recognised stock exchange' means

(*a*) in India, any stock exchange which is recognized by the Central Government under the Securities Contracts (Regulation) Act, 1956;

(*b*) in Mexico, the Mexican Stock Exchange Market (Bolsa Mexicana de Valores); and

(*c*) any other stock exchange which the competent authorities agree to recognise for the purposes of this Article.

6. Notwithstanding anything contained in paragraphs 2 to 5 above, any person shall not be entitled to the benefits of this Agreement, if its affairs were arranged in such a manner as if it was the main purpose or one of the main purposes to avoid taxes to which this Agreement applies.

India-USA DTAA, LOB

1. A person (other than an individual) which is a resident of a Contracting State and derives income from the other Contracting State shall be entitled under this Convention to relief from taxation in that other Contracting State only if :

(*a*) more than 50 per cent of the beneficial interest in such person (or in the case of a company, more than 50 per cent of the number of shares of each class of the companys shares) is owned, directly or indirectly, by one or more individual residents of one of the Contracting States, one of the Contracting States or its political sub-divisions or local authorities, or other individuals subject to tax in either Contracting State on their worldwide incomes, or citizens of the United States ; and

(*b*) the income of such person is not used in substantial part, directly or indirectly, to meet liabilities (including liabilities for interest or royalties) to persons who are not resident of one of the Contracting States, one of the Contracting States or its political sub-divisions or local authorities, or citizens of the United States.

2. The provisions of paragraph 1 shall not apply if the income derived from the other Contracting State is derived in connection with, or is incidental to, the active conduct by such person of a trade or business in the first-mentioned State (other than the business of making or managing investments, unless these activities are banking or insurance activities carried on by a bank or insurance company).

3. The provisions of paragraph 1 shall not apply if the person deriving the income is a company which is a resident of a Contracting State in whose principal class of shares there is substantial and regular trading on a recognized stock exchange. For purposes of the preceding sentence, the term recognized stock exchange means :

(*a*) in the case of United States, the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for purposes of the Securities Act of 1934 ;

(*b*) in the case of India, any stock exchange which is recognized by the Central Government under the Securities Contracts Regulation Act, 1956 ; and

(*c*) any other stock exchange agreed upon by the competent authorities of the Contracting States.

4. A person that is not entitled to the benefits of this Convention pursuant to the provisions of the preceding paragraphs of this Article may, nevertheless, be granted the benefits of the Convention if the competent authority of the State in which the income in question arises so determines.

India- Uzbekistan DTAA, LOB

1. The provisions of this Agreement shall in no case prevent a Contracting State from the application of the provisions of its domestic law and measures concerning tax avoidance or evasion, whether or not described as such.

2. A resident of a Contracting State shall not be entitled to the benefits of this Agreement if its affairs were arranged in such a manner as if it was the main purpose or one of the main purposes to take the benefits of this Agreement.

3. The case of legal entities not having bonafide business activities shall be covered by the provisions of this Article.”