MINISTRY OF FINANCE

(Departemnt of Revenue)

NOTIFICATION

New Delhi, the 24th September, 2014

S.O. 2488(E).—Whereas, a Protocol (hereinafter referred to as the said Protocol) as set out in the Annexure, was entered into between the Government of the Republic of India and the Government of the Polish People's Republic amending the Agreement between the Government of the Republic of India and the Government of the Polish People's Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income that was signed at Warsaw on the 21st day of June, 1989;

And whereas, the date of entry into force of the said Protocol is the 1st day of June, 2014, being the thirtieth day after the date of receipt of latter of the notifications of completion of the procedures as required by the respective laws for entry into force of the said Protocol, in accordance with paragraph 1 of article 17 of the said Protocol;

And whereas, sub-paragraph (a) of paragraph 1 of article 17 of the said Protocol provides that the provisions of the said Agreement shall have effect in India in respect of taxes withheld at source to amounts of income derived on or after the first day of the fiscal year next following the year in which the Protocol enters into force and in respect of other taxes on income to amounts of income derived in any fiscal year beginning on or after the first day of the fiscal year next following the year in which the Protocol enters into force;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Protocol amending the agreements between the Government of the Republic of India and the Government of Polish People's Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, as set out in the Annexure hereto, shall be given effect to in the Union of India with effect from the first day of April, 2015, being the first day of the fiscal year next following the year in which the Protocol enters into force.

[Notification No. 47/2014 F. No. 501/08/1979-FTD-I]

AKHILESH RANJAN, Jt. Secy.

PROTOCOL BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF INDIA

AND

THE GOVERNMENT OF THE REPUBLIC OF POLAND

AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT WARSAW ON THE 21ST DAY OF JUNE, 1989

The Government of the Republic of India and the Government of the Republic of Poland desiring to conclude a Protocol amending the Agreement between the Government of the Republic of India and the Government of the Polish People's Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Warsaw on the 21st day of June, 1989 (hereinafter referred to as "the Agreement"),

Have agreed as follows:

ARTICLE 1

Paragraph 1 of Article 2 (TAXES COVERED) of the Agreement shall be deleted and replaced by the following paragraph:

"1. The taxes to which this Agreement shall apply are:

a) in India, the income-tax including any surcharge and cess thereon imposed under the Income-tax Act, 1961;

(hereinafter referred to as "Indian tax")

b) in Poland:

(i) the personal income tax, and

(ii) the corporate income tax,

(hereinafter referred to as "Polish taxes").".

ARTICLE 2

In Article 3 (GENERAL DEFINITIONS) of the Agreement:

1. Clauses (a) and (b) of paragraph 1 shall be deleted and replaced by the following clauses:

"a) the term "India" means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law, including the U.N. Convention on the Law of the Sea;

b) the term "Poland" means the Republic of Poland and, when used in a geographical sense, means the territory of the Republic of Poland, and any area adjacent to the territorial waters of the Republic of Poland within which, under the laws of Poland and in accordance with international law, the rights of Poland with respect to the exploration and exploitation of the natural resources of the seabed and its sub-soil may be exercised;".

2. After clause (j) of paragraph 1 the following clause shall be inserted:

"(k) The term "fiscal year", in the case of India, means the financial year beginning on the first day of April.".

ARTICLE 3

In Article 4 (FISCAL RESIDENCE) of the Agreement, paragraph 1 shall be deleted and replaced by the following paragraph:

"1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political sub-division or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.".

ARTICLE 4

In Article 5 (PERMANENT ESTABLISHMENT), the following paragraph shall be inserted after Paragraph 2:

"2A. The term "permanent establishment" shall also include the furnishing of services, including consultancy services, by an enterprise of a Contracting State through its employees or other personnel engaged by the enterprise for such purpose, but only where such activities continue(for the same or a connected project) in the other Contracting State for a period or periods exceeding in the aggregate six months within any 12-month period.".

ARTICLE 5

Article 10 (ASSOCIATED ENTERPRISES) of the Agreement shall be deleted and replaced by the following Article:

"Article 10

ASSOCIATED ENTERPRISES

1. Where:

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

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

and in either case, conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

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

ARTICLE 6

In Article 11 (DIVIDENDS) of the Agreement, paragraph 2 shall be deleted and replaced by the following paragraph:

"2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

This paragraph shall not affect the taxation of the company in respect of the profits out of which dividends are paid.".

ARTICLE 7

In Article 12 (INTEREST) of the Agreement:

1. Paragraph 2 shall be deleted and replaced by the following paragraph:

"2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.".

2. Clause (i) of sub paragraph (b) of paragraph 3 shall be deleted and replaced by the following clause:

"(i) in the case of Poland, Bank Gospodarstwa Krajowego (BGK), to the extent such interest is attributable to financing of exports and imports only;".

ARTICLE 8

In Article 13 (ROYALTIES AND FEES FOR TECHNICAL SERVICES) of the Agreement, paragraphs 2, 3 and 4 shall be deleted and replaced by the following paragraphs:

"2. However, such royalties or fees for technical services may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the royalties, or fees for technical services, is a resident of the other Contracting State, the tax so charged shall not exceed 15per cent of the gross amount of the royalties or fees for technical services.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright including copyright of literary, artistic or scientific work including cinematograph films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use any industrial, commercial, or scientific equipment or for information concerning industrial, commercial or scientific experience.

4. The term "fees for technical services" as used in this Article means payments of any kind, other than those mentioned in Articles 15 and 16, as consideration for managerial or technical or consultancy services, including the provision of services of technical or other personnel.".

ARTICLE 9

In Article 14 (CAPITAL GAINS) of the Agreement, paragraph 4 shall be deleted and replaced by the following paragraph:

"4. Gains from the alienation of shares of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.".

ARTICLE 10

In Article 16 (DEPENDENT PERSONAL SERVICES) of the Agreement, clause a) of the paragraph 2 shall be deleted and replaced by the following clause:

"(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and;".

ARTICLE 11

Article 21(PAYMENTS RECEIVED BY STUDENTS AND APPRENTICES) of the Agreement shall be deleted and replaced by the following Article:

"Article 21

PAYMENTS RECEIVED BY STUDENTS AND APPRENTICES

1. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. Notwithstanding the provisions of Article 16, remuneration which a student, or an apprentice or trainee who is or was, immediately before visiting a Contracting State, a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training, receives for dependent personal services rendered in that first-mentioned State shall not be taxable in that State, provided that such services are directly related, and incidental, to his education or training or the remuneration for those services is necessary to supplement the resources for his maintenance. However, in any case the benefits of this paragraph shall not be granted for a period of more than five consecutive years from the date of his first arrival in the first-mentioned State.".

ARTICLE 12

Article 24 (ELIMINATION OF DOUBLE TAXATION) of the Agreement shall be deleted and replaced by the following Article:

"Article 24

ELIMINATION OF DOUBLE TAXATION

1. In case of India, double taxation shall be avoided as follows:

(a) Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Poland, India shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in Poland.

Such deduction shall not, however, exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in Poland.

(b) Where in accordance with any provision of the Agreement income derived by a resident of India is exempt from tax in India, India may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

2. In case of Poland, double taxation shall be avoided as follows:

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

(b) Where in accordance with any provision of this Agreement, income derived by a resident of Poland is exempt from tax in Poland, Poland may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.".

ARTICLE 13

In Article 25 (NON DISCRIMINATION), paragraph 2 shall be deleted and replaced by the following paragraph:

"2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities in the same circumstances or under the same conditions.This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7. However, the difference in tax rate shall not exceed 10 percentage points.".

ARTICLE 14

Article 27 (EXCHANGE OF INFORMATION) of the Agreement shall be deleted and replaced by the following Article:

"Article 27

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 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 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.

6. A Contracting State may allow representatives of the competent authority of the other Contracting State to enter the territory of the first-mentioned Contracting State to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Contracting State shall notify the competent authority of the first-mentioned Contracting State of the time and place of the meeting with the individuals concerned.

7. At the request of the competent authority of one Contracting State, the competent authority of the other Contracting State may allow representatives of the competent authority of the first-mentioned Contracting State to be present at the appropriate part of a tax examination in the second-mentioned Contracting State.

8. If the request referred to in paragraph 7 is acceded to, the competent authority of the Contracting State conducting the examination shall, as soon as possible, notify the competent authority of the other Contracting State about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Contracting State for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Contracting State conducting the examination.".

ARTICLE 15

Article 28 (ASSISTANCE IN COLLECTION) of the Agreement shall be deleted and replaced by the following Article:

"Article 28

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 Agreement 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.

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. When a Contracting State, under its law, takes interim measures of conservancy by freezing assets before a revenue claim is raised against a person, the competent authority of the other Contracting State, if requested by the competent authority of the first-mentioned State, shall take interim measures for freezing the assets of that person in that other Contracting State to the extent permitted in the provisions of its law.

6. 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.

7. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall only be brought before the courts or administrative bodies of that State. Nothing in this Article shall be construed as creating or providing any right to such proceedings before any court or administrative body 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 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.

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 (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 16

After Article 28, a new Article shall be inserted as follows:

"Article 28A

LIMITATION OF BENEFITS

Benefits of this Agreement shall not be available

(a) to a resident (not being an individual) of a Contracting State if the main purpose or one of the main purposes of the creation or existence of such a resident; or

(b) with respect to any arrangement or transaction undertaken by a resident of a Contracting State, if the main purpose or one of the main purposes of the creation or existence of such an arrangement or transaction,

was to obtain the benefits under this Agreement.".

ARTICLE 17

1. Each of the Contracting States shall notify through diplomatic channels to the other the completion of the procedures required by its law for the bringing into force of this Protocol. The Protocol shall enter into force on the thirtieth day after the date of receipt of the latter of the notifications referred to above and shall have effect:

(a) in India:

(i) in respect of the taxes withheld at source – to amounts of income derived on or after the first day of the fiscal year next following the year in which the Protocol enters into force;

(ii) in respect of other taxes on income - to amounts of income derived in any fiscal year beginning on or after the first day of the fiscal year next following the year in which the Protocol enters into force.

(b) in Poland:

(i) in respect of the taxes withheld at source – to amounts of income derived on or after the first of January of the calendar year next following the year in which the Protocol enters into force;

(ii) in respect of other taxes on income - to amounts of income derived in any fiscal year beginning on or after the first of January of the calendar year next following the year in which the Protocol enters into force.

2. Notwithstanding the provisions of paragraph 1 of this Article, the provisions of Articles 14 and 15 of this Protocol shall apply in respect of any matter referred to in these Articles even if such matters pre-date the entry into force of this Protocol or the effective date of any of its provisions.

In witness whereof, the undersigned, duly authorized thereto, have signed this Protocol.

Done in duplicate at Poland this 29th day of January, 2013 in Hindi, Polish and English languages, all the texts being equally authentic. In case there is any divergence between the Hindi and Polish texts, the English text shall prevail.

For the Government of the Republic of India

(Mrs. Preneet Kaur)
Minister of State for External Affairs of the Government of Inida

For the Government of the Republic of Poland

(Mr. Radoslaw Sikorski)
Minister of Foreign Affairs of the Republic of Poland

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