

PROTOCOL

BETWEEN

THE GOVERNMENT OF
THE REPUBLIC OF AUSTRIA

AND

THE GOVERNMENT OF
THE REPUBLIC OF INDIA

AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON
INCOME WHICH WAS SIGNED AT VIENNA ON 8 NOVEMBER 1999

The Government of the Republic of Austria and the Government of the Republic of India desiring to conclude a Protocol (hereinafter referred to as "Amending Protocol") amending the Convention between the Government of the Republic of Austria and the Government of the Republic of India for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, which was signed at Vienna on 8th November 1999 and which entered into force on 5th September, 2001 (hereinafter referred to as "the Convention"),

Have agreed as follows:

Article 1

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

“ARTICLE 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities thereof, 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.”

Article 2

The following new Article 26A shall be inserted after the new Article 26 of the Convention:

“ARTICLE 26A

Assistance in Collection of Taxes

1. The Contracting States shall lend assistance to each other in the collection of tax to the extent needed to ensure that any exemption or reduced rate of tax granted under this Convention shall not be enjoyed by persons not entitled to such benefits. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. 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).

3. The Contracting States undertake to lend each other support and assistance in the collection of taxes to the extent necessary to ensure that relief granted by the present Convention from

taxation imposed by a Contracting State does not inure to the benefit of persons not entitled thereto, provided that:

(a) the requesting State must produce a copy of a document certified by its competent authority specifying that the sums referred to for the collection of which it is requesting the intervention of the other State, are finally due and enforceable;

(b) a document produced in accordance with the provisions of paragraph 3 shall be rendered enforceable in accordance with the laws of the requested State. It is specified that under current Austrian legislation, such documents must be rendered enforceable by the Regional Tax Offices (Finanzämter);

(c) the requested State shall effect recovery in accordance with the rules governing the recovery of similar tax debts of its own; however, tax debts to be recovered shall not be regarded as privileged debts in the requested State. In the Republic of Austria, judicial execution shall be requested by the Finanzprokurator or by the finance office delegated to act on his behalf; and

(d) appeals concerning the existence or amount of the debt shall lie only to the competent tribunal of the requesting State.

The provisions of this paragraph shall not impose upon either Contracting State the obligation to carry out administrative measures different from those used in the collection of its own tax, or which would be contrary to its sovereignty, security, public policy or its essential interests.”

Article 3

The following paragraphs shall be added to the Protocol of the Convention:

“Ad Article 26:

1. The competent authority of the applicant State shall provide the following information to the competent authority of the requested State when making a request for information under the Convention to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) a statement of the information sought including its nature and the form in which the applicant State wishes to receive the information from the requested State;
- (c) the tax purpose for which the information is sought;
- (d) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State;
- (e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- (f) a statement that the applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

2. It is understood that the exchange of information provided in Article 26 does not include measures which constitute “fishing expeditions”.

3. It is understood that paragraph 5 of Article 26 does not require the Contracting States to exchange information on a spontaneous or automatic basis.

4. It is understood that – in addition to the above mentioned principles – for the interpretation of Article 26 the principles established in the OECD Commentaries shall be considered as well subject to the reservations or observations or positions of India or Austria.

5. It is also understood that the provisions of the Protocol signed on 8 November 1999 concerning Article 26 of the Convention shall likewise apply with reference to Article 26 of the Convention as amended by this Protocol.

6. It is understood that under paragraph 1 of Article 26, information needs to be exchanged in the specific form requested (including depositions of witnesses and production of authenticated copies of original documents) to the extent possible under the jurisdiction’s domestic law and practices.

7. It is understood that as stated in paragraph 9.1 of the OECD Commentary on Article 26, the new wording (as per 2010 version) of Article 26 covers Tax Examinations Abroad, Simultaneous Tax Examinations and Industry-Wide Exchange of Information to the extent allowed by the domestic law and administrative practice of both Contracting States.’

Article 4

The Contracting States shall notify each other through diplomatic channels that all legal procedures for the entry into force of this Protocol have been completed. The Protocol shall enter into force on the first day of the third month next following the date of the receipt of the latter of the notifications referred to above. The provisions of this Protocol shall have effect with regard to taxable periods beginning on or after 1 January of the calendar year next following the year of the entry into force of this Protocol.

IN WITNESS WHEREOF the plenipotentiaries of the two Contracting States, duly authorised thereto, have signed this Protocol.

DONE in duplicate at New Delhi on 6th February 2017 in the German, Hindi and English languages, all the texts being equally authentic. In case of any divergences of interpretation, the English text shall prevail.

For the Government of
the Republic of Austria:

Georg Zehetner

For the Government of
the Republic of India:

Sushil Chandra