



Income Tax Department

Government of India

SECTION 90 OF THE INCOME-TAX ACT, 1961 - DOUBLE TAXATION AGREEMENT - AGREEMENT FOR AVOIDANCE OF DOUBLE TAXATION AND PREVENTION OF FISCAL EVASION WITH FOREIGN COUNTRIES - NETHERLANDS - AMENDMENT IN NOTIFICATION NO.GSR 382(E), DATED 27-3-1989

NOTIFICATION NO. 2/2013 [F.NO.501/02/1983-FTD-I], DATED 14-1-2013

WHEREAS a Protocol for amending the Convention between the Republic of India and the Kingdom of the Netherlands for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on Income and on Capital was signed at the Hague on the 10th day of May, 2012;

AND WHEREAS, the date of entry into force of the said Protocol is the 2nd day of November, 2012, being the date of later of the notifications of satisfaction of all legal requirements and procedures for entry into force of the Agreement, in accordance with Paragraph 2 of Article 3 of the said Protocol;

AND WHEREAS, Paragraph 2 of Article 3 of the said Protocol provides that the amending protocol, which shall form an integral part of the convention shall enter into force on the date of the later of the notifications referred to in paragraph 1 of said Article and its provisions shall have effect forthwith;

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, as set out in the Annexure hereto, shall be given effect to in the Union of India in respect of income and on Capital arising from the 2nd November, 2012.

ANNEXURE
PROTOCOL AMENDING
THE CONVENTION BETWEEN
THE REPUBLIC OF INDIA
AND
THE KINGDOM OF THE NETHERLANDS
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND FOR THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL
WITH PROTOCOL, WHICH WAS SIGNED AT NEW DELHI ON 30TH JULY 1988.

The Government of the Republic of India

and

the Government of the Kingdom of the Netherlands;

Desiring to conclude a Protocol (hereinafter referred to as "Amending Protocol") to amend the Convention between the Republic of India and the Kingdom of the Netherlands for the Avoidance of Double Taxation and for the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital with protocol, which was signed at New Delhi on 30th July, 1988 and which entered into force on 21st January, 1989 (hereinafter referred to as "the Convention");

Have agreed as follows:

ARTICLE 1

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

*"Article 26**Exchange of Information*

1. The competent authorities of the States shall exchange such information (including documents or certified copies of the documents) as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the 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 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 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 authorizes such use.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a State the obligation:

- a. to carry out administrative measures at variance with the laws and administrative practice of that or of the other 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 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 the public policy (ordre public).

4. If information is requested by a State in accordance with this Article, the other 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 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 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

A new paragraph VIII of the Protocol to the Convention shall be added as follows:

"VIII Ad Article 26

1. The provisions of Article 26 shall also apply accordingly to information that is relevant for carrying out the income-related regulations under the laws of the States by the tax authorities of the State concerned with the implementation, administration or enforcement of these income-related regulations.

2. Notwithstanding the second sentence of paragraph 2 of Article 26, any information received under paragraph 1 of Article 26 by a State may, without further conditions, also be used by that State for the carrying-out of the income-related regulations as meant in paragraph 1."

ARTICLE 3

1. The Governments of the States shall notify each other through diplomatic channels that all legal requirements and procedures for giving effect to this Amending Protocol have been satisfied.

2. The Amending Protocol, which shall form an integral part of the Convention, shall enter into force on the date of the later of the notifications referred to in paragraph 1 and its provisions shall have effect forthwith.

In witness whereof the undersigned, duly authorized thereto by their respective Governments, have signed this Amending Protocol.

Done in duplicate at the Hague on this 10th day of May 2012 in the Hindi, Netherlands and English languages, the three texts being equally authentic. In case of divergence between the Hindi and Netherlands texts, the English text shall be the operative one.

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