

MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

New Delhi, the 22nd May, 2015

S.O.1371(E).—Whereas, a Protocol amending the Convention between the Republic of India and the Kingdom of Denmark for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, and the Protocol on provisions on clarification of the Convention which were signed at Copenhagen on the 8th March, 1989 (hereinafter referred to as the said Protocol) as set out in the Annexure to this notification, was entered into between the Government of the Republic of India and the Government of the Kingdom of Denmark and was signed on the 10th day of October, 2013;

And whereas, the date of entry into force of the said Protocol is the 1st February, 2015, being the date of the first day of the month following the date of receipt of the later of the notifications of completion of the procedures as required for the bringing into force the said Protocol, in accordance with paragraph 1 of article 3 of the said Protocol;

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 between the Government of the Republic of India and the Government of the Kingdom of Denmark as set out in the Annexure hereto, shall be given effect to in the Union of India with effect from the first day of February, 2015.

[Notification No. 45/2015/F. No. 503/02/1998-FTD-I]

AKHILESH RANJAN, Jt. Secy.

PROTOCOL

AMENDING THE CONVENTION BETWEEN THE REPUBLIC OF INDIA AND THE KINGDOM OF DENMARK FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL, AND THE PROTOCOL ON PROVISIONS ON CLARIFICATION OF THE CONVENTION WHICH WERE BOTH SIGNED AT COPENHAGEN ON 8TH MARCH, 1989.

The Government of the Republic of India

and

the Government of the Kingdom of Denmark;

Desiring to conclude a Protocol (hereinafter referred to as "Amending Protocol") to amend the Convention between the Republic of India and the Kingdom of Denmark for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, and the Protocol on provisions on clarification of the Convention which were both signed at Copenhagen on 8th March, 1989 and which entered into force on 13th June, 1989 (hereinafter referred to as "the Convention" and "the Protocol on provisions on clarification of the Convention" respectively);

Have agreed on the following provisions which shall have effect between India and Denmark and in accordance with the protocol extending the Convention to apply in its entirety to the Faroe Islands which was signed at Copenhagen on 8th March, 1989 also between India and the Faroe Islands:

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 (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 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 Contracting 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 (including documents or certified copies of the documents) 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 paragraph 3 shall be inserted after paragraph 2 of the Protocol to the Convention on provisions on clarification of the Convention:

- “3. With reference to Article 26, it is understood that as stated in paragraph 9.1 of OECD commentary on Article 26, the new wordings (as per 2010 version) of Article 26 covers Tax Examinations Abroad.”

Article 3

1. Each of the Contracting States shall notify to the other the completion of the procedures required as far as it is concerned for the bringing into force of this Protocol. The Protocol shall enter into force on the first day of the month following the date of receipt of the later of these notifications.

2. The provisions of this Protocol shall remain in force as long as the Convention remains in force.

Done in duplicate at Copenhagen on 10th October, 2013 in the Hindi, Danish and English languages, all three texts being authentic. In case of divergent interpretation of the Hindi and the Danish text the English text shall prevail.

For the Government of Republic of India

For the Government of Kingdom of Denmark

(Niraj Srivastava)

(Holger K. Nielsen)

Ambassador

Minister for Taxation

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