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- India and Myanmar Double Taxation Avoidance Agreement

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Myanmar has double taxation treaty with 8 countries i.e. India, UK, Laos, Malaysia, Singapore, South Korea, Vietnam and Thailand. It has also negotiated but not yet enforced with Indonesia and Bangladesh. On the other hand, India has double taxation avoidance agreements with more than 82 countries including Myanmar. As provided by the Indian Income Tax Act 1961, Section 90, when there is conflict between the provisions of the Income Tax Act 1961 and provisions of the double taxation avoidance agreement (treaty), the treaty will override the domestic law provisions.

The Government of the Republic of India and the Government of the Union of Myanmar entered into an agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income effective from 1st day of April, 2010. NOTIFICATION NO. 49/2009-FT & TR-II [F. NO. 504/10/2004-FT& TR-II]/[SO 1518(E)], (DATED 18-6-2009)

The agreement applies to persons who are residents of one or both of the contracting states, i.e. India and Myanmar.

### I. Taxes (Art.2)

The agreement shall apply to taxes on income:

- (1) imposed on behalf of a Contracting State or of its political sub-divisions or local authorities,
- (2) on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on the total amount of wages or salaries paid by enterprises.

### II. Resident (Art.4)

The term "resident" refers to:

- domicile,
- residence,

- place of management or any of a similar nature

Further the term resident does not include any income from the source in other state.

In case if an individual is a resident of both the Contracting States, the following steps can be consider to establish his status:

- he shall be deemed to be a resident only of the State in which he has a permanent home;
- if he has a permanent home in both States, then shall be deemed to be a resident only of the State in which his personal and economic relations are closer i.e. (centre of vital interests);
- if his centre of vital interests or permanent home cannot be determined, then the place where he has an habitual abode;
- if he has an habitual abode in both States or in neither of them then the State of which he is a national;

- if he is a national of both States or neither of them, the competent authorities of the Contracting States shall settle by mutual agreement, which can be decided by the place of management is situated.

In order to establish a place of management, permanent establish is necessary which means a fixed place of business wholly or partly carried by an enterprise.

### III. Permanente Establishment (Art.5)

The term "permanent establishment" which should include:

- a place of management;
- a branch;
- an office;
- a factory;
- a workshop;
- a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- a sales outlet;
- a warehouse in relation to a person providing storage facilities for others;
- a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on.

This may also include a building site or



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construction, installation or assembly project or supervisory activities of more than 270 days. Also an independent agent of independent acting of other contracting state on behalf of an enterprise in the contracting State establishes a permanent establishment for the activities on behalf of the enterprise. An insurance enterprise that collects premiums on behalf of the other State or inures risk also establishes permanent establishment.

The term “permanent establishment” shall not include:

(a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or for collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

If a broker, general commission agent, or any other agent of an independent status provides services in ordinary course it shall not establish permanent establishment if it carries on business in that State. The fact that a company resident of a Contracting State controls or is controlled by a resident company of the other Contracting State, or carries on business in that other State through a permanent establishment or otherwise shall not constitute for either company a permanent establishment of the other.

### IV. Immovable Property (Art. 6)

Any income derived from the direct use, letting or use in any other form of immovable property and also on the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services by a resident from the property situated in the other Contracting State may be taxed in that other State as per the term “immovable property” means as defined under the law of the Contracting State. The term shall include property accessory to immovable property, livestock and

equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

### V. Business Profits (Art. 7)

Any profits earned are taxable only in the state where the business was conducted unless the enterprise carries through a permanent establishment carries on business, the profits of the enterprise may be taxed in the other State but only attributable to that permanent establishment. If any enterprise carries distinct and separate engaged in the same or similar activities and dealing wholly and independently with the enterprise through permanent establishment in the other Contracting State, then each Contracting State will attributed to the profits that would have been expected to make if it was permanent establishment.

The profits shall be allowed as deductions expenses incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated. However, no such deduction shall be allowed in respect of amount paid towards reimbursement of actual expenses) to the head office of the enterprise or any of its other offices:

- royalties,
- the use of patents,
- know-how or other rights,
- commission or other charges , or,
- Banking enterprises by way of interest on moneys lent to the permanent establishment.

### VI. Taxation on Shipping & Air Transport (Art.8)

A) Enterprise: In case profits of an enterprise of Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State. Incase if the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in which the home harbor of the ship is situated, or, the operator of the ship is a resident.

B) Transportation Enterprise: the profits by a resident of a Contracting State from the use, maintenance or rental of containers, including trailers and other equipment for the transport of containers, goods or merchandise in international traffic, will tax only in that contracting state. If not taxed in that contracting state then within the other Contracting State.

C) Investment: any profits earned from the interest directly connected with the operation of ships or

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aircraft in international traffic if they are integral to the carrying on of such business.

D) Capital Gain: Any capital gains from the alienation will be taxable in the state in which the alienator is a resident. (Article 13) Contracting State of which the alienator is a resident.

### VII. Taxation on the Associated Enterprise (Art. 9)

When an (a) an enterprise or (b) the same person of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State and 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.

### VIII. Taxation on Dividends (Art.10)

The term "dividends" means income from shares or other rights, not being debt claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

The dividends paid by a company resident of the Contracting State to a resident of the other Contracting State may be taxed in that other State. However, if a beneficial owner is a resident of the other state then only 5 percent of the gross dividend will be taxed.

But in case if the beneficial owner of the dividends, a resident of a Contracting State where the company pays dividend as a resident through permanent establishment or independent personal service then the dividends are paid is effectively connected with such permanent establishment or fixed base

### IX. Taxation on Interest (Art 11)

The term "interest" is defined as the income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from Government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article. Interest to be taxed in other state if the interest is arising from the Contracting State and paid to the other contracting state resident, it may be taxed in the Contracting state but shall not exceed 10 percent of the gross amount interest, if the beneficial owner is the resident of the other contracting state.

The following interest in a contracting state to be

exempt from tax in the state which it is derived and beneficially owned. :

- (a) the Government, a political sub-division or a local authority of the other Contracting State: or
- (b) (i) in the case of Myanmar, the Central Bank of Myanmar, Myanmar Foreign Trade Bank, Myanmar investment and Commercial Bank, Myanmar Economic Bank; and
- (ii) in the case of India, the Reserve Bank of India, the Export-Import Bank of India, the National Housing Bank, the Small Industries Development Bank of India; and
- (c) any other institution as may be agreed upon from time to time between the competent authorities of the Contracting States through exchange of letters.

### X. Royalties (Art.12)

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 of literary, artistic or scientific work including cinematograph films or films or tapes used for television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience. Any income arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

### XI. Capital Gains (Art.13)

Any Capital Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), or of such fixed base, may be taxed in that other State.

In addition to the above taxation, the treaties between Myanmar and India also speak about DTAA on Independent Personal services (article 14) Dependent Personal service (article 15), director fees (article 16), Artistes and sportsperson (Article 17) Pension (Article 18), Government Service (Article 19), Student (Article 20), Professor, teachers and Researchers (Article 21) and other Income (Article 22).

As Myanmar is moving towards a development of its growth and economy more changes are expected to come during the coming year. Further opening of its economy for banks, manufacturing and other sectors may lead to further changes in the tax law system and the DTAA with other

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countries. Further the 'Act East' policy of the Government of India endeavors to cultivate extensive economic and strategic relations in South-East Asia. In order to catalyze investments from the Indian private sector in this region, a Project Development Company will, through separate Special Purpose Vehicles (SPVs), set up manufacturing hubs in CMLV countries, namely, Cambodia, Myanmar, Laos and Vietnam.