

PROTOCOL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE PORTUGUESE REPUBLIC 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

The Portuguese Republic and the Republic of India,

Desiring to amend the Convention between the Government of the Portuguese Republic 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 on the 11th September 1998 (hereinafter referred to as “the Convention”),

Agree as follows:

ARTICLE I

The text of Article 26 of the Convention is deleted and replaced by the following:

“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 or administrative 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.”

ARTICLE II

The Contracting States agree to include the following paragraph in the Protocol to the Convention:

“Ad article 26

The supplying and the receiving agencies shall be obliged to take effective measures to protect the personal data supplied against unauthorized access, unauthorized alteration and unauthorized disclosure.”

ARTICLE III

This Protocol shall enter into force on the thirtieth day after the date on which diplomatic notes indicating the completion of internal legal procedures necessary in each Contracting State for the entry into force of this Protocol have been exchanged.

ARTICLE IV

This Protocol shall form an integral part of the Convention and shall remain in force as long as the Convention remains in force.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto, have signed this Protocol.

DONE in duplicate at Lisbon on this 24 day of June 2017, in the Portuguese, Hindi and English languages, each text being equally authentic. In the case of any divergence of interpretation or application of this Protocol, the English text shall prevail.

For the Government of the Portuguese Republic <hr/>	For the Government of the Republic of India <hr/>
Mr. Francisco Duarte Lopes Director General of External Policy of the Ministry of Foreign Affairs	Smt. K. Nandini Singla Ambassador of the Republic of India to Portugal