Income Tax (Singapore — Brunei Darussalam) (Avoidance of Double Taxation Agreement) Order 2006

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No. S 671

INCOME TAX ACT
(CHAPTER 134)

INCOME TAX
(SINGAPORE — BRUNEI DARUSSALAM)
(AVOIDANCE OF DOUBLE TAXATION AGREEMENT) ORDER 2006

WHEREAS it is provided by section 49 of the Income Tax Act that if the Minister by order declares that arrangements specified in the order have been made with the Government of any country outside Singapore with a view to affording relief from double taxation in relation to tax under the Act and any tax of a similar character imposed by the laws of that country, and that it is expedient that those arrangements should have effect, the arrangements shall have effect in relation to tax under the Act notwithstanding anything in any written law:

AND WHEREAS by an Agreement dated the 19th day of August 2005, between the Government of the Republic of Singapore and the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam, arrangements were made, amongst other things, for the avoidance of double taxation:

NOW, THEREFORE, it is hereby declared by the Minister for Finance —

(*a*) that the arrangements specified in the Schedule to this Order have been made with the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam; and

(*b*) that it is expedient that those arrangements should have effect

notwithstanding anything in any written law.

THE SCHEDULE

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE

AND

THE GOVERNMENT OF HIS MAJESTY THE SULTAN AND YANG DI-PERTUAN OF BRUNEI DARUSSALAM

FOR

THE AVOIDANCE OF DOUBLE TAXATION AND PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Republic of Singapore and the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam,

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

ARTICLE 1

PERSONAL SCOPE

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

TAXES COVERED

1. This Agreement shall apply to taxes on income imposed on behalf of each Contracting State irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property.

3. The existing taxes to which the Agreement shall apply are:

(*a*) in Singapore:

income tax imposed under Income Tax Act, (Cap 134);

(hereinafter referred to as "Singapore tax");

(*b*) in Brunei Darussalam:

(i) income tax imposed under Income Tax Act, (Cap. 35);

(ii) petroleum profits tax imposed under Income Tax (Petroleum) Act, (Cap. 119);

(hereinafter collectively referred to as "Brunei Darussalam tax").

4. This Agreement shall apply also to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes referred to in paragraph 3 above. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

5. If by reason of changes made in the taxation law of either Contracting State, it appears desirable to amend any Article of this Agreement without affecting the general principles thereof, the necessary amendments may be made by mutual consent by means of an exchange of diplomatic notes or in any other manner in accordance with their constitutional procedures.

ARTICLE 3

GENERAL DEFINITIONS

1. In this Agreement, unless the context otherwise requires:

(*a*) the term "Singapore" means:

the territory of Singapore and its territorial sea over which Singapore exercises its sovereignty, as well as the adjacent areas over which Singapore has sovereign rights or jurisdiction in accordance with the provisions of the United Nations Convention on the Law of the Sea, 1982;

(*b*) the term "Brunei Darussalam" means:

the territory of Brunei Darussalam as defined in its laws and its territorial sea over which Brunei Darussalam exercises its sovereignty, as well as the adjacent areas over which Brunei Darussalam has sovereign rights or jurisdiction in accordance with the provisions of the United Nations Convention on the Law of the Sea, 1982;

(*c*) the terms "a Contracting State" and "the other Contracting State" mean Singapore or Brunei Darussalam as the context requires;

(*d*) the term "tax" means Singapore tax or Brunei Darussalam tax as the context requires;

(*e*) the term "person" includes an individual, a company, a body of persons and any other entity which is treated as a taxable entity under the tax laws of the respective Contracting States;

(*f*) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

(*g*) the terms “enterprise of a Contracting State” and ’’enterprise of the other Contracting State’’ mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(*h*) the term “national” means:

(i) (*a*) in Singapore:

any natural person who possesses the status of a national under the applicable laws in Singapore;

(*b*) in Brunei Darussalam:

any natural person who possesses the status of a national under the applicable laws in Brunei Darussalam;

(ii) any legal person, partnership and association or other entity deriving its status as such from the laws in force in a Contracting State;

(*i*) the term “international traffic” means any transport by a ship or aircraft which is operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(*j*) the term “competent authority” means:

(i) in Singapore: the Minister for Finance or his authorised representative;

(ii) in Brunei Darussalam: the Minister for Finance or his authorised representative.

2. As regards the application of this Agreement by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Agreement.

ARTICLE 4

RESIDENT

1. For the purpose of this Agreement, the term “resident of a Contracting State” means any person who is resident in a Contracting State for tax purposes of that Contracting State, and includes the Government of that Contracting State and any local authority or statutory body thereof.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

(*a*) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);

(*b*) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

(*c*) if he has an habitual abode in both Contracting States or in neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which the control and management of its business is exercised. If the place of control and management of its business cannot be determined, the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

(*a*) a place of management;

(*b*) a branch;

(*c*) an office;

(*d*) a store, warehouse or premises used as a sales outlet unless the activities fall within paragraphs 3(*a*) or (*b*);

(*e*) a factory;

(*f*) a workshop;

(*g*) a farm or plantation;

(*h*) a mine, an oil or gas well, a quarry or other place of extraction of natural resources, including timber or other forest produce;

(*i*) a drilling rig or working ship used for the exploration of natural resources but only where the activity continues for a period of more than 3 months;

(*j*) a building site or construction project or supervisory activities in connection therewith, provided such site, project or activity continues for a period of more than 183 days;

(*k*) an assembly or installation project which exists for more than 6 months; and

(*l*) the furnishing of services, including consultancy services by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than 3 months within any twelve month period.

3. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall not be deemed to include:

(*a*) the use of facilities solely for the purposes of storage, display or delivery of goods or merchandise belonging to the enterprise;