

Income Tax (Singapore — Germany) (Avoidance of Double Taxation Agreement) Order 2021

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Enacting Formula

THE SCHEDULE Protocol amending the agreement signed on 28 June 2004 between the Republic of Singapore and the Federal Republic of Germany for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital

No. S 186

**INCOME TAX ACT
(CHAPTER 134)**

**INCOME TAX (SINGAPORE — GERMANY)
(AVOIDANCE OF DOUBLE TAXATION AGREEMENT)
ORDER 2021**

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 have effect in relation to tax under the Act despite anything in any written law:

AND WHEREAS by an Agreement dated 28 June 2004, between the Government of the Republic of Singapore and the Federal Republic of Germany, arrangements were made, amongst other things, for the avoidance of double taxation:

AND WHEREAS by a Protocol dated 9 December 2019, between the Government of the Republic of Singapore and the Federal Republic of Germany, the arrangements set

out in the said Agreement were modified as prescribed in the said Protocol:

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

- (a) that the arrangements specified in the Schedule to this Order have been made with the Federal Republic of Germany; and
- (b) that it is expedient that those arrangements should have effect despite anything in any written law.

THE SCHEDULE

PROTOCOL

AMENDING THE AGREEMENT SIGNED ON 28 JUNE 2004

BETWEEN

THE REPUBLIC OF SINGAPORE

AND

THE FEDERAL REPUBLIC OF GERMANY

FOR THE AVOIDANCE OF DOUBLE TAXATION

WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Republic of Singapore

and

the Federal Republic of Germany,

Desiring to amend the Agreement signed on 28 June 2004 between the Republic of Singapore and the Federal Republic of Germany for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital, and the attached Protocol signed on 28 June 2004, hereinafter referred to as “the Agreement”,

Have agreed as follows:

ARTICLE 1

The preamble of the Agreement shall be replaced by the following:

“The Republic of Singapore

and

the Federal Republic of Germany,

intending to eliminate double taxation with respect to the taxes covered by this Agreement without

creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third jurisdictions),
have agreed as follows:”

ARTICLE 2

Paragraph 3 of Article 5 of the Agreement shall be replaced by the following paragraph:

“3. A building site or construction or installation or assembly project constitutes a permanent establishment only if it lasts more than twelve months.”

ARTICLE 3

Article 10 of the Agreement shall be amended as follows:

1. Sub-paragraph (b) of paragraph 2 shall be replaced by the following sub-paragraph:

“(b) 10 per cent of the gross amount of the dividends in all other cases;”

2. A new sub-paragraph (c) shall be inserted after sub-paragraph (b) of paragraph 2:

“(c) notwithstanding the provisions of sub-paragraphs (a) and (b), 15 per cent of the gross amount of the dividends if the company paying the dividend is a real estate investment company or trust, as the case may be.”

3. A new paragraph 3 shall be inserted after paragraph 2:

“3. For the purpose of Article 10 of the Agreement, the term “company” shall include:

- (a) in the case of the Federal Republic of Germany, a real estate investment company that is a company according to paragraph 1 of Section 1 of the German Act on German Real Estate Stock Corporations with Listed Shares (REIT Act); and
- (b) in the case of Singapore, a real estate investment trust that is a trust constituted as a collective investment scheme authorised under Section 286 of the Securities and Futures Act (Cap. 289) and listed on the Singapore Exchange, and that invests or proposes to invest in immovable property and immovable property-related assets, and that is not taxed at the trustee level pursuant to Section 43(2A) of the Singapore Income Tax Act (Cap. 134).”

4. The current paragraph 3 shall be renumbered as paragraph 4.

5. The current paragraph 4 shall be renumbered as paragraph 5 and the following sentence shall be deleted:

“Under the full imputation system currently adopted in Singapore, the tax deductible from dividends is a tax on the profits or income of the company and not a tax on dividends within the

meaning of this Article.”

6. The current paragraphs 5 through 7 shall be renumbered as paragraphs 6 through 8.

ARTICLE 4

Article 11 of the Agreement shall be amended as follows:

1. Paragraph 1 shall be replaced by the following paragraph:

“1. Interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.”

2. Paragraphs 2, 3 and 6 shall be deleted.

3. Paragraph 5 shall be deleted and replaced by the following paragraph:

“3. The provisions of paragraph 1 above shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.”

4. Paragraphs 4 and 7 shall be renumbered as paragraphs 2 and 4 respectively.

ARTICLE 5

Article 12 of the Agreement shall be amended as follows:

1. In respect of paragraph 2, the term “8 per cent” shall be replaced by “5 per cent”.

2. In respect of paragraph 3, the phrase “or for the use of, or the right to use, industrial, commercial or scientific equipment,” shall be deleted.

ARTICLE 6

Article 13 of the Agreement shall be amended as follows:

1. A new paragraph 3 shall be inserted after paragraph 2:

“3. Gains other than those referred to in paragraph 2 derived by a resident of a Contracting State from the alienation of shares, participations, or other rights representing more than 50 per cent of the vote, value or capital stock in a company which is a resident of the other Contracting State may be taxed in that other Contracting State if the alienator had held directly or indirectly such shares, participations, or other rights for a period of less than 12 months preceding such alienation.”

2. The current paragraphs 3 and 4 shall be renumbered as paragraphs 4 and 5 respectively.

3. The current paragraph 5 shall be renumbered as paragraph 6 and shall be replaced by the following paragraph:

“6. Gains from the alienation of any property other than that referred to in paragraphs 1 to 5 above shall be taxable only in the Contracting State of which the alienator is a resident.”

4. The current paragraph 6 shall be renumbered as paragraph 7 and shall be replaced by the following paragraph:

“7. Where an individual was a resident of a Contracting State for a period of 5 years or more and has become a resident of the other Contracting State, paragraph 6 above shall not prevent the first-mentioned State from taxing under its domestic law the capital appreciation of shares in a company resident in the first-mentioned State for the period of residency of that individual in the first-mentioned State. Where the first-mentioned Contracting State has taxed the appreciation of capital pursuant to the first sentence, this appreciation of capital shall not be included in the determination of the subsequent appreciation of capital by the other Contracting State.”

ARTICLE 7

Article 18 of the Agreement shall be amended as follows:

1. Paragraph 4 shall be renumbered as paragraph 5.

2. A new paragraph 4 shall be inserted after paragraph 3:

“4. Notwithstanding the provisions of paragraph 1 above:

- (a) in the case of Singapore, withdrawals made by a resident of the Federal Republic of Germany from his Supplementary Retirement Scheme account under Section 10L of the Singapore Income Tax Act (Cap. 134) shall be taxable only in Singapore;
- (b) in the case of the Federal Republic of Germany, a pension, similar remuneration or annuity arising in the Federal Republic of Germany, which is attributable in whole or in part to contributions which for more than 5 years in the Federal Republic of Germany
 - (aa) did not form part of the taxable income from employment; or
 - (bb) were tax-deductible; or
 - (cc) were tax-relieved in some other waysshall be taxable only in the Federal Republic of Germany.”

ARTICLE 8

Paragraph 2 of Article 22 of the Agreement shall be replaced by the following paragraph:

“2. Paragraph 1 above shall not be construed to apply: