Income Tax (Singapore — Indonesia) (Avoidance of Double Taxation Agreement) Order 1991

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INCOME TAX ACT
(CHAPTER 134, SECTION 49)

INCOME TAX (SINGAPORE — INDONESIA) (AVOIDANCE OF DOUBLE TAXATION AGREEMENT) ORDER 1991

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G.N. No. S 42/1991

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(30th March 1994)

[25th January 1991]

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 8th day of May 1990, between the Government of the Republic of Singapore and the Government of the Republic of Indonesia, 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 have been made with the Government of the Republic of Indonesia; and

(*b*) that it is expedient that those arrangements should have effect notwithstanding anything in any written law.

THE SCHEDULE

AGREEMENT

BETWEEN

THE REPUBLIC OF SINGAPORE

AND

THE REPUBLIC OF INDONESIA

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

The Government of the Republic of Singapore and the Government of the Republic of Indonesia,

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 and taxes on the total amount of wages or salaries paid by enterprises.

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

(*a*) in Singapore:

the income tax (hereinafter referred to as "Singapore tax");

(*b*) in Indonesia:

the income tax (pajak penghasilan), and to the extent provided in such income tax, the company tax (pajak perseroan) and the tax on interest, dividends and royalties (pajak atas bunga, dividen dan royalty) (hereinafter referred to as "Indonesian tax").

4. This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

5. If by reason of changes made in the taxation law of either Contracting State, it seems 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*) (i) the term "Singapore" comprises the territory of the Republic of Singapore as defined in its laws and the adjacent areas over which the Republic of Singapore has sovereign rights or jurisdiction in accordance with the provisions of the United Nations Convention on the Law of the Sea, 1982;

(ii) the term "Indonesia" comprises the territory of the Republic of Indonesia as defined in its laws and the adjacent areas over which the Republic of Indonesia has sovereign rights or jurisdiction in accordance with the provisions of the United Nations Convention on the Law of the Sea, 1982;

(*b*) the terms "a Contracting State" and "the other Contracting State" mean Indonesia or Singapore as the context requires;

(*c*) the term "tax" means Indonesian tax or Singapore tax as the context requires;

(*d*) the term "person" includes an individual, a company and any other body of persons which is treated as an entity for tax purposes;

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

(*f*) 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;

(*g*) the term "national" means:

(i) any individual possessing the nationality or citizenship of a Contracting State;

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

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

(*i*) the term "competent authority" means:

(*aa*) in the case of Indonesia, the Minister of Finance or his authorised representative;

(*bb*) in the case of Singapore, the Minister for Finance or his authorised representative.

2. As regards the application of this Agreement by a Contracting State, any term not defined in this Agreement 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

FISCAL DOMICILE

1. For the purposes of this Agreement, the term "a resident of a Contracting State" means any person who is resident in a Contracting State for tax purposes of that Contracting State. This term shall not include a permanent establishment of a foreign enterprise which is treated as a resident for tax purposes.

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 closest (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, 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 the 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 factory;

(*e*) a workshop;

(*f*) a farm or plantation;

(*g*) a mine, an oil or gas well, a quarry or other place of extraction of natural resources;

(*h*) a building site or construction, installation or assembly project which exists for more than 183 days;

(*i*) the furnishing of services, including consultancy services, by an enterprise through an employee or other person (other than an agent of an independent status within the meaning of paragraph 7) where the activities continue within a Contracting State for a period or periods aggregating more than 90 days within a twelve-month period.

3. The term "permanent establishment" shall not be deemed to 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 advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the