

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

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Enacting Formula

THE SCHEDULE Agreement between the Government of the Republic of Singapore and the Government of the Republic of Indonesia for the elimination of double taxation with respect to taxes on income and the prevention of tax evasion and avoidance

No. S 547

**INCOME TAX ACT
(CHAPTER 134)**

**INCOME TAX
(SINGAPORE — INDONESIA)
(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 4 February 2020, 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 declared by the Minister for Finance —

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

THE SCHEDULE

AGREEMENT BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE

AND

THE GOVERNMENT OF THE REPUBLIC OF INDONESIA

FOR

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

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

Intending to conclude an Agreement for the elimination of double taxation with respect to taxes on income 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 1

PERSONS COVERED

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 a Contracting State or of its political subdivisions or local authorities, 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, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

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

- (a) in Indonesia:
 - the income tax
 - (hereinafter referred to as “Indonesian tax”);
- (b) in Singapore:
 - the income tax
 - (hereinafter referred to as “Singapore tax”).

4. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the 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 that have been made in their taxation laws.

ARTICLE 3

GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:

- (a) the term “Indonesia” means the Republic of Indonesia and, when used in a geographical sense, means the land territories, territorial sea, archipelagic waters, internal waters, including sea-bed and subsoil thereof, and airspace over such territories, as well as continental shelf and exclusive economic zone, over which Indonesia has sovereignty, sovereign rights or jurisdiction, as defined in its laws, and in accordance with the United Nations Convention on the Law of the Sea, done at Montego Bay, 10 December 1982;
- (b) the term “Singapore” means the Republic of Singapore and, when used in a geographical sense, includes its land territory, internal waters and territorial sea, as well as any maritime area situated beyond the territorial sea which has been or might in the future be designated under its national law, in accordance with international law, as an area within which Singapore may exercise sovereign rights or jurisdiction with regards to the sea, the sea-bed, the subsoil and the natural resources;
- (c) the terms “a Contracting State” and “the other Contracting State” mean Indonesia or Singapore as the context requires;
- (d) the term “person” includes an individual, a company and any other body of persons;
- (e) the term “company” means any body corporate or any entity that 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”, in relation to a Contracting State, means:

- (i) any individual possessing the nationality or citizenship of that Contracting State; and
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;
- (h) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (i) the term “competent authority” means:
- (i) in the case of Indonesia, the Minister of Finance or his authorised representative;
 - (ii) in the case of Singapore, the Minister for Finance or his authorised representative.

2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

FISCAL DOMICILE

1. For the purposes of this Agreement, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision, 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 as follows:

- (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the 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 State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- (d) in any other case, 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 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 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. It is understood that a time limit of 3 months shall apply to an assembly or installation project performed by a person other than the main contractor;
- (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 other Contracting State if it carries on supervisory activities in that other State for more than 6 months in