

**Income Tax (Singapore — Malaysia) (Avoidance of Double Taxation Agreement) Order 1968**

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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 twenty-sixth day of December 1968, between the Government of the Republic of Singapore and the Government of Malaysia,

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 Malaysia; 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 MALAYSIA 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 Malaysia,

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 I

1. The taxes which are the subject of this Agreement are —

- (a) in Singapore:
  - the income tax (hereinafter referred to as “Singapore tax”); and
- (b) in Malaysia:
  - (i) the income tax,
  - (ii) the tin profits tax, and
  - (iii) the development tax (hereinafter referred to as “Malaysian tax”).

2. This Agreement shall also apply to any other taxes of a substantially similar character to those referred to in the preceding paragraph imposed in Singapore or Malaysia after the date of signature of this Agreement.

3. The provisions of this Agreement in respect of the taxation of income or profits shall likewise apply to the development tax computed other than on the basis of income.

## ARTICLE II

### 1. In this Agreement, unless the context otherwise requires —

- (a) the term “Singapore” means the Republic of Singapore;
- (b) the term “Malaysia” means the Federation of Malaysia;
- (c) the terms “one of the Contracting States” and “the other Contracting State” mean Singapore or Malaysia, as the context requires;
- (d) the term “tax” means Singapore tax or Malaysian tax, as the context requires;
- (e) the term “company” means a body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the term “individual” means a natural person;
- (g) the term “person” includes an individual, a company, a body of persons, a Hindu joint family and a corporation sole;
- (h)
  - (i) the term “resident of Singapore” in relation to a year of assessment means any person who is resident in Singapore for that year of assessment for the purposes of Singapore tax; and a company shall be deemed to be a resident of Singapore if it is managed and controlled in Singapore;
  - (ii) the term “resident of Malaysia” in relation to a year of assessment means any person who is ordinarily resident in Malaysia for the basis year for that year of assessment for the purposes of Malaysian tax:

#### Provided that —

- (aa) for the purposes of this Agreement references to 30 days in section 7(1)(c) of the Malaysian Income Tax Act, 1967 shall be read as references to 90 days;
  - (bb) an individual who is a resident of Singapore shall not be deemed to be ordinarily resident in Malaysia for the basis year 1968;
  - (cc) an individual who is a resident of Singapore shall not be deemed to be ordinarily resident in Malaysia for the basis year 1969 solely by the application of the provisions of section 7(1)(b) of the Malaysian Income Tax Act, 1967;
  - (dd) in calculating the number of days an individual is in Malaysia under the provisions of section 7(1)(c) of the Malaysian Income Tax Act, 1967, any day that he is in Malaysia solely for the purpose of medical treatment, vacation or recreation shall be disregarded if that individual has no source of income other than dividend or interest derived from Malaysia, and in the case of a person who derives income from any source any period of hospitalisation shall not be taken into account;
- (iii) a company shall be deemed to be a resident of Malaysia for the basis year for a year of assessment if its business, or if more than one, any of its

businesses is controlled and managed in Malaysia in that basis year:

Provided that a company which is a resident of Singapore shall not be treated as a resident of Malaysia for the basis year or basis years which coincide with the Singapore year of assessment 1968 or year of assessment 1969;

- (i) the terms “resident of one of the Contracting States” and “resident of the other Contracting State” mean a resident of Singapore or a resident of Malaysia, as the context requires;
- (j) the terms “Singapore enterprise” and “Malaysian enterprise” mean respectively an industrial, mining, commercial, timber, plantation or agricultural enterprise or undertaking carried on by a resident of Singapore, and an industrial, mining, commercial, timber, plantation or agricultural enterprise or undertaking carried on by a resident of Malaysia;
- (k) the terms “enterprise of one of the Contracting States” and “enterprise of the other Contracting State” mean a Singapore enterprise or a Malaysian enterprise, as the context requires;
- (l) the terms “income or profits of a Singapore enterprise” and “income or profits of a Malaysian enterprise” do not include rents or royalties in respect of literary or artistic copyrights, motion picture films or of tapes for television or broadcasting or of mines, oil wells, quarries, or other places of extraction of natural resources or of timber or forest produce, or income in the form of dividends, interest, rents, royalties or fees or other remuneration derived from the management, control or supervision of the trade, business or other activity of another enterprise or concern or remuneration for labour or personal services or income derived from the operation of ships or aircraft;
- (m)
  - (i) subject to this sub-paragraph, the term “permanent establishment” means a fixed place of business in which the business of the enterprise is wholly or partly carried on;
  - (ii) a permanent establishment shall include especially —
    - (aa) a place of management;
    - (bb) a branch;
    - (cc) an office;
    - (dd) a factory;
    - (ee) a workshop;
    - (ff) a mine, oil well, quarry or other place of extraction of natural resources;
    - (gg) a building site or installation or construction or assembly project;
    - (hh) a farm or plantation;
    - (ii) a place of extraction of timber or forest produce;
  - (iii) the term “permanent establishment” shall not be deemed to include —
    - (aa) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
    - (bb) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

- (cc) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - (dd) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
  - (ee) 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;
- (iv) an enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State if it carries on supervisory activities in that other Contracting State in connection with a construction, installation or assembly project which is being undertaken in that other Contracting State;
- (v) a person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State (other than an agent of independent status to whom sub-paragraph (m)(vi) applies) shall be deemed to be a permanent establishment of that enterprise in the first-mentioned Contracting State if —
  - (aa) he has, and habitually exercises in that first-mentioned Contracting State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
  - (bb) he maintains in the first-mentioned Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise;
- (vi) an enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that Contracting State through a broker, general commission agent or any other agent of independent status where such a person is acting in the ordinary course of the business;
- (vii) the fact that a company which is a resident of one of the Contracting States controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other Contracting State (whether through a permanent establishment or otherwise) shall not of itself constitute either company a permanent establishment of the other;
- (n) the term “competent authorities” means, in the case of Singapore, the Minister for Finance or his authorised representative; and in the case of Malaysia, the Federal Minister of Finance or his authorised representative.

2. In the application of this Agreement by one of the Contracting States, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that