Income Tax (Singapore — Netherlands) (Avoidance of Double Taxation Convention) Order 1971

Table of Contents

INCOME TAX ACT
(CHAPTER 134, SECTION 49)

INCOME TAX (SINGAPORE — NETHERLANDS) (AVOIDANCE OF DOUBLE TAXATION CONVENTION) ORDER 1971

O 20

G.N. No. S 238/1971

REVISED EDITION 1990

(25th March 1992)

[3rd September 1971]

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 a Convention dated the 19th day of February 1971, between the Government of the Republic of Singapore and the Government of the Kingdom of the Netherlands, 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 the Kingdom of the Netherlands; and

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

THE SCHEDULE

CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE AND THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Republic of Singapore and the Government of the Kingdom of the Netherlands,

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,

Have agreed as follows:

ARTICLE 1

TAXES COVERED

1. This Convention shall apply to taxes on income and on capital imposed on behalf of each of the States irrespective of the manner in which they are levied.

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

3. The existing taxes to which this Convention shall apply are, in particular —

(*a*) in the case of the Netherlands:

the income tax (de inkomstenbelasting),

the wages tax (de loonbelasting),

the company tax (de vennootschapsbelasting),

the dividend tax (de dividendbelasting),

the tax on fees of directors of companies (de commissarissenbelasting),

the capital tax (de vermogensbelasting), (hereinafter referred to as "Netherlands tax");

(*b*) in the case of Singapore:

the income tax

(hereinafter referred to as "Singapore tax").

4. This Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes.

ARTICLE 2

GENERAL DEFINITIONS

1. In this Convention, unless the context otherwise requires —

(*a*) the term "State" means the Netherlands or Singapore, as the context requires;

(*b*) the term "States" means the Netherlands and Singapore;

(*c*) the term "the Netherlands" comprises the part of the Kingdom of the Netherlands that is situated in Europe and the part of the seabed and its sub-soil under the North Sea, over which the Kingdom of the Netherlands has sovereign rights in accordance with international law;

(*d*) the term "Singapore" means the Republic of Singapore;

(*e*) the term "tax" means Netherlands tax or Singapore tax, as the context requires;

(*f*) the term "person" includes an individual, a company and any other body of persons;

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

(*h*) the terms "enterprise of one of the States" and "enterprise of the other State" mean respectively an enterprise carried on by a resident of one of the States and an enterprise carried on by a resident of the other State;

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

(i) in the Netherlands the Minister of Finance or his authorised representative;

(ii) in Singapore the Minister for Finance or his authorised representative.

2. As regards the application of this Convention by either of the States, any term not otherwise

defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that State relating to the taxes which are the subject of this Convention.

ARTICLE 3

FISCAL DOMICILE

1. For the purposes of this Convention, the term "resident of one of the States" means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management and control or any other criterion of a similar nature.

2. For the purposes of this Convention an individual, who is a member of a diplomatic or consular mission of one of the States in the other State or in a third State and who is a national of the sending State, shall be deemed to be a resident of the sending State if he is submitted therein to the same obligations in respect of taxes on income and on capital as are residents of that State.

3. Where by reason of the provisions of paragraph 1 an individual is a resident of both States, then this case shall be determined in accordance with the following rules —

(*a*) he shall be deemed to be a resident 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 of the State with which his personal and economic relations are closer;

(*b*) if the State with which his personal and economic relations are closer 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 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, the competent authorities of the States shall settle the question by mutual agreement.

4. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both States, then it shall be deemed to be a resident of the State in which it is managed and controlled.

ARTICLE 4

PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in 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, oil well, quarry or other place of extraction of natural resources;

(*h*) a building site or construction or assembly project which exists for more than six months.

3. The term "permanent establishment" shall not be deemed to include —

(*a*) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery;

(*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. A person acting in one of the States on behalf of an enterprise of the other State (other than an agent of an independent status to whom paragraph 6 applies) shall be deemed to be a permanent establishment in the first-mentioned State if —

(*a*) he has, and habitually exercises in the first-mentioned 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

(*b*) he maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise.

5. An enterprise of one of the States shall be deemed to have a permanent establishment in the other State if it carries on supervisory activities in that other State for more than six months in connection with a construction, installation or assembly project which is being undertaken in that other State.

6. An enterprise of one of the States shall not be deemed to have a permanent establishment in the other State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such person is acting in the ordinary course of his business.

7. The fact that a company which is a resident of one of the States controls or is controlled by a company which is a resident of the other State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 5

LIMITATION OF RELIEF

Where under any provision of this Convention income is relieved from tax in one of the States and under the law in force in the other State, a person, in respect of the said income, is subject to tax by reference to the amount thereof which is remitted to or received in that other State and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the first-mentioned State