Income Tax (Singapore — Papua New Guinea) (Avoidance of Double Taxation Agreement) Order 1992

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INCOME TAX ACT
(CHAPTER 134, SECTION 49)

INCOME TAX (SINGAPORE — PAPUA NEW GUINEA) (AVOIDANCE OF DOUBLE TAXATION AGREEMENT) ORDER 1992

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G.N. No. S 476/1992

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(1st April 1993)

[20th November 1992]

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 19th day of October 1991, between the Government of the Republic of Singapore and the Government of the Independent State of Papua New Guinea, 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 Independent State of Papua New Guinea; 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 THE INDEPENDENT STATE OF PAPUA NEW GUINEA 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 Independent State of Papua New Guinea,

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 or of its 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 personal or real property.

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

(*a*) in the case of Papua New Guinea:

the income tax imposed under the law of Papua New Guinea, including:

(i) the salary or wages tax;

(ii) the additional profits tax upon taxable additional profits from mining operations;

(iii) the additional profits tax upon taxable additional profits from petroleum operations;

(iv) the specific gains tax upon taxable specific gains; and

(v) the dividend withholding tax upon taxable dividend income;

(hereinafter referred to as "Papua New Guinea tax");

(*b*) in the case of the Republic of Singapore:

the income tax;

(hereinafter referred to as "Singapore tax").

4. This Agreement shall also apply to any identical or substantially similar taxes which are imposed under the law of Singapore or under the law of Papua New Guinea 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 substantial changes which are made in the laws of their respective States relating to the taxes to which this Agreement applies.

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*) the term "Papua New Guinea" means the Independent State of Papua New Guinea and, when used in a geographical sense, includes any area adjacent to the territorial limits of Papua New Guinea in respect of which there is for the time being in force, consistently with international law, a law of Papua New Guinea dealing with the exploitation of any of the natural resources of the continental shelf, its sea-bed and subsoil;

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

(*c*) the terms "a Contracting State" and "the other Contracting State" mean Papua New Guinea or Singapore as the context requires;

(*d*) the term "tax" means Papua New Guinea tax or Singapore tax as the context requires;

(*e*) the term "person" includes an individual, a company and any other entity which is treated as a taxable entity under the tax laws of the respective Contracting States;

(*f*) the term "company" means any company, body corporate or any other entity which is treated as a company under the tax laws of the respective Contracting States;

(*g*) 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;

(*h*) the term "national" means any individual possessing the nationality or citizenship of the respective Contracting States and also any legal person, partnership and association deriving their status as such from the laws in force in the respective Contracting States;

(*i*) the term "competent authority" means in the case of Papua New Guinea, the Chief Collector of Taxes or an authorised representative of the Chief Collector of Taxes and in the case of Singapore, the Minister for Finance or his authorised representative.

2. In this Agreement, the terms "Singapore tax" and "Papua New Guinea tax" do not include any penalty or interest imposed under the law of either Contracting State relating to the taxes to which this Agreement applies by virtue of Article 2.

3. As regards the application of this Agreement by a Contracting State, any term not otherwise defined 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, a person is a resident of one of the Contracting States:

(*a*) in the case of Singapore, if the person is a resident of Singapore for the purposes of Singapore tax; and

(*b*) in the case of Papua New Guinea, if the person is a resident of Papua New Guinea for the purposes of Papua New Guinea tax.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his case 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 closer (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, then it shall be deemed to be a resident of the State in which its place of effective management is situated. If its place of management cannot be determined, 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" includes especially:

(*a*) a place of management;

(*b*) a branch;

(*c*) an office;

(*d*) a factory;

(*e*) a workshop;

(*f*) a mine, an oil or gas well, a quarry or any other place of extraction of a natural resource;

(*g*) an agricultural, pastoral or forestry property; and

(*h*) a building site or construction, installation or assembly project which exists for more than 183 days in any calendar year.

3. An enterprise shall not be deemed to have a permanent establishment merely by reason of:

(*a*) the use of facilities solely for the purpose of storage or display or occasional 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 or display or occasional 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 activities which have a preparatory or auxiliary character for the enterprise, such as advertising or scientific research.

4. An enterprise shall be deemed to have a permanent establishment in one of the Contracting States if:

(*a*) it carries on supervisory activities in that State for more than 183 days in any calendar year in connection with a building site, or a construction, installation or assembly project which is being undertaken in that State;

(*b*) substantial equipment is being used for the purpose of mining or petroleum exploration in