

**Income Tax (Singapore — Vietnam) (Avoidance of Double Taxation Agreement)  
Order 2013**

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**Enacting Formula**

**THE SCHEDULE**

**No. S 9**

**INCOME TAX ACT  
(CHAPTER 134)**

**INCOME TAX  
(SINGAPORE — VIETNAM)  
(AVOIDANCE OF DOUBLE TAXATION AGREEMENT)  
ORDER 2013**

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 it is provided by section 105C of the Income Tax Act that the Minister may by order declare an avoidance of double taxation arrangement or an exchange of information arrangement as a prescribed arrangement for the purposes of Part XXA of the Act:

AND WHEREAS by an Agreement dated 2nd March 1994 as amended by a Protocol dated 2nd March 1994, between the Government of the Republic of Singapore and the Government of the Socialist Republic of Vietnam, arrangements were made, amongst

other things, for the avoidance of double taxation:

AND WHEREAS by a Second Protocol dated 12th September 2012, between the Government of the Republic of Singapore and the Government of the Socialist Republic of Vietnam, the arrangements set out in the said Agreement were modified as prescribed in the said Second Protocol:

NOW, THEREFORE, it is hereby declared by the Minister for Finance —

- (a) that the arrangements as modified by the Second Protocol specified in the Schedule to this Order have been made with the Government of the Socialist Republic of Vietnam;
- (b) that it is expedient that those arrangements should have effect notwithstanding anything in any written law; and
- (c) that those arrangements as modified by the said Second Protocol specified in the Schedule to this Order are a prescribed arrangement for the purposes of Part XXA of the Act.

## THE SCHEDULE

### SECOND PROTOCOL AMENDING THE AGREEMENT

#### BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE

#### AND

THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM

#### FOR

THE AVOIDANCE OF DOUBLE TAXATION

#### AND

THE PREVENTION OF FISCAL EVASION  
WITH RESPECT TO TAXES ON INCOME  
SIGNED AT HANOI ON 2 MARCH 1994

The Government of the Republic of Singapore and the Government of the Socialist Republic of Vietnam,

Desiring to amend the Agreement between the Government of the Republic of Singapore and the Government of the Socialist Republic of Vietnam for the avoidance of double taxation and the prevention

of fiscal evasion with respect to taxes on income signed at Hanoi on 2 March 1994 (hereinafter referred to as “the Agreement”),

Have agreed as follows:

## ARTICLE I

With respect to Article 2 (Taxes Covered) of the Agreement, paragraph 3(a) shall be deleted and replaced by the following:

“(a) in Vietnam:

- (i) the personal income tax; and
- (ii) business income tax;

(hereinafter referred to as “Vietnamese tax”);

## ARTICLE II

With respect to Article 5 (Permanent Establishment) of the Agreement, paragraph 3 shall be deleted and replaced by the following:

“3. The term “permanent establishment” also encompasses:

- (a) A building site or construction or installation project constitutes a permanent establishment only if it lasts more than 6 months; and
- (b) The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than 183 days within any twelve month period;”

## ARTICLE III

Article 9 (Associated Enterprises) of the Agreement shall be deleted and replaced by the following:

“1. Where —

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes, in accordance with the provisions of paragraph 1, in the

profits of an enterprise of that State — and taxes accordingly — profits on which an enterprise of the other Contracting State has been charged to tax in that other State and where the competent authorities of the Contracting States agree, upon consultation, that all or part of the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those agreed profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement.”

#### ARTICLE IV

With respect to Article 10 (Dividends) of the Agreement, a new paragraph 9 shall be inserted:

“9. The exemption provided under paragraph 3 of Article 10 shall not apply to dividends derived by the Government of Singapore from the carrying on of commercial activities.”

#### ARTICLE V

With respect to Article 11 (Interest) of the Agreement:

1. Paragraph 4(a)(i) shall be deleted and replaced by the following:

“(i) the Monetary Authority of Singapore;”

2. A new paragraph 9 shall be inserted:

“9. With respect to the taxation of interest as provided under paragraph 2 of Article 11, if Vietnam, in any agreement for the avoidance of double taxation with any other State, provides for a rate of less than 10 per cent on the gross amount of interest, the same lower rate shall apply for the purposes of paragraph 2 of Article 11.”

#### ARTICLE VI

With respect to Article 12 (Royalties) of the Agreement, paragraph 2(b) shall be deleted and replaced by the following:

“(b) 10% of the gross amount of royalties in all other cases.”

#### ARTICLE VII

With respect to Article 13 (Capital Gains) of the Agreement, paragraph 4 shall be deleted and replaced by the following:

“4. Gains derived by a resident of a Contracting State from the alienation of shares, other than shares of a company quoted on a recognized stock exchange of one or both Contracting States, deriving more than 50% of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the State of which the alienator is a resident.”