Income Tax (Singapore — Australia) (Avoidance of Double Taxation Agreement) Order 1969

Table of Contents

INCOME TAX ACT
(CHAPTER 134, SECTION 49)

INCOME TAX (SINGAPORE — AUSTRALIA) (AVOIDANCE OF DOUBLE TAXATION AGREEMENT) ORDER 1969

O 6

G.N. No. S 33/1969

REVISED EDITION 1990

(25th March 1992)

[11th February 1969]

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 eleventh day of February 1969 between the Government of the Republic of Singapore and the Government of the Commonwealth of Australia, 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 Commonwealth of Australia; 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 COMMONWEALTH OF AUSTRALIA 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 Commonwealth of Australia,

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

1. The existing taxes to which this Agreement applies are —

(*a*) in Australia:

the Commonwealth income tax, including the additional tax upon the undistributed amount of the distributable income of a private company;

(*b*) in Singapore:

the income tax.

2. This Agreement applies also to any identical or substantially similar taxes which are imposed subsequent to the date of signature of this Agreement by Singapore or the Commonwealth in addition to, or in place of, the existing taxes to which this Agreement applies.

ARTICLE 2

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

(*a*) the term “the Commonwealth” means the Commonwealth of Australia;

(*b*) the term “Australia” means the whole of the Commonwealth and includes —

(i) the Territory of Norfolk Island;

(ii) the Territory of Christmas Island;

(iii) the Territory of Cocos (Keeling) Islands;

(iv) the Territory of Ashmore and Cartier Islands;

(v) any territory which, subsequent to the date of signature of this Agreement, becomes a Territory of the Commonwealth; and

(vi) any area outside the territorial limits of the Commonwealth and the said Territories in respect of which there is for the time being in force a law of the Commonwealth or of a State or part of the Commonwealth or of a Territory aforesaid dealing with the exploitation of any of the natural resources of the sea-bed and sub-soil of the continental shelf;

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

(*d*) the terms "Contracting State", "one of the Contracting States", and "other Contracting State" mean Australia or Singapore, as the context requires;

(*e*) the terms "Australian tax" and "Singapore tax" mean tax imposed by the Commonwealth and tax imposed by Singapore respectively, being tax to which this Agreement applies by virtue of Article 1;

(*f*) the term "company" includes any body or association which is treated as a company for tax purposes;

(*g*) the term "competent authority" means, in the case of Australia, the Commissioner of Taxation or his authorised representative and in the case of Singapore, the Minister for Finance or his authorised representative;

(*h*) the term "enterprise" includes undertaking;

(*i*) the term "Malaysian company" means a company which, for purposes of income tax in Malaysia, is resident in Malaysia;

(*j*) the term "person" includes an individual, a company and any body of persons, corporate or not corporate;

(*k*) the terms "profits of a Singapore enterprise" and "profits of an Australian enterprise" mean profits of a Singapore enterprise or profits of an Australian enterprise respectively, but do not include —

(i) dividends, interest (as defined in Article 9), or royalties (including those payments which come within the meaning of "royalties" for the purposes of Article 10) other than such dividends, interest or royalties that are effectively connected with a trade or business carried on through a permanent establishment in one of the Contracting States by an enterprise of the other Contracting State;

(ii) rent;

(iii) remuneration or other income for personal (including professional) services;

(iv) profits from the operation of ships or aircraft;

(v) payments to the extent to which they are received as consideration for the use of, or the right to use, motion picture films, literary, dramatic, musical or artistic copyrights, films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting; or

(vi) payments to the extent to which they are received as consideration for the supply of scientific, technical, industrial or commercial knowledge, information or assistance (other than those payments which come within the meaning of "royalties" for the purposes of Article 10);

(*l*) the term "resident in Singapore" has the meaning which it has under the laws of Singapore relating to Singapore tax; and the term "resident of Australia" has the meaning which it has under the laws of the Commonwealth relating to Australian tax;

(*m*) the term "tax" means Australian tax or Singapore tax, as the context requires;

(*n*) words in the singular include the plural and words in the plural include the singular.

2. The terms "Australian tax" and "Singapore tax" do not include any amount which represents a penalty or interest imposed under the law in force in Australia or Singapore relating to the taxes to which this Agreement applies.

3. Where under this Agreement income is relieved from tax in one of the Contracting States and, under the law in force in the other Contracting 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 Contracting State and not by reference to the full amount thereof, then the relief to be allowed under this Agreement in the first mentioned Contracting State shall apply only to so much of the income as is remitted to or received in the other Contracting State.

4. Unless the context otherwise requires, any term of this Agreement not otherwise defined shall have, in a Contracting State, the meaning which it has under the laws in that Contracting State relating to the taxes to which this Agreement applies.

ARTICLE 3

1. For the purposes of this Agreement —

(*a*) the term "Australian company" means any company which being a resident of Australia —

(i) is incorporated in Australia and has its centre of administrative or practical management in Australia whether or not any person outside Australia exercises or is capable of exercising any overriding control or direction of the company or of its policy or affairs in any way whatsoever; or

(ii) is managed and controlled in Australia;

(*b*) the term "Singapore company" means any company which is managed and controlled in Singapore and which is not an Australian company;

(*c*) the term "Singapore resident" means any Singapore company and any person (other than a company) who is resident in Singapore; and

(*d*) the term "Australian resident" means any Australian company and any other person (other than a Singapore company) who is a resident of Australia.

2. Where by reason of the provisions of paragraph 1 of this Article an individual is both a Singapore resident and an Australian resident —

(*a*) he shall be treated solely as a Singapore resident —

(i) if he has a permanent home available to him in Singapore and has not a permanent home available to him in Australia;

(ii) if sub-paragraph (*a*)(i) of this paragraph is not applicable but he has an habitual abode in Singapore and has not an habitual abode in Australia;

(iii) if neither sub-paragraph (*a*)(i) nor sub-paragraph (*a*)(ii) of this paragraph is applicable but the Contracting State with which his personal and economic relations are closest is Singapore;

(*b*) he shall be treated solely as an Australian resident —

(i) if he has a permanent home available to him in Australia and has not a permanent home available to him in Singapore;

(ii) if sub-paragraph (*b*)(i) of this paragraph is not applicable but he has an habitual abode in Australia and has not an habitual abode in Singapore;

(iii) if neither sub-paragraph (*b*)(i) nor sub-paragraph (*b*)(ii) of this paragraph is applicable but the Contracting State with which his personal and economic relations are closest is Australia.

3. Where by reason of the provisions of paragraph 1 of this Article a person other than an individual is both a Singapore resident and an Australian resident —

(*a*) it shall be treated solely as a Singapore resident if it is managed and controlled in Singapore;

(*b*) it shall be treated solely as an Australian resident if it is managed and controlled in Australia.

4. In this Agreement the term "resident of one of the Contracting States" and the term "resident of the other Contracting State" mean a person who is a Singapore resident or a person who is an Australian resident as the context requires.

5. In this Agreement, the term "Singapore enterprise" and the term "Australian enterprise" mean an industrial or commercial enterprise (including a mining, agricultural, pastoral, forestry or plantation