

Income Tax (Singapore — Netherlands) (Avoidance of Double Taxation Convention) (Modifications to Implement Multilateral Instrument) Order 2019

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No. S 458

**INCOME TAX ACT
(CHAPTER 134)**

**INCOME TAX (SINGAPORE — NETHERLANDS)
(AVOIDANCE OF DOUBLE TAXATION CONVENTION)
(MODIFICATIONS TO IMPLEMENT MULTILATERAL
INSTRUMENT) ORDER 2019**

In exercise of the powers conferred by section 49(7) of the Income Tax Act, the Minister for Finance makes the following Order:

Citation and commencement

1. This Order is the Income Tax (Singapore — Netherlands) (Avoidance of Double Taxation Convention) (Modifications to Implement Multilateral Instrument) Order 2019

and comes into operation on 1 July 2019.

Purpose

2.—(1) This Order amends the arrangements made between the Government of the Republic of Singapore and the Government of the Kingdom of the Netherlands as specified in the Schedule to the Income Tax (Singapore — Netherlands) (Avoidance of Double Taxation Convention) Order 1971 (O 20) (called in this Order the Convention), as modified —

- (a) by the Protocol specified in the Schedule to the Income Tax (Singapore — Netherlands) (Avoidance of Double Taxation Convention) (Supplementary) Order 1994 (O 20A); and
- (b) by the Protocol specified in the Schedule to the Income Tax (Singapore — Netherlands) (Avoidance of Double Taxation Convention) Order 2010 (G.N. No. S 135/2010).

(2) The purpose of this Order is to amend the Convention to give effect to Singapore's obligations under the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting done at Paris on 24 November 2016 (as amended from time to time).

Amendment of Convention

3. The provisions of the Convention are amended in the manner set out in the Schedule.

Entry into effect

4.—(1) Paragraph 3 of the Schedule has effect for a case presented on or after 1 July 2019 without regard to the basis period to which the case relates.

(2) Sub-paragraph (1) does not apply to a case that was not eligible to be presented immediately before 1 July 2019.

(3) Paragraph 4 of the Schedule has effect with respect to any tax paid, deemed paid or liable to be paid, before, on or after 1 July 2019.

(4) All other paragraphs of the Schedule have effect —

- (a) with respect to taxes withheld at source, in respect of amounts paid, deemed paid or liable to be paid (whichever is the earliest), on or after 1 January 2020; and
- (b) with respect to taxes other than those withheld at source, where the income is derived or received in a basis period beginning on or after 1 January

2020.

THE SCHEDULE

Paragraph 3

Deletion and replacement of Preamble

1. The Preamble of the Convention is deleted and replaced by the following Preamble:

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

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters,

Intending to eliminate double taxation with respect to the taxes covered by this Convention without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Convention for the indirect benefit of residents of third jurisdictions),

Have agreed as follows:”.

Amendment of Article 9

2. Article 9 (Associated Enterprises) of the Convention is amended —

- (a) by numbering the existing provision as paragraph 1; and
- (b) by inserting, immediately after paragraph 1, the following paragraph:

“2. Where a Contracting State includes in the profits of an enterprise of that Contracting State — and taxes accordingly — profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.”.

Amendment of Article 26

3. Article 26 (Mutual Agreement Procedure) of the Convention is amended —

- (a) by inserting, immediately after the words “of which he is a resident.” in paragraph 1, the words “The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.”; and
- (b) by inserting, immediately after the words “not in accordance with this Convention.” in

paragraph 2, the words “Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.”.

New Articles 26A to 26G

4. The Convention is amended by inserting, immediately after Article 26 (Mutual Agreement Procedure), the following Articles:

“ARTICLE 26A

MANDATORY BINDING ARBITRATION

1. Where:

- (a) under Article 26 (Mutual Agreement Procedure), a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of the Convention; and
- (b) the competent authorities are unable to reach an agreement to resolve that case pursuant to Article 26 (Mutual Agreement Procedure) within a period of two years beginning on the start date referred to in paragraph 8 or 9, as the case may be (unless, prior to the expiration of that period the competent authorities of the Contracting States have agreed to a different time period with respect to that case and have notified the person who presented the case of such agreement),

any unresolved issues arising from the case shall, if the person so requests in writing, be submitted to arbitration in the manner described in this Article and Articles 26B to 26G, according to any rules or procedures agreed upon by the competent authorities of the Contracting States pursuant to the provisions of paragraph 10.

2. Where a competent authority has suspended the mutual agreement procedure referred to in paragraph 1 because a case with respect to one or more of the same issues is pending before court or administrative tribunal, the period provided in sub-paragraph (b) of paragraph 1 will stop running until either a final decision has been rendered by the court or administrative tribunal or the case has been suspended or withdrawn. In addition, where a person who presented a case and a competent authority have agreed to suspend the mutual agreement procedure, the period provided in sub-paragraph (b) of paragraph 1 will stop running until the suspension has been lifted.

3. Where both competent authorities agree that a person directly affected by the case has failed to provide in a timely manner any additional material information requested by either competent authority after the start of the period provided in sub-paragraph (b) of paragraph 1, the period provided in sub-paragraph (b) of paragraph 1 shall be extended for an amount of time equal to the period beginning on the date by which the information was requested and ending on the date on which that information was provided.

4. (a) The arbitration decision with respect to the issues submitted to arbitration shall be implemented through the mutual agreement concerning the case referred to in paragraph 1. The arbitration decision shall be final.

(b) The arbitration decision shall be binding on both Contracting States except in the following cases:

- (i) if a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision. In such a case, the case shall not be eligible for any further consideration by the competent authorities. The mutual agreement that implements the arbitration decision on the case shall be considered not to be accepted by a person directly affected by the case if any person directly affected by the case does not, within 60 days after the date on which notification of the mutual agreement is sent to the person, withdraw all issues resolved in the mutual agreement implementing the arbitration decision from consideration by any court or administrative tribunal or otherwise terminate any pending court or administrative proceedings with respect to such issues in a manner consistent with that mutual agreement.
- (ii) if a final decision of the courts of one of the Contracting States holds that the arbitration decision is invalid. In such a case, the request for arbitration under paragraph 1 shall be considered not to have been made, and the arbitration process shall be considered not to have taken place (except for the purposes of Articles 26C (Confidentiality of Arbitration Proceedings) and 26F (Costs of Arbitration Proceedings)). In such a case, a new request for arbitration may be made unless the competent authorities agree that such a new request should not be permitted.
- (iii) if a person directly affected by the case pursues litigation on the issues which were resolved in the mutual agreement implementing the arbitration decision in any court or administrative tribunal.

5. The competent authority that received the initial request for a mutual agreement procedure as described in sub-paragraph (a) of paragraph 1 shall, within two calendar months of receiving the request:

- (a) send a notification to the person who presented the case that it has received the request; and
- (b) send a notification of that request, along with a copy of the request, to the competent authority of the other Contracting State.

6. Within three calendar months after a competent authority receives the request for a mutual agreement procedure (or a copy thereof from the competent authority of the other Contracting State) it shall either:

- (a) notify the person who has presented the case and the other competent authority that it has received the information necessary to undertake substantive consideration of the case; or
- (b) request additional information from that person for that purpose.

7. Where pursuant to sub-paragraph (b) of paragraph 6, one or both of the competent authorities have requested from the person who presented the case additional information necessary to undertake substantive consideration of the case, the competent authority that requested the additional information shall, within three calendar months of receiving the additional information from that person, notify that person and the other competent authority