

**Income Tax (Singapore-Kuwait) (Avoidance of Double Taxation Agreement)
Order 2003**

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Enacting Formula

THE SCHEDULE

No. S 322

**INCOME TAX ACT
(CHAPTER 134)**

**INCOME TAX (SINGAPORE-KUWAIT) (AVOIDANCE OF DOUBLE TAXATION
AGREEMENT) ORDER 2003**

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 21st February 2002, between the Republic of Singapore and the State of Kuwait, arrangements were made for, amongst other things, 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 State of Kuwait; and
- (b) that it is expedient that those arrangements should have effect notwithstanding anything in any written law.

THE SCHEDULE
AGREEMENT
BETWEEN
THE STATE OF KUWAIT
AND
THE REPUBLIC OF SINGAPORE
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND
THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

The State of Kuwait and the Republic of Singapore;

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 a Contracting State or of its political subdivisions or 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 movable or immovable property.

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

- (a) in the case of Singapore:
 - the income tax;
 - (hereinafter referred to as “Singapore tax”);

(b) in the case of Kuwait:

- (1) the corporate income tax;
- (2) the contribution from the net profits of the Kuwaiti shareholding companies payable to the Kuwait Foundation for Advancement of Science (KFAS); and
- (3) the Zakat;

(hereinafter referred to as “Kuwaiti tax”).

4. This Agreement shall apply also to any identical or substantially similar taxes which are imposed 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 have been made in their respective taxation laws.

ARTICLE 3

GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:

- (a) the term “Singapore” means the Republic of Singapore;
- (b) the term “Kuwait” means the State of Kuwait, and when used in a geographical sense includes any area beyond the territorial sea which in accordance with international law has been or may hereafter be designated, under the laws of Kuwait, as an area over which Kuwait may exercise sovereign rights or jurisdiction;
- (c) the terms “a Contracting State” and “the other Contracting State” mean Singapore or Kuwait, as the context requires;
- (d) the term “person” includes an individual, a company and any other body of persons;
- (e) the term “national” means any individual possessing the nationality of a Contracting State, and any legal person, partnership, association or other entity deriving its status as such from the law in force in that Contracting State;
- (f) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (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 “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (i) the term “tax” means Singapore tax or Kuwaiti tax, as the context requires;
- (j) the term “competent authority” means:

- (1) in Singapore: the Minister for Finance or his authorized representative;
 - (2) in Kuwait: the Minister of Finance or his authorized representative;
 - (k) the term “fixed base” means a permanent place for the purpose of performing professional services or other activities of an independent nature.
2. As regards the application of this Agreement by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that Contracting State concerning the taxes to which this Agreement applies.

ARTICLE 4

RESIDENT

1. For the purposes of this Agreement, the term “resident of a Contracting State” means:
 - (a) in the case of Singapore : any person who, under the tax law of Singapore is resident in Singapore and is liable to tax therein by reason of residence or place of control and management;
 - (b) in the case of Kuwait : an individual who has his domicile in Kuwait and is a Kuwaiti national, and a company which is incorporated in the State of Kuwait.
2. For the purposes of paragraph 1, a resident of a Contracting State shall include:
 - (a) the Government of that Contracting State or any political subdivision or local authority or statutory body thereof; and
 - (b) any governmental institution created in that Contracting State under public law and the effective management of which is situated in that Contracting State, such as a corporation, central bank, fund, authority, foundation, agency or other similar entity; and
 - (c) any inter-governmental entity established in that Contracting State, in whose capital that Contracting State subscribes together with other states and the effective management of which is situated in that Contracting State.
3. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status 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;
 - (b) 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);
 - (c) 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 State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
 - (d) if he has an habitual abode in both Contracting States or in neither of them, he shall be

deemed to be a resident of the Contracting State of which he is a national;

- (e) if his status cannot be determined under the provisions of sub-paragraphs (a)-(d), the competent authorities of the Contracting 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 Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated, or if that cannot be established, 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; and
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site, or construction, assembly, erection or installation project or supervisory activities in connection therewith constitutes a permanent establishment only if such site, project or activities continue for a period of more than six months.

4. The furnishing of services, including consultancy services, by an enterprise of a Contracting State through employees or other engaged personnel in the other Contracting State constitutes a permanent establishment provided that such activities continue for the same project or a connected project for a period or periods aggregating more than six months within any twelve-month period.

5. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if substantial technical or scientific equipment or machinery is being used for more than three months within any twelve-month period or installed in that other Contracting State by, for or under contract with the enterprise.

6. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

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