

**Income Tax (Singapore-Malaysia) (Avoidance of Double Taxation Agreement)
Order 2006**

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Enacting Formula

THE SCHEDULE

No. S 77

**INCOME TAX ACT
(CHAPTER 134)**

**INCOME TAX (SINGAPORE-MALAYSIA) (AVOIDANCE OF DOUBLE
TAXATION AGREEMENT) ORDER 2006**

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 5th October 2004, between the Government of the Republic of Singapore and the Government of Malaysia, 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 Government of Malaysia; 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 MALAYSIA
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 MALAYSIA

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 by a Contracting State, irrespective of the manner in which they are levied.

2. The taxes which are the subject of this Agreement are:

(a) in Malaysia:

(i) the income tax; and

(ii) the petroleum income tax;

(hereinafter referred to as “Malaysian tax”);

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

3. The Agreement shall also apply to any identical or substantially similar taxes on income 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 important changes which have been made in their respective taxation laws.

ARTICLE 3

GENERAL DEFINITIONS

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

- (a) the term “Malaysia” means the territories of the Federation of Malaysia, the territorial waters of Malaysia and the sea-bed and subsoil of the territorial waters, and when used in a geographical sense includes any area extending beyond the limits of the territorial waters of Malaysia, and the sea-bed and subsoil of any such area, which has been or may hereafter be designated under the laws of Malaysia and in accordance with international law as an area over which Malaysia has sovereign rights for the purposes of exploring and exploiting the natural resources, whether living or non-living:

Provided that nothing contained in the above definition shall be construed as conferring recognition or acceptance by one Contracting State of the outstanding maritime and territorial claims made by the other Contracting State, nor shall be taken as pre-judging the determination of such claims;

- (b) the term “Singapore” means the territories of the Republic of Singapore, the territorial waters of Singapore and the sea-bed and subsoil of the territorial waters, and when used in a geographical sense includes any area extending beyond the limits of the territorial waters of Singapore, and the sea-bed and subsoil of any such area, which has been or may hereafter be designated under the laws of Singapore and in accordance with international law as an area over which Singapore has sovereign rights for the purposes of exploring and exploiting the natural resources, whether living or non-living:

Provided that nothing contained in the above definition shall be construed as conferring recognition or acceptance by one Contracting State of the outstanding maritime and territorial claims made by the other Contracting State, nor shall be taken as pre-judging the determination of such claims;

- (c) the terms “a Contracting State” and “the other Contracting State” mean Malaysia or Singapore as the context requires;
- (d) the term “person” includes an individual, a company and any other body of persons which is treated as a person for tax purposes;
- (e) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) 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;

(g) the term “tax” means Malaysian tax or Singapore tax, as the context requires;

(h) the term “national” means:

(i) any individual possessing the nationality or citizenship of a Contracting State;

(ii) any legal person, partnership, association and any other entity deriving its status as such from the laws in force in a Contracting State;

(i) the term “international traffic” means any transport by a ship, aircraft or road vehicle operated by an enterprise of a Contracting State, except when the ship, aircraft or road vehicle is operated solely between places in the other Contracting State;

(j) the term “competent authority” means:

(i) in the case of Malaysia, the Minister of Finance or his authorised representative; and

(ii) in the case of Singapore, the Minister for Finance or his authorised representative.

2. As regards the application of this Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

RESIDENT

1. For the purposes of this Agreement, the term “resident of a Contracting State” means:

(a) in the case of Malaysia, a person who is resident in Malaysia for the purposes of Malaysian tax;

(b) in the case of Singapore, a person who is resident in Singapore for the purposes of Singapore tax;

and also includes that State, any political subdivision, local authority or a statutory body thereof.

2. 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. If he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

- (b) if the 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 State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of 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.

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” shall include 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 natural resources; and
- (g) a building site or construction, installation or assembly project, which exists for more than 6 months.

3. The term “permanent establishment” shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, display or 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 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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

4. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the