First published in the Government *Gazette*, Electronic Edition, on 11th January 2013 at 4:00 pm.

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:

THE SCHEDULE — *continued*

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.

THE SCHEDULE — *continued*

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:

THE SCHEDULE — *continued*

"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."

ARTICLE VIII

With respect to Article 14 (Independent Personal Services) of the Agreement, paragraph 1 shall be deleted and replaced by the following:

"1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State:

(*a*) if he has a fixed base regularly available to him in the other State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or

(*b*) if his stay in the other State is for a period or periods exceeding in the aggregate 183 days within any twelve month period; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State;"

ARTICLE IX

ARTICLE 23 (Limitation of Relief) of the Agreement shall be deleted and the subsequent Articles shall not be renumbered.

ARTICLE X

With respect to Article 25 (Non-Discrimination) of the Agreement:

1. Paragraph 2 shall be deleted and replaced by the following:

"2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying out the same activities."

2. Paragraph 5 shall be deleted and replaced by the following:

THE SCHEDULE — *continued*

"5. Where a Contracting State grants tax incentives to its nationals designed to promote economic or social development in accordance with its national policy and criteria, it shall not be construed as discrimination under this Article."

ARTICLE XI

ARTICLE 27 (Exchange of Information) of the Agreement shall be deleted and replaced by the following:

"1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

(*a*) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(*b*) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(*c*) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation

THE SCHEDULE — *continued*

contained in the preceding sentence is subject to the limitations of paragraph 3 of this Article but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person."

ARTICLE XII

The Protocol (1994) of the Agreement shall be deleted.

ARTICLE XIII

Each of the Contracting States shall notify the other Contracting State of the completion of the procedures required by the law of the respective Contracting State for bringing into force this Protocol. This Protocol shall enter into force on the date of the later of these notifications and shall thereupon have effect:

(*a*) in Vietnam:

(i) in respect of taxes withheld at source, in relation to taxable amounts as derived on or after the first day of January following the calendar year in which the Protocol enters into force, and in subsequent calendar years;

(ii) in respect of other Vietnamese taxes, in relation to income, profits, gains or capital arising on or after the first day of January following the calendar year in which the Protocol enters into force, and in subsequent calendar years; and

(iii) in respect of Article XI, to request made on or after the date of entry into force of the Protocol;

(*b*) in Singapore:

(i) in respect of tax chargeable for any year of assessment beginning on or after 1st January in the second calendar year following the year in which the Protocol enters into force;

(ii) in respect of Article XI, to request made on or after the date of entry into force of the Protocol.

THE SCHEDULE — *continued*

ARTICLE XIV

This Protocol, which shall form an integral part of the Agreement, shall remain in force as long as the Agreement remains in force and shall apply as long as the Agreement itself is applicable.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments have signed this Protocol.

DONE in duplicate at Singapore on this 12th day of September 2012 in the Vietnamese and English language, both texts being equally authoritative.

FOR THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE	FOR THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM
THARMAN SHANMUGARATNAM	VUONG DINH HUE
DEPUTY PRIME MINISTER AND MINISTER FOR FINANCE	MINISTER OF FINANCE

Made this 11th day of January 2013.

LIM SOO HOON
Permanent Secretary (Finance) (Performance), Ministry of Finance, Singapore.

[MF(R) R32.2.0029 V4; AG/LLRD/SL/134/2010/7 Vol. 3]