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No. S 186

INCOME TAX ACT
(CHAPTER 134)

INCOME TAX (SINGAPORE — GERMANY) (AVOIDANCE OF DOUBLE TAXATION AGREEMENT) ORDER 2021

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 have effect in relation to tax under the Act despite anything in any written law:

AND WHEREAS by an Agreement dated 28 June 2004, between the Government of the Republic of Singapore and the Federal Republic of Germany, arrangements were made, amongst other things, for the avoidance of double taxation:

AND WHEREAS by a Protocol dated 9 December 2019, between the Government of the Republic of Singapore and the Federal Republic of Germany, the arrangements set out in the said Agreement were modified as prescribed in the said Protocol:

NOW, THEREFORE, it is declared by the Minister for Finance —

(*a*) that the arrangements specified in the Schedule to this Order have been made with the Federal Republic of Germany; and

(*b*) that it is expedient that those arrangements should have effect despite anything in any written law.

THE SCHEDULE

PROTOCOL

AMENDING THE AGREEMENT SIGNED ON 28 JUNE 2004

BETWEEN

THE REPUBLIC OF SINGAPORE

AND

THE FEDERAL REPUBLIC OF GERMANY

FOR THE AVOIDANCE OF DOUBLE TAXATION

WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Republic of Singapore

and

the Federal Republic of Germany,

Desiring to amend the Agreement signed on 28 June 2004 between the Republic of Singapore and the Federal Republic of Germany for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital, and the attached Protocol signed on 28 June 2004, hereinafter referred to as "the Agreement",

Have agreed as follows:

ARTICLE 1

The preamble of the Agreement shall be replaced by the following:

"The Republic of Singapore

and

the Federal Republic of Germany,

intending to eliminate double taxation with respect to the taxes covered by this Agreement 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 Agreement for the indirect benefit of residents of third jurisdictions),

have agreed as follows:"

THE SCHEDULE — *continued*

ARTICLE 2

Paragraph 3 of Article 5 of the Agreement shall be replaced by the following paragraph:

"3. A building site or construction or installation or assembly project constitutes a permanent establishment only if it lasts more than twelve months."

ARTICLE 3

Article 10 of the Agreement shall be amended as follows:

1. Sub-paragraph (*b*) of paragraph 2 shall be replaced by the following sub-paragraph:

"(*b*) 10 per cent of the gross amount of the dividends in all other cases;"

2. A new sub-paragraph (*c*) shall be inserted after sub-paragraph (*b*) of paragraph 2:

"(*c*) notwithstanding the provisions of sub-paragraphs (*a*) and (*b*), 15 per cent of the gross amount of the dividends if the company paying the dividend is a real estate investment company or trust, as the case may be."

3. A new paragraph 3 shall be inserted after paragraph 2:

"3. For the purpose of Article 10 of the Agreement, the term "company" shall include:

(*a*) in the case of the Federal Republic of Germany, a real estate investment company that is a company according to paragraph 1 of Section 1 of the German Act on German Real Estate Stock Corporations with Listed Shares (REIT Act); and

(*b*) in the case of Singapore, a real estate investment trust that is a trust constituted as a collective investment scheme authorised under Section 286 of the Securities and Futures Act (Cap. 289) and listed on the Singapore Exchange, and that invests or proposes to invest in immovable property and immovable property-related assets, and that is not taxed at the trustee level pursuant to Section 43(2A) of the Singapore Income Tax Act (Cap. 134)."

4. The current paragraph 3 shall be renumbered as paragraph 4.

THE SCHEDULE — *continued*

5. The current paragraph 4 shall be renumbered as paragraph 5 and the following sentence shall be deleted:

> "Under the full imputation system currently adopted in Singapore, the tax deductible from dividends is a tax on the profits or income of the company and not a tax on dividends within the meaning of this Article."

6. The current paragraphs 5 through 7 shall be renumbered as paragraphs 6 through 8.

ARTICLE 4

Article 11 of the Agreement shall be amended as follows:

1. Paragraph 1 shall be replaced by the following paragraph:

> "1. Interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State."

2. Paragraphs 2, 3 and 6 shall be deleted.

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

> "3. The provisions of paragraph 1 above shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply."

4. Paragraphs 4 and 7 shall be renumbered as paragraphs 2 and 4 respectively.

ARTICLE 5

Article 12 of the Agreement shall be amended as follows:

1. In respect of paragraph 2, the term "8 per cent" shall be replaced by "5 per cent".

2. In respect of paragraph 3, the phrase "or for the use of, or the right to use, industrial, commercial or scientific equipment," shall be deleted.

ARTICLE 6

Article 13 of the Agreement shall be amended as follows:

1. A new paragraph 3 shall be inserted after paragraph 2:

THE SCHEDULE — *continued*

"3. Gains other than those referred to in paragraph 2 derived by a resident of a Contracting State from the alienation of shares, participations, or other rights representing more than 50 per cent of the vote, value or capital stock in a company which is a resident of the other Contracting State may be taxed in that other Contracting State if the alienator had held directly or indirectly such shares, participations, or other rights for a period of less than 12 months preceding such alienation."

2. The current paragraphs 3 and 4 shall be renumbered as paragraphs 4 and 5 respectively.

3. The current paragraph 5 shall be renumbered as paragraph 6 and shall be replaced by the following paragraph:

"6. Gains from the alienation of any property other than that referred to in paragraphs 1 to 5 above shall be taxable only in the Contracting State of which the alienator is a resident."

4. The current paragraph 6 shall be renumbered as paragraph 7 and shall be replaced by the following paragraph:

"7. Where an individual was a resident of a Contracting State for a period of 5 years or more and has become a resident of the other Contracting State, paragraph 6 above shall not prevent the first-mentioned State from taxing under its domestic law the capital appreciation of shares in a company resident in the first-mentioned State for the period of residency of that individual in the first-mentioned State. Where the first-mentioned Contracting State has taxed the appreciation of capital pursuant to the first sentence, this appreciation of capital shall not be included in the determination of the subsequent appreciation of capital by the other Contracting State."

ARTICLE 7

Article 18 of the Agreement shall be amended as follows:

1. Paragraph 4 shall be renumbered as paragraph 5.

2. A new paragraph 4 shall be inserted after paragraph 3:

"4. Notwithstanding the provisions of paragraph 1 above:

(*a*) in the case of Singapore, withdrawals made by a resident of the Federal Republic of Germany from his Supplementary Retirement Scheme account under Section 10L of the Singapore Income Tax Act (Cap. 134) shall be taxable only in Singapore;

THE SCHEDULE — *continued*

(*b*) in the case of the Federal Republic of Germany, a pension, similar remuneration or annuity arising in the Federal Republic of Germany, which is attributable in whole or in part to contributions which for more than 5 years in the Federal Republic of Germany

(*aa*) did not form part of the taxable income from employment; or

(*bb*) were tax-deductible; or

(*cc*) were tax-relieved in some other ways

shall be taxable only in the Federal Republic of Germany."

ARTICLE 8

Paragraph 2 of Article 22 of the Agreement shall be replaced by the following paragraph:

"2. Paragraph 1 above shall not be construed to apply:

(*a*) in the case of Singapore:

(*aa*) when Singapore exempts income referred to in sub-paragraph (*b*) of paragraph 2 of Article 24 of the Agreement; in such case, the exemption or reduction of tax to be allowed under this Agreement in the Federal Republic of Germany shall apply to the amount of income from sources in the Federal Republic of Germany that is exempted from tax in Singapore; and

(*bb*) to income derived by the Government of Singapore and any statutory body thereof, GIC Private Limited, and the Central Bank of Singapore; and

(*b*) in the case of the Federal Republic of Germany, to income derived by the Federal Republic of Germany, a Land, a political subdivision or a local authority thereof."

ARTICLE 9

Article 24 of the Agreement shall be amended as follows:

1. In respect of sub-paragraph (*c*) of paragraph 1, the term "(paragraph 3 of Article 13)" shall be replaced by "(paragraph 4 of Article 13)".

2. Sub-paragraphs (*f*) through (*h*) of paragraph 1 shall be deleted.

3. Paragraph 2 shall be replaced by the following paragraph:

THE SCHEDULE — *continued*

"2. Tax shall be determined in the case of a resident of Singapore as follows:

(*a*) Where a resident of Singapore derives income from the Federal Republic of Germany which, in accordance with the provisions of this Agreement, may be taxed in the Federal Republic of Germany, Singapore shall, subject to its laws regarding the allowance as a credit against Singapore tax of tax payable in any country other than Singapore, allow the German tax paid, whether directly or by deduction, as a credit against the Singapore tax payable on the income of that resident. Where such income is a dividend paid by a company (not including a partnership) which is a resident of the Federal Republic of Germany to a resident of Singapore which is a company owning directly or indirectly not less than 10 per cent of the share capital of the first-mentioned company, the credit shall take into account the German tax paid by that company on the portion of its profits out of which the dividend is paid.

(*b*) Where a resident of Singapore derives income from the Federal Republic of Germany and remits such income to Singapore, Singapore shall, subject to the conditions of exemption for income received from outside Singapore provided for in Sections 13(7A), 13(8) and 13(12) of the Singapore Income Tax Act (Cap. 134) or any identical or substantially similar provisions enacted after the signature of the Agreement, being satisfied, exempt such income from tax in Singapore."

ARTICLE 10

In respect of the first sentence of paragraph 4 of Article 25 of the Agreement, the term "paragraph 7 of Article 11" shall be replaced by "paragraph 4 of Article 11".

ARTICLE 11

A new paragraph 5 shall be added after paragraph 4 of Article 26 of the Agreement:

"5. Where,

(*a*) under paragraph 1, a person has presented a case, except a case that is not eligible for arbitration, 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 this Agreement, and

THE SCHEDULE — *continued*

(*b*) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within three years from the date when all the information required by the competent authorities in order to address the case has been provided to both competent authorities,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests in writing. These unresolved issues shall not, however, be submitted to arbitration if a final decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph."

ARTICLE 12

Article 27 of the Agreement shall be replaced by the following Article:

"ARTICLE 27

EXCHANGE OF INFORMATION

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 a Contracting State, of a Land or a political subdivision or a local authority thereof, 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:

THE SCHEDULE — *continued*

(*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 contained in the preceding sentence is subject to the limitations of paragraph 3 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 13

Article 29 of the Agreement shall be amended as follows:

1. Paragraph 1 shall be preceded by the following new paragraph 1:

"1. Notwithstanding any provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement."

2. The current paragraphs 1 and 2 shall be renumbered as paragraphs 2 and 3 respectively.

THE SCHEDULE — *continued*

ARTICLE 14

The Protocol to the Agreement shall be amended as follows:

1. Paragraph 4 shall be deleted.

2. Paragraph 5 shall be renumbered as paragraph 4.

3. A new paragraph 5 shall be inserted after paragraph 4:

"5. With reference to paragraph 5 of Article 26:

The following cases are not eligible for arbitration under paragraph 5 of Article 26 of the Agreement:

(*a*) any case in which a domestic law or tax treaty anti-abuse rule (e.g. Parts 4, 5 and 7 of the German External Tax Relations Act (Außensteuergesetz), Section 42 of the German Fiscal Code (Abgabenordnung), Section 50d Paragraph 3 of the German Income Tax Act (Einkommensteuergesetz)) has been applied;

(*b*) any case involving conduct for which the taxpayer, a person acting on his or her behalf, or a related person has been found guilty by a court for a tax offence or has been subject to the imposition of a serious penalty;

(*c*) any case concerning items of income or capital that are not taxed by a Contracting State because they are not included in the taxable base in that Contracting State or because they are subject to an exemption or zero tax rate provided under the domestic tax law of that Contracting State;

(*d*) any case that falls within the scope of application of the Convention on the Elimination of Double Taxation in Connection with the Adjustment of Profits of Associated Enterprises (90/436/EEC) as amended, or any subsequent regulation;

(*e*) any case involving the application of any domestic law or tax treaty provision to items of income or capital resulting in the avoidance of double taxation by the credit method instead of the exemption method;

(*f*) any facts determined as part of a "mutual agreement on facts" (tatsächliche Verständigung) defined in the German Federal Ministry of Finance circular of 30 July 2008 (Federal Tax (Gazette I 2008, p. 831), as amended, or in any subsequent

THE SCHEDULE — *continued*

regulation, between the tax administration of a Contracting State and the taxpayer;

(*g*) any case involving the application of domestic general anti-avoidance rules contained in Section 33 of the Singapore Income Tax Act (Cap. 134), case law or judicial doctrines, and any subsequent provisions replacing, amending or updating these anti-avoidance rules."

4. Sub-paragraph (*a*) of paragraph 6 shall be replaced by the following sub-paragraph:

"(*a*) The receiving agency shall on request inform the supplying agency on a case-by-case basis about the use of the supplied data and the results achieved thereby."

5. Two new paragraphs 7 and 8 shall be added after paragraph 6:

"7. With reference to Article 27:

It is understood that both Contracting States will explore ways to enhance bilateral cooperation as regards the exchange of information in tax matters.

8. With reference to paragraph 2 of Article 27:

Information that has been received under paragraph 1 of Article 27 by a Contracting State and that is disclosed in public court proceedings or in judicial decisions may only be used by the Contracting State for the purposes specified in Article 27."

ARTICLE 15

1. This Protocol shall be subject to ratification and the instruments of ratification shall be exchanged at Singapore as soon as possible.

2. This Protocol shall enter into force on the date on which the instruments of ratification are exchanged and shall have effect:

(*a*) in the Federal Republic of Germany:

(*aa*) in the case of taxes withheld at source, in respect of amounts paid on or after the first day of January of the calendar year next following that in which this Protocol entered into force;

(*bb*) in the case of other taxes, in respect of taxes levied for any assessment period beginning on or after the first day of January of the calendar year next following that in which this Protocol entered into force;

THE SCHEDULE — *continued*

(*cc*) regarding Article 27, in respect of requests made on or after the date of entry into force concerning information that relates to any assessment period or any chargeable event in accordance with the law of the requesting Contracting State.

(*b*) in Singapore:

(*aa*) in the case of taxes withheld at source, in respect of amounts paid on or after the first day of January of the calendar year next following that in which this Protocol entered into force;

(*bb*) in the case of other taxes, in respect of taxes levied for any basis period beginning on or after the first day of January of the calendar year next following that in which this Protocol entered into force;

(*cc*) regarding Article 27, in respect of requests made on or after the date of entry into force concerning information that relates to any taxable period or any chargeable event in accordance with the law of the requesting Contracting State.

ARTICLE 16

This Protocol shall remain in force as long as the Agreement remains in force.

DONE in duplicate at Berlin on 9 December 2019 in the English and German languages, both texts being equally authentic.

For the Republic of Singapore For the Federal Republic of Germany

Made on 8 December 2020.

TAN CHING YEE
Permanent Secretary,
Ministry of Finance,
Singapore.

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