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No. S 71

INCOME TAX ACT (CHAPTER 134)

INCOME TAX (SINGAPORE — INDIA) (AVOIDANCE OF DOUBLE TAXATION AGREEMENT) ORDER 2017

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 notwithstanding anything in any written law:

AND WHEREAS by an Agreement dated 24 January 1994, between the Government of the Republic of Singapore and the Government of the Republic of India, arrangements were made, amongst other things, for the avoidance of double taxation:

AND WHEREAS by a Protocol dated 29 June 2005, between the Government of the Republic of Singapore and the Government of the Republic of India, the arrangements set out in the said Agreement were modified as prescribed in the said Protocol:

AND WHEREAS by a Second Protocol dated 24 June 2011, between the Government of the Republic of Singapore and the Government of the Republic of India, the arrangements set out in the said Agreement were modified as prescribed in the said Second Protocol:

AND WHEREAS by a Third Protocol dated 30 December 2016, between the Government of the Republic of Singapore and the Government of the Republic of India, the arrangements set out in the said Agreement were modified as prescribed in the said Third Protocol:

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

(*a*) that the arrangements, as modified by the said Third Protocol specified in the Schedule to this Order, have been made with the Government of the Republic of India; and

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

THE SCHEDULE

THIRD PROTOCOL

AMENDING THE AGREEMENT BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE

AND

THE GOVERNMENT OF THE REPUBLIC OF INDIA

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 the Republic of India,

Desiring to conclude a Third Protocol to amend the Agreement between the Government of the Republic of Singapore and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion

THE SCHEDULE — *continued*

with respect to Taxes on Income, signed at India on 24 January 1994, as amended by the Protocol signed at India on 29 June 2005 (hereinafter referred to as "the 2005 Protocol") and by the Second Protocol signed at India on 24 June 2011 (the Agreement so amended hereinafter referred to as "the Agreement"),

Have agreed as follows:

ARTICLE 1

1. The existing paragraph of Article 9 — Associated Enterprises of the Agreement shall be numbered as paragraph 1; and

2. After the said paragraph 1, the following paragraph shall be inserted:

"2. Where a Contracting State includes 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 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 profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other."

ARTICLE 2

Article 13 — Capital Gains of the Agreement shall be amended, with effect from 1 April 2017:

(i) by deleting paragraph 4; and

(ii) by inserting the following paragraphs:

"4A. Gains from the alienation of shares acquired before 1 April 2017 in a company which is a resident of a Contracting State shall be taxable only in the Contracting State in which the alienator is a resident.

4B. Gains from the alienation of shares acquired on or after 1 April 2017 in a company which is a resident of a Contracting State may be taxed in that State.

4C. However, the gains referred to in paragraph 4B of this Article which arise during the period beginning on 1 April 2017 and ending on 31 March 2019 may be taxed in the State of which the company whose shares are being alienated is a resident at a tax

rate that shall not exceed 50% of the tax rate applicable on such gains in that State.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4A and 4B of this Article shall be taxable only in the Contracting State of which the alienator is a resident."

ARTICLE 3

The Agreement is amended by adding after Article 24, the following Article, with effect from 1 April 2017:

"ARTICLE 24A

1. A resident of a Contracting State shall not be entitled to the benefits of paragraph 4A or paragraph 4C of Article 13 of this Agreement if its affairs were arranged with the primary purpose to take advantage of the benefits in the said paragraph 4A or paragraph 4C of Article 13 of this Agreement, as the case may be.

2. A shell or conduit company that claims it is a resident of a Contracting State shall not be entitled to the benefits of paragraph 4A or paragraph 4C of Article 13 of this Agreement. A shell or conduit company is any legal entity falling within the definition of resident with negligible or nil business operations or with no real and continuous business activities carried out in that Contracting State.

3. A resident of a Contracting State is deemed to be a shell or conduit company if its annual expenditure on operations in that Contracting State is less than S$200,000 in Singapore or Indian Rs.5,000,000 in India, as the case may be:

(*a*) in the case of paragraph 4A of Article 13 of this Agreement, for each of the 12-month periods in the immediately preceding period of 24 months from the date on which the gains arise;

(*b*) in the case of paragraph 4C of Article 13 of this Agreement, for the immediately preceding period of 12 months from the date on which the gains arise.

4. A resident of a Contracting State is deemed not to be a shell or conduit company if:

(*a*) it is listed on a recognised stock exchange of the Contracting State; or

THE SCHEDULE — *continued*

(*b*) its annual expenditure on operations in that Contracting State is equal to or more than S$200,000 in Singapore or Indian Rs.5,000,000 in India, as the case may be:

(i) in the case of paragraph 4A of Article 13 of this Agreement, for each of the 12-month periods in the immediately preceding period of 24 months from the date on which the gains arise;

(ii) in the case of paragraph 4C of Article 13 of this Agreement, for the immediately preceding period of 12 months from the date on which the gains arise.

5. For the purpose of paragraph 4(*a*) of this Article, a recognised stock exchange means:

(*a*) in the case of Singapore, the securities market operated by the Singapore Exchange Limited, Singapore Exchange Securities Trading Limited and The Central Depository (Pte) Limited; and

(*b*) in the case of India, a stock exchange recognised by the Securities and Exchange Board of India.

Explanation: The cases of legal entities not having bona fide business activities shall be covered by paragraph 1 of this Article."

ARTICLE 4

Articles 1, 3, 5 and 6 of the 2005 Protocol shall be deleted, with effect from 1 April 2017.

ARTICLE 5

The Agreement is amended by adding after Article 28, the following Article:

"ARTICLE 28A

MISCELLANEOUS

This Agreement shall not prevent a Contracting State from applying its domestic law and measures concerning the prevention of tax avoidance or tax evasion."

ARTICLE 6

Each of the Contracting States shall complete the procedures required by its law for the bringing into force of this Protocol and notify the other State about such completion of the procedures. This Protocol shall enter into force on the date of the later of these notifications. If this Protocol does not enter into force as at 31 March

THE SCHEDULE — *continued*

2017 due to either of the aforesaid notifications remaining pending, this Protocol shall enter into force on 1 April 2017.

ARTICLE 7

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, duly authorised thereto by their respective Governments, have signed this Protocol.

DONE in duplicate at New Delhi on this 30th day of December 2016, in the English and Hindi languages, both texts being equally authentic. In the case of divergence between the two texts, the English text shall be the operative one.

FOR THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE	FOR THE GOVERNMENT OF THE REPUBLIC OF INDIA
H.E. Lim Thuan Kuan	Shri Sushil Chandra
High Commissioner of The Republic of Singapore to India	Chairman, Central Board of Direct Taxes

Made on 22 February 2017.

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

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