

No. S 37

INCOME TAX ACT
(CHAPTER 35, SECTION 41)

INCOME TAX (BRUNEI DARUSSALAM – THE REPUBLIC OF INDONESIA)
(AVOIDANCE OF DOUBLE TAXATION AGREEMENT)
ORDER, 2002

WHEREAS it is provided by section 41 of the Income Tax Act that if His Majesty in Council by order declares that arrangements specified in the order have been made with the Government of any territory outside Brunei Darussalam with a view to affording relief from double taxation in relation to tax under that Act and any tax of a similar character imposed by the laws of that territory, 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 the 27th. day of February, 2000, between the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam and the Government of the Republic of Indonesia, arrangements were made amongst other things for the avoidance of double taxation.

NOW THEREFORE, it is hereby declared by His Majesty in Council –

(a) that the arrangements specified in the Schedule have been made with the Government of the Republic of Indonesia; and

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

SCHEDULE

AGREEMENT BETWEEN
BRUNEI DARUSSALAM

AND

THE REPUBLIC OF INDONESIA

FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE
PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam and the Government of the Republic of Indonesia desiring to

SCHEDULE – *(continued)*

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 and Government of one or both of the Contracting States.

ARTICLE 2

Taxes Covered

1. This Agreement shall apply to taxes on income and capital gains imposed on behalf of each Contracting State irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and capital gains all taxes imposed on total income and total capital gains or on elements of income and capital gains including taxes on gains from the alienation of movable or immovable property.

3. The existing taxes on which this Agreement shall apply are –

(a) in the case of Brunei Darussalam –

(i) income tax imposed under Income Tax Act (Chapter 35);

(ii) petroleum profits tax imposed under Income Tax (Petroleum) Act, (Chapter 119);

(hereinafter collectively referred to as "Brunei tax");

(b) in the case of Indonesia –

the income tax imposed under the Undang-Undang Pajak Penghasilan 1984 (Law No. 7 of 1983 as amended);

(hereinafter referred to as "Indonesian tax").

SCHEDULE – (continued)

4. This Agreement shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes referred to in paragraph 3 above. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws within a reasonable period of time after such changes and furnish copies of relevant enactments and regulations.

5. If by reason of changes made in the taxation law of either Contracting State, it appears desirable to amend any article of this Agreement without affecting the general principles thereof, the necessary amendments may be made by mutual consent by means of an exchange of diplomatic notes or in any other manner in accordance with their constitutional procedures.

ARTICLE 3

General Definitions

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

(a) the term "Brunei" means —

the territory of Brunei Darussalam as defined in its laws and the adjacent areas over which Brunei Darussalam has sovereignty, sovereign rights or jurisdiction in accordance with the provisions of the United Nations Convention on the Law of the Sea, 1982;

(b) the term "Indonesia" means —

the territory of the Republic of Indonesia as defined in its laws and the adjacent areas over which the Republic of Indonesia has sovereignty, sovereign rights or jurisdiction in accordance with the provisions of the United Nations Convention on the Law of the Sea, 1982;

(c) the term "Government" means —

(i) in the case of Brunei Darussalam —

- (1) The Brunei Currency Board;
- (2) The Brunei Investment Agency;
- (3) Any local or statutory authority or body exempt from tax in Brunei Darussalam;

SCHEDULE – (continued)

- (4) Any body corporate controlled or wholly owned by the Government of Brunei Darussalam;
- (5) Such institutions as may be agreed from time to time between the two Contracting States;

(ii) in the case of Indonesia –

- (1) Local authorities;
- (2) A political subdivision;
- (3) The Central Bank or any financial institution controlled by the Government the capital of which is wholly owned by the Government;

(d) the terms "a Contracting State" and "the other Contracting State" mean Brunei or Indonesia as the context requires;

(e) the term "tax" means Brunei tax or Indonesian tax as the context requires;

(f) the term "person" includes an individual, a company, a body of persons and any other entity which is treated as a taxable entity under the tax laws of the respective Contracting States;

(g) the term "company" means any company, body corporate or any other entity which is treated as a company under the tax laws of the respective Contracting States;

(h) 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;

(i) the term "national" means –

(i) a) in the case of Brunei Darussalam –

any natural person who is afforded the status of a national under the applicable laws in Brunei and may also include any person in possession of a national passport issued by the competent authorities;

SCHEDULE – (continued)

b) in the case of Indonesia –

any natural person who is afforded the status of a national under the applicable laws in Indonesia;

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

(j) the term "international traffic" means carriage of passengers, mails, livestock or goods by a ship or aircraft which is operated by an enterprise of one of the Contracting States, except when the ship or aircraft is operated solely between places in the other Contracting State or solely between such places and one or more structures used for the exploration or exploitation of natural resources situated in waters adjacent to the territorial waters of that other Contracting State;

(k) the term "competent authority" means –

(i) in Brunei: the Minister of Finance or his authorised representative;

(ii) in Indonesia: the Minister of Finance or his authorised representative.

2. As regards the application of this Agreement by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Agreement.

ARTICLE 4

Resident

1. For the purpose of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

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 –

SCHEDULE – (continued)

(a) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has 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 closest (centre of vital interests);

(b) 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 Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

(c) If he has an habitual abode in both Contracting States or in 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 the control and management of its business is exercised. If its place of control and management cannot be determined, 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 the 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 store, warehouse or premises used as a sales outlet;

(e) a factory;

(f) a workshop;

SCHEDULE – (continued)

(g) a farm or plantation;

(h) a mine, an oil or gas well, a quarry or other place of extraction or exploration of natural resources, drilling rig or working ship used for the exploration or exploitation of natural resources including timber or other forest produce;

(i) a building site or construction or supervisory activities in connection therewith, provided such site, project or activity continues for a period of more than 183 days;

(j) assembly project or installation project which exists for more than three months; and

(k) the furnishing of services, including consultancy services by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than 3 months within any twelve months period.

3. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall not be deemed to include —

(a) the use of facilities solely for the purposes of storage, or display 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 or display;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purposes of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status to whom paragraph 5 applies is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person —

SCHEDULE – (continued)

(a) has and habitually exercises in that Contracting State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business would not make this fixed place of business a permanent establishment under the provisions of that paragraph;

(b) has no such authority, but habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise; or

(c) manufactures or processes in that Contracting State for the enterprise goods or merchandise belonging to the enterprise.

5. An insurance enterprise of a Contracting State shall, except with regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in that other State or insures risks situated therein through an employee or through a representative who is not an agent of an independent status within the meaning of paragraph 6.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise or its associated enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other Contracting State (whether through a permanent establishment or otherwise), shall not of itself make either company a permanent establishment of the other.

ARTICLE 6

Income from Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other Contracting State.

SCHEDULE – (continued)

2. The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture, forestry and fishery, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments in cash or kind as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Contracting State but only so much of them as is attributable to (a) that permanent establishment; (b) sales in that other Contracting State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or (c) other business activities carried on in that other Contracting State of the same or similar kind as those effected through that permanent establishment.

2. Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere, but this does not include any expenses

SCHEDULE – (continued)

which, under the law of that Contracting State would not be allowed to be deducted by an enterprise of that Contracting State.

4. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles laid down in this Article.

5. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

7. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

ARTICLE 8**Shipping and Air Transport**

1. Notwithstanding the provision of Article 7, profits from the operation of aircraft in international traffic carried on by an enterprise of a Contracting State shall be taxable only in that Contracting State.

2. Profits from sources within a Contracting State derived by an enterprise of the other Contracting State from the operation of ships in international traffic may be taxed in the first mentioned State, but the tax imposed shall be reduced by an amount equal to 50% thereof.

3. The provisions of paragraphs 1 and 2 of this Article shall likewise apply to profits derived from the participation in pools, in a joint business or in an international operating agency of any kind by enterprises engaged in the operation of ships or aircraft in international traffic.

4. For the purposes of this Article, profits derived from the other Contracting State mean profits from the carriage of passengers, mail, livestock or goods shipped, or loaded into a ship or an aircraft in that Contracting State (excluding

SCHEDULE – (continued)

the profits accruing from passengers, mail, livestock or goods which are brought to that other Contracting State solely for transshipment, or for transfer from one aircraft to another or from one aircraft to a ship or from a ship to an aircraft).

ARTICLE 9

Associated Enterprises

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 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, 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 and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that Contracting State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and the profits so included are profits which would have accrued to the enterprises of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprise, then that other Contracting State shall make an appropriate adjustment, to the amount of the tax charged therein in 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.

3. A Contracting State shall not change the profits of an enterprise in the circumstances referred to in paragraph 2 after the expiry of the time limits provided in its tax laws.

SCHEDULE – (continued)

ARTICLE 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15% of the gross amount of the dividends. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. Notwithstanding the provisions of paragraph 2, dividends arising in a Contracting State and paid to the Government of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State.

4. The term "dividends" as used this article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from the other corporate rights which is subjected to the same taxation treatment.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are 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.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company except in so far as such dividends are paid to a resident of that other Contracting State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other Contracting State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly or profits or income arising in such other Contracting State.

SCHEDULE – (continued)

7. Notwithstanding any other provision of this Agreement where a company which is a resident of a Contracting State has a permanent establishment in the other Contracting State, the profits of the permanent establishment may be subjected to an additional tax in that other Contracting State in accordance with its law, but the additional tax so charged shall not exceed 10% of the amount of such profits after deducting therefrom income tax and other taxes on income imposed thereon in that other Contracting State.

8. The rate of tax in paragraph 2 and in paragraph 7 of this Article shall not affect the rate of the tax applied in any production sharing contracts or any other similar contracts relating to oil and gas sector or other mining sector concluded by the Government of a Contracting State, its instrumentality, its relevant state oil and gas company or any other entity thereof with a person who is a resident of the other Contracting State.

ARTICLE 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 15% of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to the Government of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State.

4. The term "interest" as used in this Article means income from debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income assimilated to income from money lent by the taxation laws of the Contracting State in which the income arises including interest on deferred payment sales. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

SCHEDULE – *(continued)*

5. The provisions of paragraphs 1 and 2 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 Contracting 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 a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political sub-division, a local authority or a resident of that Contracting State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

7. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that Contracting State, but, if the recipient is the beneficial owner of the royalties, the tax so charge shall not exceed 15% of the gross amount of the royalties.

3. Notwithstanding the provisions of paragraph 2, royalties arising in a Contracting State and paid to the Government of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State.

SCHEDULE – (continued)

4. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of or the right to use, any copyright of literary, artistic or scientific work, including cinematographic films or tapes for television or broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial or scientific experience.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a local authority or a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in that Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in that Contracting State in which the permanent establishment is situated.

6. The provisions of paragraphs 1, 2 and 5 of this Article shall likewise apply to proceeds arising from the alienation of any copyright of scientific work, any patent, trade mark, design or model, plan or secret formula or process.

7. The provisions of paragraphs 1, 2 and 5 of this Article shall not apply if the recipient of the royalties or the proceeds, being a resident of a Contracting State, has in the other Contracting State in which the royalties or the proceeds arise a permanent establishment with which the right or property giving rise to the royalties or the property the alienation of which gives rise to the proceeds is effectively connected. In such a case, the provisions of Article 7 shall apply.

8. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other Contracting State.

SCHEDULE – (continued)

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other Contracting State.

3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State.

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

5. Notwithstanding the provisions of paragraphs 1 and 2 of this Article and paragraph 2 of the Protocol, capital gains arising in a Contracting State to the Government of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State.

ARTICLE 14

Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities or he is present in that other Contracting State for a period or periods exceeding in the aggregate 183 days within any twelve months period. If he has such a fixed base or remains in that other Contracting State for the aforesaid period or periods, the income may be taxed in that other Contracting State but only so much of it as is attributable to that fixed base or is derived in that other Contracting State during the aforesaid period or periods.

2. The term "professional services" includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

SCHEDULE — *(continued)*

ARTICLE 15

Dependant Personal Services

1. Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration or income for personal services derived by a resident of a Contracting State, shall be taxable only in that Contracting State, unless the services are performed in the other Contracting State. If the services are so performed, such remuneration or income as is derived therefrom may be taxed in that other Contracting State.

2. Notwithstanding the provisions of paragraph 1, remuneration or income derived by a resident of a Contracting State for personal services performed in the other Contracting State shall be exempt from tax of that other Contracting State if —

(a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days within any twelve-months period; and

(b) the remuneration or income is paid by or on behalf of, a person who is a resident of the first-mentioned State; and

(c) the remuneration or income is not borne by a permanent establishment which that person has in the other Contracting State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that Contracting State.

ARTICLE 16

Directors' Fees

1. Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or any other similar organ of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

2. The remuneration which a person to whom paragraph 1 applies derives from the company in respect of the discharge of day-to-day functions of a managerial or technical nature may be taxed in accordance with the provisions of Article 15.

SCHEDULE – (continued)

ARTICLE 17

Artistes and Athletes

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting State.

2. Where income in respect of personal activities exercised in a Contracting State by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 15, be taxed in that Contracting State.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived from activities referred to in paragraph 1 shall be exempt from tax in the Contracting State in which the activities are exercised if the visits to that Contracting State are wholly or substantially supported by funds of one or both of the Contracting States, a local authority or public institution thereof.

ARTICLE 18

Pensions

1. Subject to the provisions of paragraph 2 of Article 19, any pension or other similar remuneration paid to a resident of one of the Contracting States from a source in the other Contracting State in consideration of past employment or services in that other Contracting State and any annuity paid to such a resident from such a source may be taxed in that other Contracting State.

2. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE 19

Government Service

1. (a) Remuneration, including benefits other than a pension, paid by a Contracting State or a local authority thereof to an individual in respect of services rendered to that Contracting State or authority shall be taxable only in that Contracting State.

SCHEDULE – (continued)

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other Contracting State and the individual is a resident of that State who –

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a local authority thereof to an individual in respect of services rendered to that Contracting State or authority shall be taxable only in that Contracting State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other Contracting State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof.

ARTICLE 20**Income of Government**

The Government of a Contracting State shall be exempt from tax in respect of any income derived from sources within the other Contracting State.

ARTICLE 21**Students and Trainees**

1. An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in that other Contracting State solely –

(a) as a student at a recognised university, college or school in that other Contracting State;

(b) as a recipient of grant, allowance or award for the primary purpose of study or research from a Governmental, religious, charitable, scientific, literary or educational organisation; or

(c) as a business or technical apprentice,

SCHEDULE – *(continued)*

shall be exempt from tax of that other Contracting State in respect of –

- (i) all remittances from abroad for the purposes of his maintenance, education, study research or training;
- (ii) the grant, allowance or award; and
- (iii) any remuneration for personal services rendered in that other Contracting State insofar the amount does not exceed non taxable income under the law of that State.

2. An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that other Contracting State solely as a trainee for the purpose of acquiring technical, professional or business experience, shall for a period not exceeding four years from the date of his first arrival in that other Contracting State in connection with that visit be exempt from tax in that other Contracting State in respect of –

(a) all remittances from abroad for the purposes of his maintenance or training, and

(b) any remuneration for personal services rendered in that other Contracting State insofar the amount does not exceed non taxable income under the law of that State.

3. The benefits of paragraphs 1 and 2 of this Article shall not be concurrently cumulative.

ARTICLE 22

Teachers

An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State, and who, at the invitation of any university, college, school or other similar educational institution, which is recognised by the competent authority in that other Contracting State, visits that other Contracting State for a period not exceeding two years solely for the purpose of teaching or research or both at such educational institution shall be exempt from tax in that other Contracting State on his remuneration for such teaching or research.

SCHEDULE – (continued)

ARTICLE 23

Other Income

Items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may be taxed in that other Contracting State.

ARTICLE 24

Elimination of Double Taxation

Double taxation shall be avoided as follows —

1. In the case of Brunei —

Subject to the provisions of the laws of Brunei regarding allowance as a credit against Brunei tax of tax payable in a territory outside Brunei (which shall not affect the general principle hereof), tax payable under the laws of Brunei and in accordance with this Agreement, whether directly or by deduction, on profits or income from sources within Indonesia shall be allowed as a credit against any Brunei tax computed by reference to the same profits or income on which the Indonesia tax is computed.

2. In the case of Indonesia —

Where a resident of Indonesia derives income from Brunei, the amount of tax on that income payable in Brunei in accordance with the provisions of this Agreement, may be credited against the tax levied in Indonesia imposed on that resident. The amount of credit, howsoever, shall not exceed the amount of tax of Indonesia on that income computed in accordance with Indonesia taxation laws and regulations.

3. For the purposes of this Article, the term "tax payable" shall be deemed to include the amount of tax which would have been paid if the tax had not been exempted or reduced in accordance with the social incentive laws designed to promote economic development in either Contracting State, effective on the date of signature of this Agreement, or which may be introduced hereafter in modification of, or in addition to, the existing laws.

SCHEDULE – (continued)

ARTICLE 25

Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other Contracting State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly, or indirectly by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

4. Interest, royalty and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Contracting State.

5. In this Article the term "taxations" means taxes which are the subject of this Agreement.

ARTICLE 26

Mutual Agreement Procedure

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may notwithstanding the remedies provided by the national laws of those States. Present the case to the competent authority of the Contracting State of which he is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

SCHEDULE – (continued)

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State with a view to the avoidance of taxation not in accordance with this Agreement.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulty or doubt arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of applying the provisions of this Agreement.

ARTICLE 27

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting State concerning taxes covered by this Agreement, in so far as the taxation thereunder is not contrary to this Agreement, in particular for the prevention of fraud or evasion of such taxes. Any information received by a Contracting State shall be treated as a secret in the same manner as information obtained under the domestic laws of the State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of this Agreement. Such persons or authorities shall use the information only for such purposes including the disclosure of such information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation —

(a) to carry out administrative measures at variance with the laws or the 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;

SCHEDULE – *(continued)*

(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 (order public).

ARTICLE 28

Diplomatic and Consular Officials

Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

ARTICLE 29

Entry into Force

1. This Agreement shall enter into force on the later of the dates on which the respective Governments may notify each other in writing that the formalities constitutionally required in their respective Contracting States have been complied with.

2. This Agreement shall have effect –

(a) in the case of Brunei –

in respect of Brunei tax for the year of assessment beginning on or after 1st. January in the calendar year immediately following the year in which this Agreement enters into force and subsequent years of Assessment.

(b) in the case of Indonesia –

(i) in respect of tax withheld at source to income derived on or after 1st. January in the year next following that in which this agreement enters into force; and

(ii) in respect of other taxes on income, for taxable years beginning on or after 1st. January in the year next following that in which this Agreement enters into force.

SCHEDULE – (continued)

ARTICLE 30

Termination

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate this Agreement, through diplomatic channels, by giving written notice of termination on or before the thirtieth of June of any calendar year following after the period of five years from the year in which this Agreement enters into force. In such event, this Agreement shall cease to have effect –

(a) in the case of Brunei –

in respect of Brunei tax for the year of assessment beginning on or after 1st. January in the second calendar year following the year in which the notice is given and subsequent years of assessment.

(b) in the case of Indonesia –

- (i) in respect of tax withheld at source to income derived on or after 1st. January in the year next following that in which the notice of termination is given; and
- (ii) in respect of other taxes on income, for taxable years beginning on or after 1st. January in the year next following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Agreement.

Done in duplicate at Bandar Seri Begawan, Brunei Darussalam this 27th. day of February, 2000 in the English Language.

.....
 HIS ROYAL HIGHNESS PRINCE
 MOHAMED BOLKIAH
 Minister of Foreign Affairs

For the Government of His Majesty
 the Sultan and Yang Di-Pertuan
 of Brunei Darussalam.

.....
 HIS EXCELLENCY DR ALWI SHIHAB
 Minister of Foreign Affairs

For the Government of the Republic
 of Indonesia.

SCHEDULE – (continued)

PROTOCOL

On signing this Agreement between the Government of Brunei Darussalam and the Government of the Republic of Indonesia concerning the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed upon the following provision which is an integral part of this Agreement —

1. With reference to Article 13.

In respect of paragraph 4 of Article 13 the alienation of shares traded in Stock Exchange are subject to withholding tax in accordance with prevailing law and regulation.

2. With reference to Article 19.

In respect of paragraphs 1 and 2 of Article 19 all references to "Contracting State" shall be deemed to include reference to a Government of a Contracting State as defined in paragraph 1(c) of Article 3 of this Agreement.

Paragraph 3 of Article 19 shall not apply to remuneration and pensions of nationals of the Government of a Contracting State in respect of services rendered in connection with a business carried on by that Government of a Contracting State as defined in paragraph 1(c) of Article 3 of this Agreement.

3. With reference to Article 24.

In respect of paragraph 3 of Article 24, the tax exemption, in the case of Indonesia means tax which is borne by the Government in accordance with tax incentive granted in qualified industries.

IN WITNESS WHEREOF the undersigned have signed the present Protocol which shall have the same force and validity as if it were inserted word by word in this Agreement.

.....
 HIS ROYAL HIGHNESS PRINCE
 MOHAMED BOLKIAH
 Minister of Foreign Affairs

.....
 HIS EXCELLENCY DR ALWI SHIHAB
 Minister of Foreign Affairs

For the Government of His Majesty
 the Sultan and Yang Di-Pertuan
 of Brunei Darussalam.

For the Government of the Republic
 of Indonesia.

SCHEDULE – *(continued)*

Made this 3rd. day of April, 2002.

PEHIN ORANG KAYA PEKERMA JAYA
DATO PADUKA HAJI JUDIN BIN HAJI ASAR
Clerk to the Council of Ministers
Brunei Darussalam.