

No. S 47

**INCOME TAX  
(CHAPTER 35)**

**INCOME TAX  
(RELIEF FROM DOUBLE TAXATION) (PAKISTAN) ORDER, 2009**

WHEREAS it is provided by subsection (1) of section 41 of the Income Tax Act (Chapter 35) that if His Majesty the Sultan and Yang Di-Pertuan 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 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 20th. day of November, 2008 between the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam and the Government of the Islamic Republic of Pakistan, arrangements were made amongst other things for relief from double taxation.

NOW THEREFORE it is hereby declared by His Majesty the Sultan and Yang Di-Pertuan in Council —

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

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

**SCHEDULE**

**ARRANGEMENTS MADE WITH THE GOVERNMENT OF THE ISLAMIC  
REPUBLIC OF PAKISTAN**

**Article 1**

**PERSONS COVERED**

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

**Article 2**

**TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which this Agreement shall apply are in particular —
  - (a) in the case of Brunei Darussalam —
    - (i) income tax imposed under Income Tax Act (Chapter 35); and
    - (ii) petroleum profits tax imposed under Income Tax (Petroleum) Act (Chapter 119)(hereinafter referred to as "Brunei Darussalam tax")
  - (b) in the case of Pakistan the income tax;  
(hereinafter referred to as "Pakistan tax");
4. This Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of significant changes made to their tax laws within a reasonable period of time.

**Article 3**

**GENERAL DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires —

*(a)* The term "Brunei Darussalam" 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 Laws of the Sea, 1982;

*(b)* The term "Pakistan" when used in a geographical sense means Pakistan as defined in the constitution of the Islamic Republic of Pakistan and includes any area outside the territorial waters of Pakistan which under the laws of Pakistan and international law is an area within which Pakistan exercises sovereign rights and exclusive jurisdiction with respect to the natural resources of the seabed and subsoil and superjacent waters;

*(c)* The term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

*(d)* The term "competent authority" means —

(i) In the case of Brunei Darussalam, the Minister of Finance or his authorized representative; and

(ii) In the case of Pakistan, the Federal Board of Revenue or its authorized representative;

*(e)* The terms "a Contracting State" and the "other Contracting State" mean Pakistan or Brunei Darussalam as the context requires;

*(f)* The terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

*(g)* The term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

*(h)* The term "national" means —

(i) Any individual possessing the nationality under the applicable laws of a Contracting State;

(ii) Any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.

(i) The term "person" includes an individual, a company and any other body of persons;

(j) The term "tax" means Brunei Darussalam tax or Pakistan tax, as the context requires.

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

#### Article 4

#### RESIDENT

1. For the purposes 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, and also includes that Contracting State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that Contracting State in respect only of income from sources in that Contracting State.

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 as follows —

(a) He shall be deemed to be a resident only of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident only of the Contracting State with which his personal and economic relations are closer (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 only 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, he shall be deemed to be a resident only of the Contracting State of which he is a national;

*(d)* If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the Contracting State in which its place of effective management is situated.

## Article 5

### PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially —

*(a)* A place of management;

*(b)* A branch;

*(c)* An office;

*(d)* A factory;

*(e)* A workshop;

*(f)* A warehouse;

*(g)* A permanent sales exhibition or sales outlet;

*(h)* A mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and

*(i)* An agricultural, pastoral or forestry property.

3. The term "permanent establishment" also encompasses —

*(a)* a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months;

*(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 three months within any twelve-month period.

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

(a) The use of facilities solely for the purpose 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 purpose of processing by another enterprise;

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

(e) The maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

(f) The maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 7 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 —

(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 4 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.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other Contracting State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. 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, he will not be considered an agent of an independent status within the meaning of this paragraph.

8. 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 constitute 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, forestry or fishery) situated in the other Contracting State may be taxed in that other Contracting State.

2. The term "immovable property" shall have the meaning which it has under 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 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 also 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. Subject to the provisions of paragraph 3, 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. (a) 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 business of the permanent establishment including those executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere which are allowed under the provisions of the domestic law of the Contracting State in which the permanent establishment is situated.

(b) However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services

performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

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

5. 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 an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

6. 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.

7. 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.

#### **Article 8**

#### **SHIPPING AND AIR TRANSPORT**

1. Profits from the operation of aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. Profits from the operation of ships in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

3. If the place of effective management of a shipping enterprise or of an inland waterways transport enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.

4. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

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 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.

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 enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting 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 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 beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed ten (10) per cent of the gross amount of the dividends. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in 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 other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident.

4. 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 15, as the case may be, shall apply.

5. 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 of profits or income arising in such 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 Contracting 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 beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed fifteen (15) per cent of the gross amount of interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in the Contracting State if interest is paid to —

(a) State Bank of Pakistan;

(b) Brunei Currency and Monetary Board, and Brunei Investment Agency of the Government of Brunei Darussalam;

(c) Government of the Contracting States and any such institution as may be agreed from time to time between two Contracting States.

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.

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 (a) such permanent establishment or fixed base, or with (b) business activities referred to in subparagraph (c) of paragraph 1 of Article 7. In such cases the provisions of Article 7 or Article 15, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is 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 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 beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed fifteen (15) per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for —

*(a)* the use of, or right to use any patent, invention, design or model, secret formula or process, trademark or other like property or right;

*(b)* the use of, or right to use any copyright of a literary, artistic or scientific work, including films or video tapes for use in connection with television or tapes in connection with radio broadcasting, but shall not include consideration for the sale, distribution or exhibition of cinematograph films;

*(c)* the receipt of, or right to receive, any visual, images or sounds, or both, transmitted by satellite, cable, optic fiber or similar technology in connection with television, radio or internet broadcasting;

*(d)* the supply of any technical, industrial, commercial or scientific knowledge, experience or skill;

*(e)* the use of or right to use any industrial, commercial or scientific equipment;

*(f)* the supply of any assistance that is ancillary and subsidiary to and is furnished as a means of enabling the application or enjoyment of, any such property or right as mentioned in clauses *(a)* through *(e)*;

*(g)* the disposal of any property or right referred to in clauses *(a)* to *(e)*.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with *(a)* such permanent establishment or fixed base, or with *(b)* business activities referred to in subparagraph *(c)* of paragraph 1 of Article 7. In such cases the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is 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 a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne

by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

6. 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 royalties, 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 beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such 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

#### FEEs FOR TECHNICAL SERVICES

1. Fees for technical services 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 fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that Contracting State, but if the beneficial owner of the fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed fifteen (15) per cent of the gross amount of the fees for technical services.

3. The term "fees for technical services" as used in this Article means payments of any kind received as a consideration for the rendering of any managerial, technical or consultancy services including the services of technical or other personnel, but does not include —

(a) consideration for any construction, assembly or like project undertaken by the recipient; or

(b) consideration which would be income of the recipient chargeable under the head "Salary".

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services arise, through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the fees for technical services are paid is effectively connected with (a) such permanent establishment or fixed base, or with (b) business activities referred to in subparagraph (c) of paragraph 1 of Article 7. In such cases the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Fees for technical services shall be deemed to arise in a Contracting State when the payer is a resident of that Contracting State. Where, however, the person paying the fees for technical services, 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 liability to pay the fees for technical services was incurred, and such fees for technical services are borne by such permanent establishment or fixed base, then such fees for technical services shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

6. 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 fees for technical services, 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 beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such 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 14

#### 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.

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, boats engaged in inland waterways transport or movable property pertaining to the operation of such ships, aircraft or boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of shares of the capital stock of a company, or of an interest in a partnership, trust or estate, the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that Contracting State. In particular —

(a) Nothing contained in this paragraph shall apply to a company, partnership, trust or estate, other than a company, partnership, trust or estate engaged in the business of management of immovable properties, the property of which consists directly or indirectly principally of immovable property used by such company, partnership, trust or estate in its business activities.

(b) For the purposes of this paragraph, "principally" in relation to ownership of immovable property means the value of such immovable property exceeding fifty percent of the aggregate value of all assets owned by the company, partnership, trust or estate.

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 Contracting State of which the alienator is a resident.

#### Article 15

#### 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 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 Contracting 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 Contracting State; or

(b) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other Contracting State may be taxed in that other Contracting State.

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

#### Article 16

#### DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 17, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that Contracting State unless the

employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned 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 in any twelve months period commencing or ending in the fiscal year concerned; and

(b) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State; and

(c) The remuneration is not borne by a permanent establishment or a fixed base which the employer 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, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

#### Article 17

##### **DIRECTORS' FEES AND REMUNERATION OF TOP-LEVEL MANAGERIAL OFFICIALS**

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

2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

#### Article 18

##### **ARTISTES AND SPORTSPERSONS**

1. Notwithstanding the provisions of Articles 15 and 16, 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 a sportsperson, 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 by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

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 State, a local authority or public institution thereof.

#### Article 19

#### PENSIONS AND SOCIAL SECURITY PAYMENTS

1. Subject to the provisions of paragraph 2 of Article 20, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment may be taxed in that Contracting State.

2. However, such pensions and other similar remuneration may also be taxed in the other Contracting State if the payment is made by a resident of that other Contracting State or a permanent establishment situated therein.

3. Notwithstanding the provisions of paragraphs 1 and 2, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political subdivision or a local authority thereof shall be taxable only in that Contracting State.

#### Article 20

#### GOVERNMENT SERVICE

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting State or subdivision or authority shall be taxable only in that Contracting State.

(b) However, such salaries, wages and other similar 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 Contracting State who —

- (i) is a national of that Contracting State; or

- (ii) did not become a resident of that Contracting 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 political subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting State or subdivision 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 16, 17, 18 and 19 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

#### Article 21

#### STUDENTS

Payments which a student or business trainee or apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that Contracting State, provided that such payments arise from sources outside that Contracting State.

#### Article 22

#### OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, 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 also be taxed in that other Contracting State in accordance with domestic laws.

Article 23

ELIMINATION OF DOUBLE TAXATION

1. Double taxation shall be avoided as follows —

(a) In the case of Brunei Darussalam —

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

(b) In the case of Pakistan —

(i) Where a resident of Pakistan derives income which, in accordance with the provisions of this Agreement, may be taxed in Brunei Darussalam whether directly or by deduction, Pakistan shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in Brunei Darussalam. The amount of the tax to be deducted pursuant to the above provision shall not exceed the lesser of the tax which would have been charged on the same income in Pakistan under the rates applicable therein.

(ii) Where a resident of Pakistan derives income which in accordance with the provisions of this Agreement, shall be taxable only in Brunei Darussalam, Pakistan may include this income in the tax base but only for purposes of determining the rate of tax on such other income as is taxable in Pakistan.

2. 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 special incentive laws designed to promote economic development in either Contracting State, effective on the date of coming into force of this Agreement, or which may be introduced thereafter in modification of, or in addition to, the existing laws.

**Article 24**

**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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. Stateless persons who are residents of a Contracting State shall not be subjected in either 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 the Contracting State concerned in the same circumstances, are or may be subjected.
3. 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.
4. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12 or paragraph 6 of Article 13 apply, interest, royalties, fee for technical services 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, however, the preceding provisions of this paragraph shall not apply to the disbursements made without withholding and depositing tax chargeable under the domestic law and in accordance with the provisions of this Agreement.
5. 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 the first-mentioned Contracting State are or may be subjected.
6. Nothing contained in this Article shall 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.

7. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

**Article 25**

**MUTUAL AGREEMENT PROCEDURE**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those Contracting States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. 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.
2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory 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 which is not in accordance with this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts 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, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities, through consultations, shall develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article. In addition, a competent authority may devise appropriate unilateral procedures, conditions, methods and techniques to facilitate the above-mentioned bilateral actions and the implementation of the mutual agreement procedure.

**Article 26**

**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 States concerning taxes covered by this Agreement, in so far as the taxation there under is not contrary to this Agreement, in particular for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting State. However, if the information is originally regarded as secret in the transmitting State it 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, 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 but may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information shall be made, including, where appropriate, exchanges of information regarding tax avoidance.

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 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.

**Article 27**

**MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS**

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

Article 28

ENTRY INTO FORCE

1. This Agreement shall enter into force on the thirtieth day after the date of receipt of the later of the two notifications through diplomatic channels by which either Contracting State notifies the other Contracting State that its internal legal requirements for the entry into force of this Agreement have been fulfilled.

2. This Agreement shall have effect —

(a) in the case of Brunei Darussalam —

In respect of Brunei Darussalam 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 Pakistan —

(i) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of July next following the date upon which this Agreement enters into force; and

(ii) with regard to other taxes, in respect of taxable years beginning on or after the first day of July next following the date upon which this Agreement enters into force.

Article 29

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 notice of termination at least six months before the end of any calendar year starting five year after the year in which this Agreement entered into force. In such event, this Agreement shall cease to have effect —

(a) In the case of Brunei Darussalam —

in respect of Brunei Darussalam 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.; and

*(b)* in the case of Pakistan —

in respect of taxes withheld at source, for other taxes, for amounts paid or credited and for taxable periods on or after the first day of July next following the date on which written notice of termination is given.

Made this 16th. day of Syawal 1430 Hijriah corresponding to the 6th. day of October, 2009, at Bandar Seri Begawan, Brunei Darussalam.

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