

No. S 11

**INCOME TAX ACT**  
**(Chapter 35)**

**INCOME TAX (RELIEF FROM DOUBLE TAXATION)**  
**(THE ROYAL GOVERNMENT OF CAMBODIA) ORDER, 2018**

WHEREAS it is provided by section 41 of the Income Tax Act that if the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order declares that arrangements specified in the order have been made with the government of any country or territory outside Brunei Darussalam in relation to tax under that Act and any tax of a similar character imposed by the laws of that country or territory for the purposes of which include relief from double taxation and that it is expedient that those arrangements should have effect, the arrangements shall have effect in relation to tax and other related matters under that Act notwithstanding anything in any written law.

AND WHEREAS by an agreement dated the 27th day of July 2017 between the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam and the Royal Government of Cambodia, arrangements were made, amongst other things, for relief from double taxation.

AND WHEREAS by a Protocol dated the 27th day of July 2017 between the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam and the Royal Government of Cambodia, Article 27 of the agreement was clarified.

NOW THEREFORE it is hereby declared by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, that —

*(a)* the arrangements specified in the Schedule 1 to this Order, as clarified by the Protocol specified in the Schedule 2 to this Order, have been made with the Royal Government of Cambodia; and

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

**SCHEDULE 1**

**AGREEMENT**

**BETWEEN**

**THE GOVERNMENT OF HIS MAJESTY THE SULTAN AND YANG  
DI-PERTUAN OF BRUNEI DARUSSALAM**

**AND**

**THE ROYAL GOVERNMENT OF CAMBODIA**

**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 Royal Government of Cambodia,

Desiring to 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**

**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 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 the 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”); and
- (b) in the case of Cambodia:
- (i) Tax on Profit including Withholding Tax, Additional Profit Tax on Dividend Distribution and Capital Gains Tax;
  - (ii) Tax on Salary;
- (hereinafter referred to as “Cambodian tax”).

4. This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes made to their tax laws.

### 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 including its territorial sea, extending to the airspace above such territory, over which it exercises sovereignty, and the maritime area beyond its territorial sea, including sea-bed and subsoil, which has been or may hereafter be designated under the laws of Brunei Darussalam, as an area over which it exercises sovereign rights and jurisdiction in accordance with international law;
  - (b) the term “Cambodia” means the territory of the Kingdom of Cambodia, as well as those maritime areas, including the seabed and subsoil adjacent to the outer limits of the territorial sea over which the Kingdom of Cambodia exercises, in accordance with international law, sovereign rights or jurisdiction;
  - (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 authorised representative; and
- (ii) in the case of Cambodia, the Minister of Economy and Finance or his authorised representative;
- (e) the terms “a Contracting State” and the “other Contracting State” mean Brunei Darussalam or Cambodia, 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 of 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 of a Contracting State under the applicable laws of that Contracting State; and
  - (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.

2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein 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 the 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 incorporation, place of management, principle place of business or any other criterion of a similar nature, and also includes that Contracting State and 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 State, 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 the competent authorities of the Contracting States shall resolve the question of resident 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 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 warehouse, in relation to a person providing storage facilities for others;
- (e) a factory;
- (f) a workshop;
- (g) a farm or plantation; and
- (h) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

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 183 days;
- (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than 183 days within any 12-month period; and
- (c) a drilling rig or working ship used for the exploration or exploitation of natural resources.

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 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 carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; and

- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (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; or
- (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.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except with 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, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, 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 deduction, expenses which are incurred for the purposes of the business 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 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. 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.
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. Nothing in this Article shall affect the application of any law of a Contracting State relating to tax imposed on income from insurance, other than

re-insurance, of non-resident insurers with a permanent establishment in the Contracting State.

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 derived by an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in that State.

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

3. The provisions of paragraphs 1 and 2 of this Article shall likewise apply to profits derived from the participation in a pool, 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.

#### 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.

3. The provisions of paragraph 2 shall not apply where judicial, administrative or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or willful default.

#### 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 State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 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.

6. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

#### 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 10 per cent 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.

For the purposes of this paragraph, the term "Government":

(a) in the case of Brunei Darussalam, shall include:

- (i) the Autoriti Monetari Brunei Darussalam;
- (ii) the Brunei Investment Agency;
- (iii) the Lembaga Tabung Amanah Pekerja;
- (iv) the Supplemental Contributory Pensions Board;
- (v) any local or statutory authority or body exempt from tax in Brunei Darussalam;

- (vi) any body corporate wholly owned by the Government of Brunei Darussalam (as defined in this Article); and
  - (vii) such institution as may be agreed from time to time between the competent authorities of the Contracting States.
- (b) in the case of Cambodia, shall include:
- (i) the central bank or any local authority; and
  - (ii) bank or financial institution or any body corporate or any entity wholly owned by government.

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. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

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 (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.

8. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

#### 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 10 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 the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trademark, 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, commercial or scientific experience;
- (b) 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; and
- (c) 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 (b).

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 (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.

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

### Article 13

#### TECHNICAL FEES

1. Technical fees arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such technical fees 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 such technical fees is a resident of the other Contracting State, the tax so charged shall not exceed 14 per cent of the gross amount of the technical fees.

3. The term "technical fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise through a permanent establishment situated therein, and the technical fees are effectively connected with (a) such permanent establishment or with (b) business activities referred to in (c) of paragraph 1 of Article 7. In such case, the provisions of Article 7, shall apply.

5. Technical fees 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 technical fees, whether he is a resident of that Contracting State or not, has in that Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the technical fees was incurred, and such technical fees are borne by such permanent establishment or fixed base, then such technical fees 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 technical fees paid exceeds, for whatever reason, 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.

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the technical fees are paid to take advantage of this Article by means of that creation or assignment.

#### 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 a resident 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 that State.

4. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from

immovable property situated in the other Contracting State may be taxed in that other State.

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

#### **Article 15**

##### **DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Article 13, 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 if:

- (a) 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) his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any 12-month period; 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 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 State if:

- (a) The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12-month 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 State; and
- (c) The remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

5. 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 may be taxed in that State.

#### Article 17

#### DIRECTORS' FEES

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.

#### 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 performed under a cultural agreement or arrangement between the Contracting States shall not be taxed in the Contracting State in which the activities are exercised.

**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 shall be taxable only in that Contracting State.

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

**Article 20**

**GOVERNMENT SERVICE**

1. (a) Salaries, wages and other similar remuneration, 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.

(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 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 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 local authority thereof.

**Article 21**

**TEACHERS AND RESEARCHERS**

A teacher or researcher 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 or scientific research institution, visits that other Contracting State for a period not exceeding 3 years from the date of his arrival in that other Contracting State solely for the purpose of teaching or research or both at such educational or research institution, shall be exempt from tax in that other Contracting State on any remuneration derived from such teaching or research.

**Article 22**

**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 23**

**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 State.

Article 24

METHODS FOR THE ELIMINATION OF DOUBLE TAXATION

Double taxation shall be eliminated as follows:

- (a) In the case of Brunei Darussalam:
  - (i) Subject to the provisions of the laws of Brunei Darussalam regarding allowances 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 payable under the laws of Cambodia and in accordance with this Agreement, whether directly or by deduction, on profits or income from sources within Cambodia shall be allowed as a credit against any Brunei Darussalam tax computed by reference to the same profits or income on which the Cambodian tax is computed.
  - (ii) For the purposes of subparagraph (i) above, the term “tax paid in Cambodia” shall be deemed to include the amount of Cambodian tax which, under the laws of Cambodia and in accordance with this Agreement, would have been paid had the Cambodian tax not been exempted or reduced in accordance with the laws of Cambodia and connected regulations or any other special incentive measures designed to promote economic development in Cambodia.
- (b) In the case of Cambodia:
  - (i) Where a resident of Cambodia derives income which, in accordance with the provisions of this Agreement, may be taxed in Brunei Darussalam, Cambodia shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Brunei Darussalam. Such deduction shall not, however, exceed that part of the Cambodian tax, as computed before the deduction is given, which is attributable to that income.
  - (ii) For the purposes of subparagraph (i) above, the term “tax paid in Brunei Darussalam” shall be deemed to include the amount of Brunei Darussalam tax which, under the laws of Brunei Darussalam and in accordance with this Agreement, would have been paid had the Brunei Darussalam tax not been exempted or reduced in accordance with the laws of Brunei Darussalam and connected regulations or any other special incentive measures designed to promote economic development in Brunei Darussalam.

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, 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, in particular with respect to residence, 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 favourably 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.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, paragraph 6 of Article 12 or paragraph 6 of Article 13 apply, interest, royalties, technical fees 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 State.

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

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

#### Article 26

##### 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 25, 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 the Agreement.

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 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 endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

#### Article 27

##### EXCHANGE OF INFORMATION

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

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

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

- (a) to carry out administrative measures at variance with the laws and 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;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

#### Article 28

#### 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 29

#### ENTRY INTO FORCE

1. This Agreement shall enter into force on the thirtieth day after the date 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:

- (i) in respect of taxes withheld at source, to income derived on or after the first day of January in the calendar year following the year in which this Agreement enters into force; and
  - (ii) in respect of other taxes on income, to taxes chargeable for any year of assessment beginning on or after the first day of January of the second calendar year following the year in which this Agreement enters into force and subsequent years of assessment; and
- (b) in the case of Cambodia:
- (i) in respect of taxes withheld at source, in relation to taxable amount as derived on or after the first day of January following the calendar year in which the Agreement enters into force and in subsequent calendar years; and
  - (ii) in respect of other Cambodian taxes, in relation to income arising on or after the first day of January following the calendar year in which the Agreement enters into force, and in subsequent calendar years.

#### Article 30

#### TERMINATION

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least 6 months before the end of any calendar year commencing after expiration of 5 years from the date that the Agreement enters into force. In such event, the Agreement shall cease to have effect:

- (a) in the case of Brunei Darussalam:
- (i) in respect of taxes withheld at source, for the year of assessment beginning on or after 1 January in the calendar year next following that in which the notice is given; and
  - (ii) in respect of other taxes, for the year of assessment beginning on or after 1 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 Cambodia:

- (i) in respect of taxes withheld at source, in relation to taxable amount as derived on or after the first day of January following the calendar year in which the notice of termination is given; and
- (ii) in respect of other Cambodian taxes, in relation to income arising on or after the first day of January following the calendar year in which the notice of termination is given.

The protocol annexed hereto shall form an integral part of this Agreement.

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

DONE in duplicate at Phnom Penh this 27th day of July 2017 each in Malay, Khmer and English languages, all texts being equally authoritative, except in the case of divergence of interpretation, the English text shall prevail.

**FOR THE GOVERNMENT OF  
HIS MAJESTY THE SULTAN AND  
YANG DI-PERTUAN OF  
BRUNEI DARUSSALAM**

**FOR THE ROYAL  
GOVERNMENT OF CAMBODIA**

**PENGIRAN KASMIRHAN BIN  
PENGIRAN HAJI MOHD TAHIR  
AMBASSADOR EXTRAORDINARY AND  
PLENIPOTENTIARY  
BRUNEI DARUSSALAM**

**Dr. AUN PORNMONIROTH  
SENIOR MINISTER  
MINISTER OF ECONOMY AND  
FINANCE**

## **SCHEDULE 2**

### **PROTOCOL**

At the moment of the signing of the Agreement between the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam and the Royal Government of Cambodia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed that the following provisions shall form an integral part of the Agreement:

With reference to Article 27 (Exchange of Information), it is understood that the following paragraphs are not included in the Article because of their incompatibility with the laws of Cambodia:

“4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to

obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

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

It is agreed that should the said paragraphs become compatible with the laws of Cambodia, the competent authority of Cambodia shall notify the competent authority of Brunei Darussalam and the said paragraphs shall form integral part of Article 27 of the Agreement and be enforceable from the date of receipt of such notification.

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

DONE in duplicate at Phnom Penh this 27th day of July 2017 each in Malay, Khmer and English languages, all texts being equally authoritative, except in the case of divergence of interpretation, the English text shall prevail.

**FOR THE GOVERNMENT OF  
HIS MAJESTY THE SULTAN AND  
YANG DI-PERTUAN OF  
BRUNEI DARUSSALAM**

**FOR THE ROYAL  
GOVERNMENT OF CAMBODIA**

PENGIRAN KASMIRHAN BIN  
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AMBASSADOR EXTRAORDINARY AND  
PLENIPOTENTIARY  
BRUNEI DARUSSALAM

Dr. AUN PORNMONIROTH  
SENIOR MINISTER  
MINISTER OF ECONOMY AND  
FINANCE

Made this 12th. day of Jamadilakhir, 1439 Hijriah corresponding to the 28th. day of February, 2018.

**DAYANG NORLIAH BINTI HAJI KULA**  
Permanent Secretary,  
Ministry of Finance,  
Brunei Darussalam.