

No. S 17

**INCOME TAX ACT
(CHAPTER 35)**

**INCOME TAX (RELIEF FROM DOUBLE TAXATION)
(REPUBLIC OF KOREA) ORDER, 2016**

WHEREAS it is provided by section 41(1) of the Income Tax Act 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 country or territory outside Brunei Darussalam with a view to affording relief from double taxation in relation to tax under that Act and any tax of a similar character imposed by the laws of that country or territory 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 9th day of December 2014 between the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam and the Government of the Republic of Korea, arrangements were made amongst other things in respect of the relief from double taxation relating to tax matters.

AND WHEREAS by a protocol dated the 9th day of December 2014 between the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam and the Government of the Republic of Korea, Articles 7, 11 and 25 of the agreement were clarified.

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

(a) the agreement specified in the First Schedule, as clarified by the Protocol specified in the Second Schedule, have been made with the Government of the Republic of Korea ; and

(b) it is expedient that the arrangements in such agreement shall have effect notwithstanding anything in any written law.

FIRST SCHEDULE

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

AND

THE GOVERNMENT OF THE REPUBLIC OF KOREA

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

The Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam and the Government of the Republic of Korea,

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 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, as well as taxes on capital appreciation.

3. The existing taxes to which this Agreement shall apply are in particular:

(a) in the case of Korea:

(i) the income tax;

- (ii) the corporation tax;
- (iii) the special tax for rural development; and
- (iv) the local income tax;

(hereinafter referred to as “Korean tax”);

(b) in the case of Brunei Darussalam:

- (i) the income tax; and
- (ii) the petroleum income tax;

(hereinafter referred to as “Brunei Darussalam tax”).

4. This Agreement shall apply also to any identical or substantially similar taxes that 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 any significant changes that have been made in their respective taxation laws within a reasonable period of time after such changes.

Article 3

GENERAL DEFINITIONS

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

(a) the term “Korea” means the Republic of Korea, and when used in a geographical sense, the territory of the Republic of Korea including its territorial sea, and any area adjacent to the territorial sea of the Republic of Korea which, in accordance with international law, has been or may hereafter be designated under the laws of the Republic of Korea as an area within which the sovereign rights or jurisdiction of the Republic of Korea with respect to the sea-bed and subsoil, and their natural resources may be exercised;

(b) 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;

(c) the terms “a Contracting State” and “the other Contracting State” mean Korea or Brunei Darussalam, as the context requires;

(d) the term “tax” means Korean tax or Brunei Darussalam tax, as the context requires;

(e) the term “person” includes an individual, a company and any other body of persons;

(f) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;

(g) the term “enterprise” applies to the carrying on of any business;

(h) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(i) the term “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;

(j) the term “national”, in relation to a Contracting State, means:

- (i)* any individual possessing the nationality of that 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 that Contracting State;

(k) the term “competent authority” means:

- (i)* in the case of Korea, the Minister of Strategy and Finance or his authorised representative; and
- (ii)* in the case of Brunei Darussalam, the Minister of Finance or his authorised representative;

(l) the term “business” includes the performance of professional services and of other activities of an independent character.

2. As regards the application of this 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 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 head or main office, 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 store, warehouse or premises used as a sales outlet unless the activities fall within subparagraph *(a)* or *(b)* of paragraph 4;

(e) a factory;

(f) a workshop;

(g) a farm or plantation;

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

(i) a drilling rig or working ship used for the exploration of natural resources.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve (12) months.

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, display or delivery 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, display or delivery;

(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 for collecting information, for the enterprise;

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

(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 on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for 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.

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.

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 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. 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 executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere.

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

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, 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 ships or aircraft in international traffic carried on by an enterprise of a Contracting State shall be taxable only in that Contracting State.

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

3. For the purposes of this Article the terms "profits from the operation of ships or aircraft in international traffic" shall include profits from:

(a) the occasional rental of a ship or aircraft on a bare boat charter basis;
and

(b) the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods and merchandise;

where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic between Korea and Brunei Darussalam.

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 who is the beneficial owner of such dividends may be taxed in that other 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:

(a) five (5) per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least twenty-five (25) per cent of the capital of the company paying the dividends;

(b) ten (10) per cent of the gross amount of the dividends, in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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 and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 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 insofar as such dividends are paid to a resident of that other Contracting State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment 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 ten (10) per cent of the gross amount of interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to the Government of the other Contracting State, including political subdivisions and local authorities thereof, or any institution wholly owned by that Government, shall be exempt from tax in the first-mentioned Contracting State.

4. For the purposes of paragraph 3, the term “institution wholly owned by that Government” shall include:

(a) in the case of Korea:

- (i) the Bank of Korea;
- (ii) the Export-Import Bank of Korea;
- (iii) the Korea Trade Insurance Corporation;
- (iv) the Korea Investment Corporation;
- (v) the Korea Finance Corporation;
- (vi) the National Pension Service; and
- (vii) such other similar institution which is wholly owned by the Government of Korea as may be agreed upon from time to time between the Governments of the Contracting States through an exchange of diplomatic notes;

(b) in the case of Brunei Darussalam:

- (i) the Brunei Darussalam Monetary Authority;
- (ii) the Brunei Investment Agency;
- (iii) the Employees Trust Fund Board;
- (iv) the Supplemental Contributory Pension Board; and
- (v) such other similar institution which is wholly owned by the Government of Brunei Darussalam as may be agreed upon from time to time between the Governments of the Contracting States through an exchange of diplomatic notes.

5. 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.

6. 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 and the debt-claim in respect of which the interest

is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

7. 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

8. 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 ten (10) per cent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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 cinematographic films or films or tapes used for radio or television broadcasting, any patent, trademark, design, or model, plan, secret formula or process 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.

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 and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 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 a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment 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

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, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other Contracting State.

3. Gains 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 or aircraft or boats, shall be taxable only in the Contracting State of which the alienator is a resident.

4. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than fifty (50) per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other Contracting 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 14

INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 15, 17, 18 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 one hundred and eighty-three (183) days in any twelve (12) month period commencing or ending in the fiscal year concerned;

(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 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 by an enterprise of a Contracting State, shall be taxable only in that State.

Article 15

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 16

ARTISTES AND SPORTSPERSONS

1. Notwithstanding the provisions of Articles 7 and 14, 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 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. Income derived by a resident of a Contracting State from activities exercised in the other Contracting State as envisaged in paragraphs 1 and 2 of this Article, shall be exempt from tax in that other Contracting State if the visit to the other Contracting State is supported wholly or mainly by public funds of the first-mentioned Contracting State, or a political subdivision or local authorities thereof, or takes place under a cultural agreement or arrangement between the Governments of the Contracting States.

Article 17

PENSIONS

Pensions and other similar payments or annuities paid to a resident of a Contracting State shall be taxed only in the Contracting State in which they originate.

Article 18

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. The provisions of Articles 14, 15, and 16 shall apply to salaries, wages and other similar remuneration 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.

3. The provisions of paragraphs 1 and 2 of this Article shall likewise apply in respect of salaries, wages and other similar remuneration paid by:

(a) in the case of Korea:

- (i) the Bank of Korea;
- (ii) the Export-Import Bank of Korea;
- (iii) the Korea Trade Insurance Corporation;
- (iv) the Korea Investment Corporation;
- (v) the Korea Finance Corporation;
- (vi) the National Pension Service; and
- (vii) such other similar institution which is wholly owned by the Government of Korea as may be agreed upon from time to time between the Governments of the Contracting States through an exchange of diplomatic notes;

(b) in the case of Brunei Darussalam:

- (i) the Brunei Darussalam Monetary Authority;
- (ii) the Brunei Investment Agency;
- (iii) the Employees Trust Fund Board;
- (iv) the Supplemental Contributory Pension Board; and
- (v) such other similar institution which is wholly owned by the Government of Brunei Darussalam as may be agreed upon from time to time between the Governments of the Contracting States through an exchange of diplomatic notes.

Article 19

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 20

TEACHERS AND RESEARCHERS

1. An individual who visits a Contracting State for the purpose of teaching or carrying out research at an university, college, school, or other similar educational institution recognised as a non-profit organisation by the Government of that Contracting State and who is or was immediately before that visit a resident of the other Contracting State shall be exempted from taxation in the first-mentioned Contracting State on any remuneration for such teaching or research for a period not exceeding two (2) years from the date of his first visit for that purpose.

2. The provisions of paragraph 1 shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

Article 21

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, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

Article 22

METHODS FOR THE ELIMINATION OF DOUBLE TAXATION

1. Subject to the provisions of Korean tax law regarding the allowance as credit against Korean tax of tax payable in any country other than Korea (which shall not affect the general principle thereof):

(a) Where a resident of Korea derives income from Brunei Darussalam which may be taxed in Brunei Darussalam under the laws of Brunei Darussalam

in accordance with the provisions of this Agreement, in respect of that income, the amount of Brunei Darussalam tax payable shall be allowed as a credit against the Korean tax payable imposed on that resident. The amount of credit shall not, however, exceed that part of Korean tax as computed before the credit is given, which is appropriate to that income;

(b) Where the income derived from Brunei Darussalam is dividends paid by a company which is a resident of Brunei Darussalam to a company which is a resident of Korea which owns at least ten (10) per cent of the voting shares issued by the company paying the dividends, the credit shall take into account the Brunei Darussalam tax payable by the company in respect of the profits out of which such dividend is paid.

2. 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 Korea and in accordance with this Agreement, whether directly or by deduction, on profits or income from sources within Korea shall be allowed as a credit against any Brunei Darussalam tax computed by reference to the same profits or income on which the Korean tax is computed.

Article 23

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. 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.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 4 of Article 12, apply, interest, royalties 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. However, the preceding provision 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.

4. 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.

5. 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.

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

Article 24

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 23, to that of the Contracting State of which he is a national. The case must be presented within three (3) 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 laws 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 this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

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

Article 25

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 political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

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

3. In no case shall the provisions of paragraph 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*).

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

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

Article 26

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 27

LIMITATION ON BENEFITS

In respect of Articles 10, 11, 12, 13 and 21 a resident of a Contracting State shall not be entitled to benefits otherwise accorded to residents of a Contracting State by this Agreement, if:

(a) the resident is controlled directly or indirectly by one or more persons which are not residents of that Contracting State; and

(b) the main purpose or one of the main purposes of any person concerned with the creation or assignment of a share, a debt-claim, or a right in respect of which the income is paid is to take advantage of these Articles by means of that creation or assignment.

Article 28

ENTRY INTO FORCE

1. This Agreement shall enter into force on the thirtieth (30th) day after the date of receipt of the later of the two (2) 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 in both Contracting States:

(a) in the case of Korea:

(i) in respect of taxes withheld at source, for amounts payable on or after the first (1st) day of January in the first calendar year following that in which this Agreement enters into force; and

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

(b) in the case of Brunei Darussalam:

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

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 (6) months before the end of any calendar year starting five (5) years 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 Korea:

- (i) in respect of taxes withheld at source, for amounts payable on or after the first (1st) day of January in the first calendar year following that in which the notice is given; and
- (ii) in respect of other taxes, for the taxable year beginning on or after the first (1st) day of January in the first calendar year following that in which the notice is given.

(b) in the case of Brunei Darussalam:

in respect of Brunei Darussalam tax for any year of assessment beginning on or after the first (1st) day of January in the calendar year immediately following that in which the notice is given.

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

Done in duplicate at Seoul this 9th day of December 2014, in the Korean, Malay and English languages, all texts being equally authentic. In the case of any 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 GOVERNMENT OF
THE REPUBLIC OF KOREA

SECOND SCHEDULE
PROTOCOL TO AGREEMENT MADE WITH THE GOVERNMENT OF KOREA

PROTOCOL

At the moment of signing the Agreement between the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam and the Government of the Republic of Korea 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:

1. In respect of paragraph 4 of Article 7, it is understood that in determining profits attributable to the permanent establishment of an enterprise of a Contracting State, the method of apportionment which has been customary shall not be applicable where the permanent establishment's accounts reflect the real facts.

2. The term "Brunei Darussalam Monetary Authority" as used in this Agreement means Autoriti Monetari Brunei Darussalam.

3. In respect of paragraph 5 of Article 11, it is understood that the term "interest" does not include interest paid in connection with the sale on credit of any industrial, commercial or scientific equipment, or paid in connection with the sale on credit of any merchandise by one enterprise to another enterprise.

4. (a) The competent authority of the requesting Contracting State shall provide in support of its written request under Article 25, with the most possible details, the following information to the competent authority of the requested Contracting State when making a request for information under the Agreement, to demonstrate the foreseeable relevance of the information to the request:

- (i) the purpose of the request;
- (ii) the identity of the competent authority;
- (iii) the identity of the person in relation to whom the information is requested;
- (iv) a statement of the information requested including its nature, the relevance of the information to the purpose of the request, and the form in which the competent authority wishes to receive the information from the requested Contracting State;
- (v) the grounds for believing that the information requested is held by the requested Contracting State or is in possession or control of a person within the jurisdiction of the requested Contracting State;

- (vi) to the extent known, the name and address of any person believed to have possession or control of the information requested;
- (vii) a statement that the request is in conformity with the law and administrative practices of the Contracting State of the requesting competent authority, and that if the requested information was within the jurisdiction of the Contracting State then the requesting competent authority would be authorised to obtain the information under the laws of that Contracting State or in the normal course of administrative practice;
- (viii) a statement that the requesting Contracting State has pursued all means available in its own territory to obtain the information (except those that would give rise to disproportionate difficulties) including getting the information directly from the person in relation to whom the information is requested;
- (ix) the details of the period within which that requesting Contracting State wishes the request to be met;
- (x) any other information required to be included in the request under this paragraph and Article 25 of the Agreement;
- (xi) any other information that may assist in giving effect to the request.

(b) The competent authority of the requested Contracting State may decline to provide the requested information:

- (i) when the request is not made in conformity with the Agreement; or
- (ii) when the information is related to confidential communications between attorneys, solicitors or other admitted legal representatives in their role as such and their clients to the extent that the communications are protected from disclosure under the domestic law of that State.

(c) It is understood that the provisions of paragraph 3 of Article 25 of the Agreement shall not be construed as preventing a Contracting State from declining to supply information which is owned by any institution by reason of public policy. Such Institutions are in the case of Brunei Darussalam:

- (i) the Brunei Darussalam Monetary Authority;
- (ii) the Brunei Investment Agency;
- (iii) the Employees Trust Fund Board;

- (iv) the Supplemental Contributory Pension Board; and
- (v) such other institution as may be agreed from time to time between the competent authorities of the Contracting States.

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

Done in duplicate at Seoul this 9th day of December 2014 in the Korean, Malay and English languages, all texts being equally authentic. In the case of any 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 GOVERNMENT OF
THE REPUBLIC OF KOREA

Made this 1st. day of Rejab, 1437 Hijriah corresponding to the 9th. day of April, 2016 at Bandar Seri Begawan, Brunei Darussalam.

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