



Double Taxation Avoidance Agreement between Vietnam and Brunei

Completed on November 15, 2008

DEZAN SHIRA & ASSOCIATES

Corporate Establishment, Tax, Accounting & Payroll Throughout Asia

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No. S 110

**INCOME TAX
(CHAPTER 35)**

**INCOME TAX
(RELIEF FROM DOUBLE TAXATION) (VIETNAM) ORDER, 2008**

WHEREAS it is provided by subsection (1) of section 41 of the Income Tax Act (Chapter 35) that if His Majesty the Sultan and Yang Di-Pertuan in Council by order declares that arrangements specified in the order have been made with the Government of any territory outside Brunei Darussalam with a view to affording relief from double taxation in relation to tax under that Act and any tax of similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall have effect in relation to tax under the Act notwithstanding anything in any written law.

AND WHEREAS by an Agreement dated the 16th. day of August, 2007 between the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam and the Government of the Socialist Republic of Vietnam, arrangements were made amongst other things for relief from double taxation.

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

- (a) that the arrangements specified in the Schedule have been made with the Government of the Socialist Republic of Vietnam; and
- (b) that it is expedient that those arrangements should have effect notwithstanding anything in any written law.

SCHEDULE

**ARRANGEMENTS MADE WITH THE GOVERNMENT OF THE
SOCIALIST REPUBLIC OF VIETNAM**

Article 1

PERSONAL SCOPE

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

Article 2

TAXES COVERED

1. This Agreement shall apply to taxes on income and on capital gains imposed on behalf of a Contracting State or of its local authorities irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital all taxes imposed on total income and on total capital or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid, as well as taxes on capital appreciation.
3. The existing taxes on which this Agreement shall apply are:
 - (a) in the case of Brunei Darussalam:
 - (i) income tax imposed under Income Tax Act (Chapter 35);
 - (ii) petroleum profits tax imposed under Income Tax (Petroleum) Act (Chapter 119);(hereinafter collectively referred to as "Brunei Darussalam tax");
 - (b) in the case of Vietnam:
 - (i) personal income tax imposed under Ordinance on High Income Earners, number 35/2001/PL-UBTVQH10; and
 - (ii) business income tax imposed under Law on Corporate Income Tax;(hereinafter collectively referred to as "Vietnamese tax").
4. This Agreement shall apply also to any identical or substantially similar taxes which are subsequently imposed after the date of signature of this Agreement, in addition to, or in place of, the existing taxes referred to in paragraph 3 above. The competent authorities of the Contracting States shall notify each

other of any significant changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

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

Article 3

GENERAL DEFINITIONS

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

- (a) the term "Brunei Darussalam" means:

the territory of Brunei Darussalam as defined in its national laws comprises the land and its territorial sea, extending to the air space above them and the bed and subsoil lying beneath them, over which it exercises its sovereignty and the maritime areas adjacent to the territorial sea over which it exercises its sovereign rights and sovereign jurisdiction in accordance with the United Nations Convention on the Laws of the Sea 1982;

- (b) the term "Vietnam" means:

the Socialist Republic of Vietnam; when used in a geographical sense, it means all its national territory, including its territorial sea and any area beyond and adjacent to its territorial sea, within which Vietnam, by Vietnamese legislation and in accordance with international law, has sovereign rights of exploration for and exploitation of natural resources of the seabed and its subsoil and superjacent waters;

- (c) the term "Government" for the purposes of Article 1, paragraph 3 of Article 11, paragraph 7 of Article 13, paragraph 1 of Article 19 and paragraph 1 of Article 22 means:

- (i) in the case of Brunei Darussalam:

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

- (4) Such institution as may be agreed from time to time between the two Contracting States;
- (ii) in the case of Vietnam:
 - (1) The State Bank of Vietnam;
 - (2) The Vietnamese Bank for Investment and Development;
 - (3) Any local or statutory authority or statutory body exempt from tax in Vietnam; and
 - (4) Such institution as may be agreed from time to time between the two Contracting States.
- (d) the term "a Contracting State" and "the other Contracting State" mean Brunei Darussalam or Vietnam as the context requires;
- (e) the term "tax" means Brunei Darussalam tax or Vietnamese tax as the context requires;
- (f) the term "person" includes an individual, a company, a body of persons and any other entity which is treated as a taxable entity under the tax laws of the respective Contracting States;
- (g) the term "company" means any body corporate or any entity which is treated as body corporate for tax purposes;
- (h) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (i) the term "national" means:
 - (i) (a) in the case of Brunei Darussalam:

any natural person who is accorded the status of a national under the applicable laws in Brunei Darussalam;
 - (b) in the case of Vietnam:

any individuals possessing the nationality of Vietnam;
 - (ii) any legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State;

- (j) 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; and
 - (k) 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 Vietnam: the Minister of Finance or his authorised representative.
2. As regards the application of this Agreement by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Agreement.

Article 4

RESIDENT

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of management, place of registration or any other criterion of a similar nature. But this term 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 or capital situated therein.
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 of the Contracting State in which he has a permanent home available to him. If he has permanent home available to him in both Contracting States he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are 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 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 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 of the State in which the control and management of its business is exercised. If its place of control and management cannot be determined, the competent authorities of the Contracting States shall settle the question by mutual agreement.

Article 5

PERMANENT ESTABLISHMENT

- 1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of the enterprise is wholly or partly carried on.
- 2. The term "permanent establishment" shall include especially:
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a store, warehouse or premises used as a sales outlet;
 - (e) a factory;
 - (f) a workshop;
 - (g) a farm or plantation;
 - (h) a mine, an oil or gas well, a quarry or other place of extraction or exploration of natural resources, drilling rig, working ship or installation structure used for the exploration or exploitation of natural resources including timber or other forest produce;

- (i) a building site or construction or supervisory activities in connection therewith, provided such site, project or activity continues for a period of more than 183 days;
 - (j) assembly project or installation project which exists for more than 183 days; and
 - (k) the furnishing of services, including consultancy services by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than 183 days within any twelve month period.
3. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall not be deemed to include:
- (a) the use of facilities solely for the purpose of storage, or display of goods or merchandise belonging to the enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purposes of processing by another enterprise;
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.
4. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 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 3 which, if exercised through a fixed place of business, would not make this fixed

place of business a permanent establishment under the provisions of that paragraph;

- (b) has no such authority, but habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise; or
 - (c) manufactures or processes in that Contracting State for the enterprise goods or merchandise belonging to the enterprise.
5. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except with regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in that other Contracting State or insures risks situated therein through an employee or through a representative who is not an agent of an independent status within the meaning of paragraph 6.
6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise or its associated enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other Contracting State (whether through a permanent establishment or otherwise), shall not of itself make either company a permanent establishment of the other.

Article 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other Contracting State.
2. The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture, forestry and fishery, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments in

cash or kind as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Contracting State but only so much of them as is attributable to (a) that permanent establishment; (b) sales in that other Contracting State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or (c) other business activities carried on in that other Contracting State of the same or similar kind as those effected through that permanent establishment.
2. Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere, but this does not include any expenses which under the law of that Contracting State would not be allowed to be deducted by an enterprise of that Contracting State.
4. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person in cases where the information available to the competent authority of that Contracting State is inadequate to determine the profits to be attributed to a

permanent establishment, provided that law shall be applied, so far as the information available to the competent authority permits, consistently with the principles of this Article.

5. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles laid down in this Article.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.
8. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

Article 8

SHIPPING AND AIR TRANSPORT

1. Notwithstanding the provision of Article 7, profits from the operation of 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 of this Article shall likewise apply to profits derived from the participation in pools, in a joint business or an international operating agency of any kind by enterprises engaged in the operation of ships or aircraft in international traffic.
3. For the purposes of this Article, profits derived from the other Contracting State mean profits from the carriage of passengers, mail, livestock or goods shipped, or loaded into a ship or an aircraft in that Contracting State (excluding the profits accruing from passengers, mail, livestock or goods which are brought to that other Contracting State solely for transshipment, or for transfer from one aircraft to another or from one aircraft to a ship or from a ship to an aircraft).

Article 9

ASSOCIATED ENTERPRISES

1. Where —

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and 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, any profits which would, but for those conditions, have accrued to one of the enterprises but by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that Contracting State — and taxes accordingly — profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall, if necessary, consult each other.

Article 10

DIVIDENDS

- 1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other Contracting State.
- 2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed 10 percent of the gross amount

of the dividends. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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

3. 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 the 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 14, as the case may be, shall apply.
5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company except in so far as such dividends are paid to a resident of that other Contracting State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other Contracting State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Contracting State.

Article 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the 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 shall be exempt from tax in the first-mentioned Contracting State.
4. The term "interest" as used in this Article means income from debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income assimilated to income from money lent by the taxation laws of the Contracting State in which the income arises including interest on deferred payment sales. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
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 under sub-paragraph 1(c) of Article 7. In such a case the provisions of Article 7 or Article 14, as the case may be, shall apply.
6. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political sub-division, a local authority or a resident of that Contracting State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.
7. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12

ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.
2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that Contracting State, but, if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 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 the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematographic films or tapes for television or broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial or scientific experience.
4. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a local authority or a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in that Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in that Contracting State in which the permanent establishment is situated.
5. The provisions of paragraphs 1, 2 and 4 of this Article shall likewise apply to proceeds arising from the alienation of any copyright of scientific work, any patent, trade mark, design or model, plan or secret formula or process.
6. The provisions of paragraphs 1, 2 and 4 of this Article shall not apply if the recipient of the royalties or the proceeds, being a resident of a Contracting State, has in the other Contracting State in which the royalties or the proceeds arise a permanent establishment with which the right or property giving rise to the royalties or the property the alienation of which gives rise to the proceeds is effectively connected with (a) such permanent establishment or fixed base or with (b) business activities referred to under sub-paragraph 1(c) of Article 7. In such a case, the provisions of Article 7 or Article 14, as the case may be shall apply.
7. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties

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

Article 13

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other Contracting State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other Contracting State.
3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State.
4. Gains derived by a resident of a Contracting State from the alienation of shares on comparable interests in a company, the assets of which consist wholly or principally of immovable property situated in the other Contracting State may be taxed in that other State.
5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that Contracting State.
6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5, shall be taxable only in the Contracting State of which the alienator is a resident.
7. Notwithstanding the provision of paragraph 5 of this Article, gains derived by the Government of a Contracting State from the alienation of share, other than those mentioned in paragraph 4, in a company which is a resident of the other Contracting State shall be exempt from tax in that other Contracting State.

Article 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities or he is present in that other Contracting State for a period or periods exceeding in the aggregate 183 days within any twelve month period. If he has such a fixed base or remains in that other Contracting State for the aforesaid period or periods, the income may be taxed in that other Contracting State but only so much of it as is attributable to that fixed base or is derived in that other Contracting State during the aforesaid period or periods.
2. The term "professional services" includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration or income for personal services derived by a resident of a Contracting State, shall be taxable only in that Contracting State, unless the services are performed in the other Contracting State. If the services are so performed, such remuneration or income as is derived therefrom may be taxed in that other Contracting State.
2. Notwithstanding the provisions of paragraph 1, remuneration or income derived by a resident of a Contracting State for personal services performed in the other Contracting State shall be taxable only in the first-mentioned State if:
 - (a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days within any twelve-month period; and
 - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State, and
 - (c) the remuneration or income 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 by an enterprise of a Contracting State shall be taxable only in that Contracting State.

Article 16

DIRECTORS' FEES

1. Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or any other similar organ of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.
2. The remuneration which a person to whom paragraph 1 applies derives from the company in respect of the discharge of day-to-day functions of a managerial or technical nature may be taxed in accordance with the provisions of Article 15.

Article 17

ARTISTES AND SPORTSMEN

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theater, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting State.
2. Where income in respect of personal activities exercised in a Contracting State by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in that Contracting State.
3. Notwithstanding the provisions of paragraphs 1 and 2, income derived from activities referred to in paragraph 1 shall be exempt from tax in the Contracting State in which the activities are exercised if the visits to that Contracting State are wholly or substantially supported by funds of one or both of the Contracting State, a local authority or public institution thereof.

Article 18

PENSIONS

1. Subject to the provisions of paragraph 2 of Article 19, any pension and other similar remuneration paid to a resident of a Contracting State from a source in the other Contracting State in consideration of past employment or services in that other Contracting State and any annuity paid to such resident from such a source may be taxed in that other Contracting State.
2. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 19

GOVERNMENT SERVICE

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

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other Contracting State and the individual is a resident of that 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 15, 16, 17 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof.

Article 20

STUDENTS AND TRAINEES

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

- (a) as a student at a recognised university, college or school in that other Contracting State;
- (b) as a recipient of grant, allowance or award for the primary purpose of study or research from a Government, religious, charitable, scientific, literary or educational organisation; or
- (c) as a business or technical apprentice,

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

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

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

- (a) all remittances from abroad for the purposes of his maintenance or training; and
- (b) any remuneration for personal services rendered in that other Contracting State insofar the amount does not exceed non taxable income under the law of that Contracting State.

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

Article 21

TEACHERS

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

Article 22

OTHER INCOME

1. Items of income of a resident or Government of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxed only in that Contracting State.
2. The provisions of paragraph 1 shall not apply to the income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may also be taxed in that other Contracting State.

Article 23

TAXATION OF CAPITAL

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other Contracting State.
2. Capital represented by 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 by 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, may be taxed in that other Contracting State.

3. Capital represented by ships and aircraft operated by an enterprise of a Contracting State in international traffic, and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in that Contracting State.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that Contracting State.

Article 24

ELIMINATION OF DOUBLE TAXATION

Double taxation shall be avoided as follow:

1. Subject to the provisions of the laws of a Contracting State regarding allowance as a credit against tax of a Contracting State of tax payable in a territory outside that Contracting State (which shall not affect the general principle hereof), tax paid under the laws of the other Contracting State and in accordance to this Agreement by a resident of the first-mentioned Contracting State, whether directly or by deduction, on profits or income from sources within the other Contracting State shall be allowed as a credit against any tax of the first-mentioned Contracting State computed by reference to the same profits or income on which the tax of the first-mentioned Contracting State is computed. That amount of credit, however, shall not exceed the amount of tax of the first-mentioned Contracting State on that profit or income as computed in accordance with the taxation laws of the first-mentioned Contracting State.
2. For the purposes of this Article, the term "tax payable" shall be deemed to include the amount of tax which would have been paid if the tax had not been exempted or reduced in accordance with the special incentive laws designed to promote economic development in either Contracting State, effective on the date of signature of this Agreement, or which may be introduced hereafter in modification of, or in addition to, the existing laws.

Article 25

NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other Contracting State in the same circumstances are or may be subjected.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less 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. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.
4. Interest, royalty and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Contracting State, provided such interest, royalty and other disbursements are paid in fair and reasonable amount.
5. The provisions of this Article shall apply only to the taxes which are the subject of this Agreement.

Article 26

MUTUAL AGREEMENT PROCEDURE

1. Where a resident of a Contracting State considers that the actions of the competent authority of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may notwithstanding the remedies provided by the national laws of those States, present the case to the competent authority of the Contracting State of which

he is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State with a view to the avoidance of taxation not in accordance with this Agreement. 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 difficulty or doubt arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of 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 necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting State concerning taxes covered by this Agreement, in so far as the taxation thereunder is not contrary to this Agreement, in particular for the prevention of fraud or evasion of such taxes. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of the Contracting State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of this Agreement. Such persons or authorities shall use the information only for such purposes including the disclosure of such information in public court proceedings or in judicial decisions.
2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;

- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

Article 28

DIPLOMATIC AND CONSULAR OFFICIALS

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

Article 29

ENTRY INTO FORCE

1. This Agreement shall enter into force on the thirtieth day after the date of receipt of the later of the two notifications through diplomatic channels by which either Contracting State notifies the other Contracting State that its internal legal requirements for the entry into force of this Agreement have been fulfilled.
2. This Agreement shall have effect:
 - (a) in the case of Brunei Darussalam:

in respect of Brunei Darussalam tax for the year of assessment beginning on or after 1 January in the calendar year immediately following the year in which this Agreement enters into force and subsequent years of Assessment;
 - (b) in the case of Vietnam:
 - (i) in respect of taxes withheld at source, in relation to taxable amount paid or credited on or after 1 January following the calendar year in which this Agreement enters into force, and in subsequent calendar years;
 - (ii) in respect of other Vietnamese taxes, in relation to income, profits or gains arising in the calendar year following the calendar year in which this 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 this Agreement, through diplomatic channels, by giving written notice of termination on or before the thirtieth of June of any calendar year following after the period of five years from the year in which this Agreement enters into force. In such event, this Agreement shall cease to have effect:

(a) in the case of Brunei Darussalam:

in respect of Brunei Darussalam tax 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.

(b) in the case of Vietnam:

(i) in respect of taxes withheld at source, in relation to taxable amount paid or credited on or after 1 January following the calendar year in which the notice of termination is given, and in subsequent calendar years;

(ii) in respect of other Vietnamese taxes, in relation to income, profits or gains arising in the calendar year following the calendar year in which the notice of termination is given, and in subsequent calendar years.

Made this 17th. day of Zulkaedah, 1429 Hijriah corresponding to the 15th. day of November, 2008 at Bandar Seri Begawan, Brunei Darussalam.

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