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**AGREEMENT BETWEEN  
THE GOVERNMENT OF THE REPUBLIC OF INDONESIA  
AND  
THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA**

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

**Article 1  
PERSONAL SCOPE**

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 and on capital 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 and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property.
3. The existing taxes to which the Agreement shall apply are in particular:
  - (a) in Indonesia :
    - (i) the income tax imposed under the Undang-Undang Pajak Penghasilan 1984 (Law No. 7 of 1983) and to the extent -- provided in such income tax law, the company tax imposed under the Ordonansi Pajak Perseroan 1925 (State Gazette No. 319 of 1925 as lastly amended by Law No. 8 of 1970) -- and the tax imposed under the Undang-Undang Pajak atas Bunga, piden dan Royalty 1970 (Law No. 10 of 1970);

(ii)the

property  
tax  
imposed  
under  
the  
Undang-  
Undang  
Pajak  
Bumi  
dan  
Bangunan  
(Law  
No.  
12  
of  
1985)

(hereinafter  
referred  
to as  
"Indonesian  
Tax");

(b)in Austria:

- (i) the income tax (die Einkommensteuer);
- (ii) the corporation tax (die Körperschaftsteuer);
- (iii) the directors' tax (die Aufsichtsratsabgabe);
- (iv) the capital tax (die Vermögensteuer);
- (v) the tax on property eluding death duties (die Abgabe von Vermögen, die der Erbschaftssteuer entzogen sind);
- (vi) the tax on commercial and industrial enterprises, including the tax levied on the sum of wages (die Gewerbesteuer einschliesslich der Lohnsummensteuer);
- (vii) the land tax (die Grundsteuer);
- (viii)the tax on agricultural and forestry enterprises (die Abgabe von land- und forstwirtschaftlichen Betrieben);

(ix) the  
tax  
on  
the  
value  
of  
vacant  
plots  
(die  
Abgabe  
vom  
Bodenwert  
bei  
unbebauten  
Grundstücken)

(hereinafter  
referred  
to as  
"Austrian  
tax").

4. The Agreement shall also apply to any identical or substantially similar taxes in income which are imposed after the date of signature of the Agreement in addition to, or in place of, those referred to in paragraph 3. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

## Article 3 GENERAL DEFINITIONS

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

(a)(i)  
the term  
"Indonesia"  
comprises the  
territory of the  
Republic of  
Indonesia as  
defined in its  
laws and the  
adjacent areas  
over which  
the Republic  
of Indonesia  
has sovereign  
rights or  
jurisdictions  
in accordance  
with the  
provisions of  
the United  
Nations  
Convention  
on the Law of  
the Sea, 1982;

- (ii) the term "Austria" means the Republic of Austria;
- (b) the terms "a Contracting State" and "the other Contracting State" mean Indonesia or Austria, as the context requires;
- (c) the term "tax" means Indonesian tax or Austrian tax, as the context requires;
- (d) the term "person" includes an individual, a company and any other body of persons;
- (e) 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; the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

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

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

(h) the term "national" means:

(i) any individual possessing the nationality of a Contracting State;

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

(i) the term "competent authority" means:

- (i) in Indonesia:
  - the Minister of Finance or his authorized representative;
- (ii) in Austria
  - the Federal Minister of Finance.

2. As regards the application of the Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies.

## **Article 4 RESIDENT**

1. For the purpose of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the 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 State, he shall be deemed to be a resident of the State in which he has an habitual abode;

(c) if he has an habitual abode in both States or in neither of them, the competent authorities of the Contracting States shall endeavour to 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 its place of effective management is situated.

## **Article 5** **PERMANENT ESTABLISHMENT**

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
  - (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop;
  - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. The term "permanent establishment" likewise encompasses:

(a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six months;

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

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

(a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;

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

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

(e) the maintenance of a fixed place of business solely for the purpose of 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 sub-paragraphs (a) to (e) provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2 where a person -- other than an agent of an independent status to whom paragraph 7 applies -- is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

(a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph;

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

6. An insurance enterprise of a Contracting State shall, except with regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in that other State or insures risks situated therein through an employee or through a representative who is not an agent of an independent status within the meaning of paragraph 7.
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 State through a broker, general commission agent or any other

agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other 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 or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under the laws 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 and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall also apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

## **Article 7** **BUSINESS PROFITS**

1. The profits of an enterprise of a Contracting State shall be taxable only in that 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 State but only so much of them as is attributable to:
  - (a) that permanent establishment;
  - (b) sales in that other 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 State of the same or similar kind as those effected through that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and -- dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining 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 State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual

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

4. In the absence of appropriate accounting or other data permitting the determination of the profits to be attributed to a permanent establishment, the tax may be assessed in the Contracting State in which the permanent establishment is situated in accordance with the laws of that State, in particular regard being had to the normal profits of similar enterprise engaged in the same or similar conditions, provided that, on the basis of the available information, the determination of the profits of the permanent establishment is consistent with the principles stated in this Article.
5. For the purpose of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
6. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.
7. The term "profits" as used in this Article includes the profits derived by any partner from his participation in a partnership and, in the case of Austria, from a participation in a sleeping partnership (Stille Gesellschaft) created under Austrian law.

## **Article 8 SHIPPING AND AIR TRANSPORT**

1. Profits from sources within a Contracting State derived by an enterprise of the other Contracting State from the operation of ships in international traffic may be taxed in the first-mentioned State, but the tax imposed shall be reduced by an amount equal to 50% thereof.
2. Profits from the operation of aircraft in international traffic shall be taxable only in the Contracting State of which the enterprise operating the aircraft is a resident.
3. The provision of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

## **Article 9 ASSOCIATED ENTERPRISES**

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 not so accrued, may be included in the profits of that enterprise and taxed accordingly.

## 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 State.

2.

However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

- 10% of the gross amount of the dividends if the recipient is a company (other than a partnership)
- (a) which holds directly at least 25% of the capital of the company paying the dividends; 15% of the gross amount of the dividends
- (b) in all other cases.

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

3. The terms "dividends" as used in this Article means income from 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 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 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 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 State or insofar 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 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 State.

6. Notwithstanding any other provisions of this Agreement where a company which is a resident of a Contracting State has a permanent establishment in the other Contracting State, the profits of the permanent establishment may be subjected to an additional tax in that other State in accordance with its law, but the additional tax so charged shall not exceed 80% of 15% of the amount of such profits after deducting therefrom income tax and other taxes on income imposed thereon in that other State.
7. The provisions of paragraph 6 of this Article shall not affect the provisions contained in any production sharing contracts and contracts of work (or any other similar contracts) relating to oil and gas sector or other mining sector concluded on or before 31 December 1983 by the Government of Indonesia, its instrumentality, its relevant State oil and gas company or any other entity thereof with a person who is resident of Austria.

## 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 State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10% of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and derived by the Government of the other Contracting State including local authorities thereof, the Central Bank or any financial institution controlled by that Government, shall be exempted from tax in the first-mentioned State.
4. For the purpose of paragraph 3, the terms "the Central Bank" and "financial institution controlled by that Government" means:
  - (a) In the case of Indonesia:
    - (i) the Bank Indonesia (the Central Bank of Indonesia);

(ii)  
such  
other  
financial  
institution,  
the  
capital  
of  
which  
is  
wholly  
owned  
by  
the  
Government  
of the  
Republic  
of  
Indonesia,  
as  
may  
be  
agreed  
upon  
from  
time  
to  
time  
between  
the  
Government  
of the  
Contracting  
State.

(b) In the case of  
Austria:  
the Österreichische  
Kontrollbank  
Aktiengesellschaft.

5. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by a 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 law of the State in which the income arises, including interest on deferred payment sales. money lent by the taxation law of the State in which the income arises, including interest on deferred payment sales.
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, or performs in that other 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 (c) of paragraph 1 of Article 7. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
- 7.

Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subpision, a local authority or a resident of that 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 State in which the permanent establishment or fixed base 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 persons, 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 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 State.
2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10% of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films or films or tapes for radio or television 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, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base the situated therein, and the right or property in respect of which the royalties are paid is effectively connected with (a) such permanent establishment or fixed base, or with (b) business activities referred to under (c) of paragraph 1 of Article 7. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subpision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payment 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. Gain derived by a resident of a Contracting State from alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other 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 the 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 State.
3. Gains derived by a resident of a Contracting State from the alienation of aircraft operated in international traffic of movable property pertaining to the operation of such aircraft shall be taxable only in that State.
4. Gains from the alienation of any property other than that referred to in the preceding paragraph shall be taxable only in the Contracting State of which the alienator is a resident.

## 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 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 State for a period or periods exceeding in the aggregate 90 days in any twelve-month period. If he has such a fixed base or remains in that other State for the aforesaid period, the income may be taxed in that other State but only so much of it as is attributable to that fixed base or is derived in that other State during the aforesaid period or periods.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

## Article 15 DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State, if:

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

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

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

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 State.

## **Article 16 DIRECTOR'S FEES**

Notwithstanding the provisions of Articles 14 or 15, 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 or any other similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

## **Article 17 ARTISTES AND ATHLETES**

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2 income derived by an entertainer or athlete from his personal activities as such shall be exempt from tax in the Contracting State in which these activities are exercised if the activities are exercised within the framework of a visit which is substantially supported by the other Contracting State, a political subpision, a local authority or public institution thereof.

## Article 18 PENSIONS

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.
2. Notwithstanding the provisions of paragraphs (1), pensions paid by a Government approved pension fund or social security pensions of a Contracting State to a resident of the other Contracting State may be taxed in the first-mentioned State.

## Article 19 GOVERNMENT SERVICES

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

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

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

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

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

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

3. The  
provisions of  
Article 15,  
16 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  
political  
subdivision or  
a local  
authority  
thereof.

## Article 20

### TEACHERS AND RESEARCHERS

A professor, teacher or researcher who makes a temporary visit to a Contracting State solely for the purpose of teaching or conducting research at a university, college, school or other recognized educational institution, and who is a resident of the other Contracting State shall be exempt from tax in the first-mentioned State for a period not exceeding two years in respect of remuneration for such teaching or research.

## **Article 21 STUDENTS**

Payments which a student, apprentice or business trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is in the first-mentioned 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 first-mentioned State, provided that such payments are made to him from sources outside that State.

## **Article 22 OTHER INCOME**

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other 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 14, as the case may be, shall apply.
3. Notwithstanding the provision of paragraphs 1 and 2 items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may also be taxed in that other State.

## **Article 23 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 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 State.
3. Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State of which the enterprise operating the aircraft is a resident.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

## **Article 24 ELIMINATION OF DOUBLE TAXATION**

1. The laws of each of the Contracting States shall continue to govern the taxation of income and capital whether derived from or situated in the Contracting State or elsewhere, except where express provisions to the contrary are made in this Agreement.

2. In the case of Indonesia, double taxation shall be avoided as follows:

(a) Indonesia, when imposing tax on residents of Indonesia, may include in the basis upon which such tax is imposed the items of income which may be taxed in Austria in accordance with the provisions of this Agreement.

(b) Where a resident of Indonesia derives income from Austria and such income may be taxed in accordance with the provisions of this Agreement, the amount of Austrian tax payable in respect of the income shall be allowed as a credit against the Indonesian tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Indonesian tax which is appropriate to the income.

3. In the case Austria, double taxation shall be avoided as follows:

(a) Where a resident of Austria derives income or owns capital which, in accordance with the provisions of this Agreement may be taxed in Indonesia, Austria shall, subject to the provisions of paragraphs b and c, exempt such income or capital from tax.

(b) Where a resident of Austria derives items of income which, in accordance with the provisions of paragraph 1 of Article 8, paragraph 2 of Article 10, 11 or 12 may be taxed in Indonesia, Austria shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Indonesia. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given which is attributable to such items of income derived from Indonesia.

(c) Where in accordance with any provision of this Agreement income derived or capital owned by a resident of Austria is exempt from tax in Austria, Austria may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

(d) For the application of sub-paragraph (b) of paragraph 3 of this Article the tax paid in Indonesia shall be deemed to have been 15% of the gross amount of dividends, interest or royalties.

## 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 State in the same circumstances 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 State than the taxation levied on enterprises of that other 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 of 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 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 State are or may be subjected.

4. Nothing contained in this Article shall be construed as to prevent either Contracting State for limiting to its nationals the enjoyment of tax incentives and any tax of a preferential nature designed in pursuance of its programme of economic development provided that such tax incentives have not been granted to nationals of a third State.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description; it is, however, understood that the laws in force on the date of signature of this Agreement of the Contracting State do correspond to this provision.

## Article 26

### MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident. The case must be presented within two 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 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.

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

4. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this Agreement and, especially, the requirement to which the residents of a Contracting State shall be subjected in order to obtain, in the other Contracting State, tax reliefs or exemption on income referred to in Articles 10, 11 and 12, received from that other Contracting State.

## 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 for the prevention of fraud or fiscal evasion or for the administration of statutory provision against tax avoidance in relation to the taxes which are the subjects of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to persons or authorities other than those, including a court, concerned with the assessment and collection, the enforcement or prosecution in respect of those taxes or the determination of appeals in relation thereto and the persons with respect to whom the information relates.
2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:
  - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
  - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
  - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

## Article 28

### DIPLOMATIC AGENTS AND CONSULAR OFFICERS

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

## Article 29 ENTRY INTO FORCE

1. This Agreement shall be ratified and the instruments of ratification shall be exchanged at Jakarta as soon as possible.
2. The Agreement shall enter into force on the first day of the third month next following that in which the exchange of instruments of ratification takes place and its provisions shall have effect in respect of taxes for any fiscal year beginning after December 31 in the calendar year in which the exchange of instruments of ratification takes place.

## Article 30 TERMINATION

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving written notice of termination on or before the thirtieth day of June in a calendar year after the fifth year from the date of entry into force of the Agreement. In such event, the Agreement shall cease to have effect in respect of the taxes for any fiscal year beginning after December 31 in the calendar year in which the notice of termination has been given.

IN WITNESS WHEREOF the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement and put seals thereto.

DONE in duplicate at Vienna on the 24th day of July of the year one thousand nine hundred and eighty six in the English language.

For the Government of  
the Republic of Indonesia

For the Government of  
the Republic of Austria

## PROTOCOL

At the moment of signing the Agreement between the Government of the Republic of Indonesia and the Government of the Republic of Austria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, the undersigned have agreed that the following provisions shall form an integral part of the Agreement.

1. Ad Article 5, paragraph 7

It is understood that the last sentence of paragraph 7 of Article 5 shall apply only to an agent whose activities were of such a kind as mentioned in this provision at the time when such activities started.

2. Ad Article 7

(a)  
It is understood that subparagraphs (b) and (c) of paragraph 1 shall apply only in cases of abuse of undisclosed channeling of profits away from a permanent establishment.

(b)  
It is further understood that subparagraph (c) of paragraph 1 shall not apply to business activities falling under sub-paragraph (b) of paragraph 3 of Article 5 if such activities continue for less than three months within any twelve-month period and if they are carried on not for the same or connected project.

(c) In the determination of the profits of a building site or construction, assembly or installation project there shall be attributed to that permanent establishment in the Contracting State in which the permanent establishment is situated only the profits resulting from the activities of the permanent establishment as such. If machinery or equipment is delivered from the head office or another permanent establishment of the enterprise or a third person in connection with those activities or independently therefrom there shall not be attributed to the profits of the building site or construction, assembly or installation project the value of such deliveries.

(d)  
Income  
derived by a  
resident of a  
Contracting  
State from  
planning,  
project,  
construction  
or research  
activities as  
well as income  
from technical  
services  
exercised in  
that State in  
connection  
with a  
permanent  
establishment  
situated in the  
other  
Contracting  
State, shall not  
be attributed  
to that  
permanent  
establishment.

### 3. Ad Article 22

It is understood that paragraph 3 shall apply only to lottery prizes, awards, annuities and rents of movable properties not dealt with in Article 7 and Article 12.

IN WITNESS WHEREOF, the undersigned duly authorized thereto have signed this Protocol which shall have the same force and validity as if it were inserted word by word in the Agreement and put seals thereto.

DONE in duplicate at Vienna this 24th day, of July of the year one thousand nine hundred and eighty six in the English language.

For the Government of  
the Republic of Indonesia

For the Government of  
the Republic of Austria

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