

DAFTAR PERTANYAAN

Yang bertandatangan dibawah ini :

Nama : Nita Mustika

NPM : 0606038881

Daftar pertanyaan ini saya buat secara umumnya saja karena pertanyaan yang diajukan bisa meluas sesuai dengan topik thesis saya yang berjudul Analisis Kebijakan Pajak Atas Penghasilan Yang Didapat Dari Transaksi *e-commerce*

1. Bagaimana administrasi pajak mengenakan pajak atas penghasilan dari transaksi *e-commerce* ?

Jawab : administrasi pajak mengenakan pajak atas penghasilan dari transaksi *e-commerce* sepanjang ada tambahan kemampuan ekonomis yang timbul akibat transaksi tersebut namun pihak administrasi pajak masih kesulitan melacak transaksi *e-commerce* tanpa tersedianya data atau informasi yang diperlukan, terutama apabila transaksi tersebut dilakukan oleh wajib pajak yang berada di luar negeri atau server yang berada di luar negeri

2. Apakah ketentuan perpajakan yang ada sekarang telah memadai dalam mengenakan pajak atas penghasilan dari transaksi *e-commerce* ?

Jawab : menurut saya sudah cukup memadai namun masih agak kesulitan apabila transaksi *e-commerce* tersebut dilakukan oleh wajib pajak luar negeri

3. Apa saja penghasilan-penghasilan yang didapat dari transaksi *e-commerce* ?

Jawab : penghasilan yang didapat ada dua jenis yaitu aktive income dan pasive income

4. Apakah pihak Direktorat Jenderal Pajak saling bekerja sama dengan pihak lain dalam hal transaksi *e-commerce* misalnya dengan pihak Departement Komunikasi dan Informatika ?

Jawab : Saya kurang tahu

DAFTAR PERTANYAAN

1. Apa tujuan dari Departemen Komunikasi dan Informatika (Depkominfo) ?
Jawab : tujuannya adalah lebih kepada regulasi mengenai bagaimana membuat peraturan-peraturan
2. Apa saja yang dibutuhkan dalam transaksi elektronik khususnya *e-commerce* ?
Jawab : transaksi elektronik atau *ecommerce* ini dibutuhkan persyaratan (1) *confidential* (yang menerima (*transferee*) benar-benar pihak yang dituju), (2) otentik, (3) integritas data (data tetap utuh), (4) *non repuditional* (tidak ada pengelakan kalau pengirim belum mengirim data atau barang dan penerima belum menerima data atau barang) dan untuk menjamin transaksi ini adalah benar maka diperlukan suatu *Certification Authority* (CA)
3. Apakah ada badan pengawas yang mengawasi transaksi *e-commerce* ?
Jawab : belum ada, karena payung hukum yang digunakan saat ini adalah Undang-Undang *Information Technology*, namun kedepannya sedang mengarah kepada pembuatan badan pengawas *Certification Authority* (CA)
4. Apakah *Certification Authority* ini sudah berlaku di Indonesia ?
Jawab : Saat ini pihak Depkominfo sedang mensosialisasikan mengenai CA ini dan yang baru memakai adalah pihak komunitas seperti bank, karena di Indonesia sendiri masih banyak yang belum peduli mengenai masalah CA.
5. Bagaimana perkembangan *e-commerce* di Indonesia ?
Jawab : Survey selama ini, hasilnya bahwa para pelaku bisnis baru hanya memiliki sebatas website untuk pengenalan saja dan belum ada transaksi yang signifikan karena masih banyak rasa kurang percaya apabila melakukan transaksi secara online

CONVENTION
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF INDONESIA

AND

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

FOR

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

The Government of the Republic of Indonesia and the Government of the United States of America,

DESIRING to conclude a convention for the avoidance of double taxation of income and the prevention of fiscal evasion,

HAVE AGREED AS FOLLOWS:

Article 1
Personal Scope

This Convention is applicable to persons who are resident of one or both of the Contracting States.

Article 2
Taxes Covered

- (1) The existing taxes which are the subject of this Convention are:
- (a) In the case of Indonesia, the income tax (pajak penghasilan 1984) and to the extent provided in such income tax, the company tax (pajak perseroan 1925), and the tax on interest, dividends, and royalties (pajak atas bunga, dividen, dan royalty 1970).
 - (b) In the case of the United States, the income taxes imposed by the Internal Revenue Code (but excluding the accumulated earnings tax, the personal holding company tax, and social security taxes).
- (2) The Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes.

Article 3
General Definitions

- (1) For purposes of this Convention only, unless the context otherwise requires:
- (a) The term "Indonesia" comprises the territory of the Republic of Indonesia and the adjacent seas over which the Republic of Indonesia has sovereignty, sovereign rights, or jurisdictions in accordance with the provisions of the 1982 United Nations Convention on the Law of the Sea.
 - (b) The term "United States" means the United States of America. When used in a geographical sense, the term "United States" means the states thereof, the District of Columbia, and those parts of the continental shelf and adjacent seas over which the United States has sovereignty, sovereign rights, or other rights in accordance with international law.
 - (c) The term "one of the Contracting States" or "the other Contracting State" means Indonesia or the United States, as the context requires.
 - (d) The term "person" includes an individual, a partnership, a company, an estate, a trust, or any body of persons.
 - (e) The term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes.
 - (f) The term "competent authority" means:
 - (i) In the case of Indonesia, the Minister of Finance or his authorized representative, and
 - (ii) In the case of the United States, the Secretary of the Treasury or his authorized representative.
 - (g) The term "Indonesian Tax" means tax imposed by Indonesia to which this Convention applies by virtue of Article 2 (Taxes Covered) and the term "United States Tax" means tax imposed by the United States to which this Convention applies by virtue of Article 2 (Taxes Covered).
 - (h) The term "international traffic" means any transport by a ship or aircraft, except where such transport is solely between places in the other Contracting State.
- (2) Any other term used in this Convention and not defined in this Convention shall, unless the context otherwise requires, have the meaning which it has under the laws of the Contracting State whose tax is being determined. Notwithstanding the preceding sentence, if the meaning of such a term under the laws of one of

the Contracting States is different from the meaning of the term under the laws of the other Contracting State, or if the meaning of such a term is not readily determinable under the laws of one of the Contracting States, the competent authorities of the Contracting States may, in order to prevent double taxation or to further any other purpose of this Convention, establish a common meaning of the term for the purposes of the Convention.

Article 4

Fiscal Residence

(1) In this Convention, 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 incorporation, place of management, or any other criterion of a similar nature. For purposes of United States tax, in the case of a partnership, estate, or trust, the term applies only to the extent that the income derived by such person is subject to United States tax as the income of a resident, either in its hands or in the hands of its partners or beneficiaries.

(2) Where by reason of the provisions of paragraph (1) an individual is a resident of both Contracting States:

(a) he shall be deemed to be a resident of that Contracting State in which he maintains his permanent home. If he has a permanent home in both Contracting States or in neither of the Contracting States, he shall be deemed to be a resident of that Contracting State with which his personal and economic relations are closest (center of vital interests);

(b) if the Contracting State in which he has his center of vital interests cannot be determined, he shall be deemed to be a resident of that Contracting State in which he has a habitual abode;

(c) if he has a habitual abode in both Contracting States or in neither of the Contracting States, he shall be deemed to be a resident of the Contracting State of which he is a citizen; and

(d) if he is a citizen of both Contracting States or of neither Contracting State, the competent authorities of the Contracting States shall settle the question by mutual agreement.

For purposes of this paragraph, a permanent home is the place where an individual dwells with his family.

(3) An individual who is deemed to be a resident of one of the Contracting States and not a resident of the other Contracting State by reason of the provisions of paragraph (2) shall be deemed to be a resident only of the first mentioned Contracting State for all purposes of this Convention, including Article 28 (General Rules of Taxation).

(4) Where by reason of the provisions of paragraph (1) a company is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which it is organized or incorporated.

Article 5

Permanent Establishment

(1) For the purpose of this Convention, the term "permanent establishment" means a fixed place of business through which the business of a resident of one of the Contracting States is wholly or partly carried on.

(2) The term "permanent establishment" includes but is not limited to:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a farm or plantation;

(g) a warehouse;

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

(i) a building site or construction or assembly or installation project, or supervisory activities in connection therewith, or an installation or drilling rig or ship used for the exploration or exploitation of natural resources, which exists or continues for more than 120 days;

(j) the furnishing of services, including consultancy services, through employees or other personnel engaged for such purposes, but only where activities of that nature continue (for the same or connected project) for more than 120 days within any consecutive 12-month period, provided that a permanent establishment shall not exist in any taxable year in which such services are rendered in that State for a period or periods aggregating less than 30 days in that taxable year.

(3) Notwithstanding paragraphs (1) and (2), a permanent establishment shall not be deemed to exist by reason of one or more of the following:

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

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

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

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

(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 resident.

(4) A person acting in one of the Contracting States on behalf of a resident of the other Contracting State, other than an agent of an independent status to whom paragraph (5) applies, shall be deemed to be a permanent establishment in the first-mentioned Contracting State if such person:

(a) has and habitually exercises in the first-mentioned Contracting State, an authority to conclude contracts on behalf of that resident, 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; or

(b) has no such authority, but habitually maintains in the first mentioned State a stock of goods or merchandise belonging to the resident from which he regularly fills orders or makes deliveries on behalf of that resident and additional activities conducted in that State on behalf of the resident have contributed to the sale of such goods or merchandise.

(5) A resident of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because such resident carries on business in that other Contracting State through a broker, general commission agent, or any other agent of an independent status, where such broker or agent is acting in the ordinary course of his business.

(6) 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.

(7) An insurance company which is a resident of one of the Contracting States, shall, except with regard to reinsurance, be considered as having a permanent establishment in the other Contracting State if, through a person other than one described in paragraph (5), such company receives premiums from or insures risks in the territory of that other Contracting State.

Article 6

Income From Immovable (Real) Property

(1) Income from immovable property, including income in respect of the operation of mines, oil or gas wells, quarries, or other natural resources and gains derived from the sale, exchange, or other disposition of such property or of the right giving rise to such income, may be taxed by the Contracting State in which such immovable property, mines, oil or gas wells, quarries, or other natural resources are situated. For purposes of this Convention, interest on indebtedness secured by immovable property or secured by a right giving rise to income in respect of the operation of mines, quarries, or other natural resources shall not be regarded as income from immovable property.

(2) Paragraph (1) shall apply to income derived from the usufruct, direct use, letting, or use in any other form of immovable property.

(3) The provisions of paragraphs (1) and (2) 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

Source of Income

For purposes of this Convention:

(1) Dividends paid by a resident of a Contracting State shall be treated as income from sources within that State.

(2) Interest shall be treated as income from sources within a Contracting State only if paid by such Contracting State, a political subdivision or a local authority thereof, or by a resident of that Contracting State.

Notwithstanding the preceding sentence, if the person paying the interest (whether or not such person is a resident of one of the Contracting States) has a permanent establishment in one of the Contracting States and such interest is borne by such permanent establishment, such interest shall be deemed to be from sources within the Contracting State in which the permanent establishment is situated.

(3) Royalties described in paragraph (3) of Article 13 (Royalties) for the use of, or the right to use, property or rights described in such paragraph within a Contracting State shall be treated as income from sources within such Contracting State.

(4) Income from immovable property including income in respect of the operation of mines, oil wells, quarries, or other natural resources (including gains derived from the sale of such property or the right giving rise to such income) shall be treated as income from sources within a Contracting State only if such property is situated in that Contracting State.

(5) Income from the rental of tangible personal (movable) property, other than ships or aircraft or containers used in international traffic, shall be treated as income from sources within a Contracting State only if such property is situated in that Contracting State.

(6) Income received by an individual for his performance of labor or personal services, whether as an employee or in an independent capacity, shall be treated as income from sources within a Contracting State only to the extent that such services are performed in that Contracting State. Income from personal services performed

aboard ships or aircraft operated by a resident of one of the Contracting States in international traffic shall be treated as income from sources within that Contracting State if rendered by a member of the regular complement of the ship or aircraft. For purposes of this paragraph, income from labor or personal services includes pensions (as defined in paragraph (4) of Article 21 (Private Pensions and Annuities)) paid in respect of such services. Notwithstanding the preceding provisions of this paragraph, remuneration described in Article 22 (Social Security Payments) shall be treated as income from sources within a Contracting State only if paid by or from the public funds of that Contracting State or a political subdivision or local authority thereof.

(7) Income from the sale, exchange, or other disposition of property described in paragraph (1) (a) or (b) of Article 14 (Capital Gains) shall be treated as income from sources within Indonesia or the United States, as the case may be.

(8) Notwithstanding paragraphs (1) through (6), business profits which are attributable to a permanent establishment which the recipient, a resident of one of the Contracting States, has in the other Contracting State, including income derived from immovable property and natural resources and dividends, interest, royalties (as defined in paragraph (3) of Article 13 (Royalties)), and capital gains, shall be treated as income from sources within that other Contracting State, but only if the property or rights giving rise to such income, dividends, interest, royalties, or capital gains are effectively connected with such permanent establishment.

(9) The source of any item of income to which paragraphs (1) through (8) are not applicable shall be determined by each of the Contracting States in accordance with its own law. Notwithstanding the preceding sentence, if the source of any item of income under the laws of one Contracting State is different from the source of such item of income under the laws of the other Contracting State or if the source of such income is not readily determinable under the laws of one of the Contracting States, the competent authorities of the Contracting States may, in order to prevent double taxation or further any other purpose of this Convention, establish a common source of the item of income for purposes of this Convention.

Article 8

Business Profits

(1) Business profits of a resident of one of the Contracting States shall be exempt from tax by the other Contracting State unless such resident carries on business in that other Contracting State through a permanent establishment situated therein. If such resident carries on business as aforesaid, tax may be imposed by that other Contracting State on the business profits of such resident but only on so much of such profits as are attributable to the permanent establishment or are derived from sources within such other Contracting State from sales of goods or merchandise of the same kind as those sold, or from other business transactions of the same kinds as those effected, through the permanent establishment.

(2) Where a resident of one of the Contracting States carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to the permanent establishment the business profits which would be attributable to such permanent establishment if such permanent establishment were an independent entity engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the resident of which it is a permanent establishment.

(3) In the determination of the business profits of a permanent establishment, there shall be allowed as deduction expenses which are reasonably connected with such profits, including executive and general administrative expenses, whether incurred in the Contracting 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 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 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 by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

(4) No profits shall be attributed to a permanent establishment of a resident of one of the Contracting States in the other Contracting State merely by reason of the purchase of goods or merchandise by that permanent establishment, or by the resident of which it is a permanent establishment, for the account of that resident.

(5) Where business profits include items of income which are dealt with separately in other articles of this Convention, the provisions of those articles shall, except as otherwise provided therein, supersede the provisions of this Article.

Article 9

Shipping and Air Transport

(1) Notwithstanding Article 8 (Business Profits), a resident of a Contracting State shall be exempt from taxation by the other Contracting State with respect to income derived by that resident from the operation of ships or aircraft in international traffic.

(2) For the purposes of paragraph (1), income from the operation of ships or aircraft in international traffic includes:

(a) income from the rental of ships or aircraft in international traffic on a full basis;

(b) income from the rental of aircraft on a bareboat basis if the aircraft is operated in international traffic;

- (c) income from the rental of ships on a bareboat basis if the ship is operated in international traffic and the lessee is not a resident of the other Contracting State or a permanent establishment in that other State; and
- (d) income from the use or maintenance of containers (and related equipment for the transport of containers) used in international traffic if such income is incidental to the income described in paragraph 1.
- (3) Notwithstanding Article 14 (Capital Gains), gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic or containers (and related equipment for the transport of containers) used in international traffic shall be taxable only in that State.

Article 10

Related Persons

- (1) Where a resident of one of the Contracting States and any other person are related and where such related persons make arrangements or impose conditions between themselves which are different from those which would be made between independent persons, any income, deductions, credits, or allowances which would, but for those arrangements or conditions, have been taken into account in computing the income (or loss) of, or the tax payable by, one of such persons, may be taken into account in computing the amount of the income subject to tax and the taxes payable by such persons.
- (2) A person is related to another person if either person participates directly or indirectly in the management, control, or capital of the other, or if any third person or persons participates directly or indirectly in the management, control, or capital of both. For this purpose, the term "control" includes any kind of control, whether or not legally enforceable, and however exercised or exercisable.
- (3) Where a Contracting State includes in the profits of a resident of that State, and taxes accordingly, profits on which a resident of the other Contracting State has been charged to tax in that other State, and the profits so included are profits which would have accrued to the resident of the first-mentioned State if the conditions made between the two residents had been those which would have been made between independent persons, then that other 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 paid to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 11

Dividends

- (1) Dividends derived from sources within one of the Contracting States by a resident of the other Contracting State may be taxed by both Contracting States.
- (2) However, if the beneficial owner of the dividends is a resident of the other Contracting State, the tax charged by the first-mentioned State may not exceed 15 percent of the gross amount of the dividends actually distributed.
- (3) Paragraph (2) shall not apply if the recipient of the dividends, being a resident of one of the Contracting States, has a permanent establishment or fixed base in the other Contracting State and the shares with respect to which the dividends are paid are effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 8 (Business Profits) or Article 15 (Independent Personal Services) shall apply.
- (4) Where a company which is a resident of a Contracting State has a permanent establishment in the other Contracting State, that other State may impose an additional tax in accordance with its law on the profits attributable to the permanent establishment (after deducting therefrom the company tax and other taxes on income imposed thereon in that other State) and on interest payments allocable to the permanent establishment, but the additional tax so charged shall not exceed 15 percent.
- (5) The rate of tax referred to in paragraph (4) of this Article shall not affect the rate of any such additional tax contained in any production sharing contracts and contracts of work (or any other similar contracts) relating to oil and gas or other mineral products negotiated by the Government of Indonesia, its instrumentality, its relevant state oil company, or any other entity thereof with a person who is a resident of the United States.

Article 12

Interest

- (1) Interest derived from sources within one of the Contracting States by a resident of the other Contracting State may be taxed by both Contracting States.
- (2) The rate of tax imposed by one of the Contracting States on interest derived from sources within that Contracting State and beneficially owned by a resident of the other Contracting State shall not exceed 15 percent of the gross amount of such interest.
- (3) Notwithstanding paragraphs (1) and (2), interest derived from sources within one of the Contracting States by the other Contracting State or any agency or instrumentality of that other State not subject to tax by that State on its income shall be exempt from tax in the first-mentioned State.
- (4) Paragraph (2) shall not apply if the recipient of the interest, being a resident of one of the Contracting States, has a permanent establishment or fixed base in the other Contracting State and the indebtedness giving rise to the interest is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 8 (Business Profits) or Article 15 (Independent Personal Services) shall apply.
- (5) Where any amount designated as interest paid to any related person exceeds an amount which would have been paid to an unrelated person, the provisions of this Article shall apply only to so much of the interest as would have been paid to an unrelated person. In such a case the excess payment may be taxed by each Contracting State according to its own law, including the provisions of this Convention where applicable.

(6) The term "interest" as used in this Convention means income from bonds, debentures, Government securities, notes, or other evidences of indebtedness, whether or not secured by a mortgage or other security and whether or not carrying a right to participate in profits, and debt-claims of every kind, as well as all other income which, under the taxation law of the Contracting State in which the income has its source, is assimilated to income from money lent.

Article 13

Royalties

(1) Royalties derived from sources within one of the Contracting States by a resident of the other Contracting State may be taxed by both Contracting States.

(2) The rate of tax imposed by a Contracting State on royalties derived from sources within that Contracting State and beneficially owned by a resident of the other Contracting State shall not exceed 15 percent of the gross amount of royalties described in paragraph 3 (a) and 10 percent of the gross amount of royalties described in paragraph 3 (b).

(3) (a) The term "royalties" as used in this Article means payments of any kind made as consideration for the use of, or the right to use, copyrights of literary, artistic, or scientific works (including copyrights of motion pictures and films, tapes, or other means of reproduction used for radio or television broadcasting), patents, designs, models, plans, secret processes or formulas, trademarks, or for information concerning industrial, commercial, or scientific experience. It also includes gains derived from the sale, exchange, or other dispositions of any such property or rights to the extent that the amounts realized on such sale, exchange or other disposition for consideration are contingent on the productivity, use, or disposition of such property or rights.

(b) The term "royalties" as used in this Article also includes payments by a resident of one of the Contracting States for the use of, or the right to use, industrial, commercial or scientific equipment, but not including ships, aircraft, or containers the income from which is exempt from tax by the other Contracting State under Article 9 (Shipping and Air Transport).

(4) Paragraph (2) shall not apply if the recipient of the royalty, being a resident of one of the Contracting States, has in the other Contracting State a permanent establishment or fixed base and the property or rights giving rise to the royalty is effectively connected with such permanent establishment. In such a case the provisions of Article 8 (Business Profits) or Article 15 (Independent Personal Services) shall apply.

(5) Where any amount designated as a royalty paid to any related person exceeds an amount which would have been paid to an unrelated person, the provisions of this Article shall apply only to so much of the royalty as would have been paid to an unrelated person. In such a case the excess payment may be taxed by each Contracting State according to its own law, including the provisions of this Convention where applicable.

Article 14

Capital Gains

(1) Gains derived by a resident of a Contracting State from the alienation of property described in Article 6 (Income from Immovable (Real) Property) and situated in the other Contracting State may be taxed in that other State. The term "property described in Article 6 (Income from Immovable (Real) Property) situated within the other Contracting State" includes:

(a) Where Indonesia is the other Contracting State, an interest in real property situated in Indonesia; and

(b) Where the United States is the other Contracting State, a United States real property interest.

(2) A resident of one of the Contracting States shall be exempt from tax by the other Contracting State on gains derived from the sale, exchange, or other disposition of capital assets other than assets described in paragraph (1) unless:

(a) The recipient of the gain has a permanent establishment or fixed base in the other Contracting State and the property, giving rise to the gain is effectively connected with such permanent establishment or fixed base, in which case the provisions of Article 8 (Business Profits) or Article 15 (Independent Personal Services) shall apply; or

(b) The recipient of the gain is an individual and is present in the other Contracting State for a period or periods aggregating 120 days or more during the taxable year.

(3) Notwithstanding paragraph (2), gains derived by a resident of a Contracting State from the deemed alienation of assets described in paragraph (2) (i) of Article 5 (Permanent Establishment) and used for the exploration for or exploitation of oil and gas resources shall be taxable only in that State.

Article 15

Independent Personal Services

(1) Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

(a) If he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or

(b) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 120 days in any consecutive 12-month period; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

Article 16
Dependent Personal Services

(1) Wages, salaries, and similar remuneration derived by an individual who is a resident of one of the Contracting States from labor or personal services performed as an employee, including income from services performed by an officer of a corporation or company, may be taxed by that Contracting State. Except as provided by paragraph (2), such remuneration derived from sources within the other Contracting State may also be taxed by that other Contracting State.

(2) Remuneration described in paragraph (1) derived by an individual who is a resident of one of the Contracting States shall be exempt from tax by the other Contracting State if:

- (a) he is present in that other Contracting State for a period or periods aggregating less than 120 days in any consecutive 12-month period; 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 as such or reimbursed by a permanent establishment which the employer has in that other Contracting State.

(3) Notwithstanding paragraph (2), remuneration derived by an individual from the performance of labor or personal services as an employee aboard ships or aircraft operated by a resident of one of the Contracting States in international traffic shall be exempt from tax by the other Contracting State if such individual is a member of the regular complement of the ship or aircraft.

Article 17
Artistes and Athletes

(1) Notwithstanding Article 15 (Independent Personal Services) and 16 (Dependent Personal Services), income derived by public entertainers, such as theatre, motion picture, radio, or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which those activities are exercised if the gross amount of such remuneration, including expenses reimbursed to him or borne on his behalf, exceeds in the aggregate 2,000 United States dollars or its equivalent in Indonesian rupiahs in any consecutive 12-month period.

(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 is diverted to another person, that income may, notwithstanding the provisions of Article 8 (Business Profits) and 15 (Independent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

(3) The provisions of paragraphs 1 and 2 shall not apply to remuneration or profits derived from activities exercised in a Contracting State if the visit to that State is substantially supported or specialized by the other Contracting State and is certified by the competent authority of the sending State to qualify under this provision.

Article 18
Government Service

(1) (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to any individual in respect to services rendered to that State or political subdivision or local authority thereof 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 State and the recipient is a resident of that State who:

- (i) is a national of that State; or
- (ii) did not become a resident of that State solely for the purpose of performing the services.

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

(3) The provisions of Articles 15 (Independent Personal Services), 16 (Dependent Personal Services), and 21 (Private Pensions and Annuities) shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 19
Students and Trainees

(1) (a) 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 the other State solely:

(i) as a student at a recognized university, college, school, or other similar recognized educational institution in that other State, or

(ii) as a recipient of a grant, allowance, or award for the primary purpose of study, research, or training from the Government of either State or from a scientific, educational, religious, or charitable organization, or under a technical assistance program entered into by the Government of either State;

shall be exempt from tax in that other State for a period not exceeding five years from his date of arrival in that other State on amounts described in subparagraph (b).

(b) The amounts referred to in subparagraph (a) are:

- (i) all remittances from abroad for the purposes of his maintenance, education, study, research, or training;

- (ii) the amount of such grant, allowance, or award; and
 - (iii) any remuneration not exceeding two thousand United States dollars or its equivalent in Indonesian rupiahs per year in respect of services in that other State, provided the services are performed in connection with his study, research, or training, or are necessary for the purposes of his maintenance.
- (2) 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 the other State solely as a business or technical apprentice shall be exempt from tax in that other State for a period not exceeding twelve consecutive months on his income from personal services in an aggregate amount not in excess of 7,500 United States dollars or its equivalent in Indonesian rupiahs.

Article 20 **Teachers and Researchers**

- (1) 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 a university, college, school, or other similar educational institution, visits that other State solely for the purpose of teaching or research or both at such educational institution shall be exempt from tax in that other State on any remuneration for such teaching or research for a period not exceeding two years from his date of arrival in that other State. An individual shall be entitled to the benefits of this paragraph only once.
- (2) This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

Article 21 **Private Pensions and Annuities**

- (1) Except as provided in Article 18 (Government Service), pension and other similar remuneration in consideration of past employment derived from sources within one of the Contracting States by a resident of the other Contracting State may be taxed by both Contracting States. If the beneficial owner of pensions and other similar remuneration is a resident of the other Contracting State, the tax so charged may not exceed 15 percent of the gross amount thereof.
- (2) Annuities paid to an individual who is a resident of one of the Contracting States shall be taxable only in that Contracting State.
- (3) Alimony and child support payments made by an individual who is a resident of one of the Contracting States to an individual who is a resident of the other Contracting State shall be exempt from tax in that other Contracting State.
- (4) The term "pensions and other similar remuneration", as used in this Article, means payments made by reason of retirement or death in consideration for services rendered, or by way of compensation for injuries received in connection with past employment.
- (5) The term "annuities", as used in this Article, means a stated sum paid periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).
- (6) The term "alimony", as used in this Article, means periodic payments made pursuant to a decree of divorce, separate maintenance agreement, or support or separation agreement.

Article 22 **Social Security Payments**

Social security payments and similar benefits paid out of public funds by one of the Contracting States to an individual who is a resident of the other Contracting State or a citizen of the United States shall be taxable only in the first-mentioned Contracting State. This article shall not apply to payments described in Article 18 (Government Service).

Article 23 **Relief From Double Taxation**

Double taxation of income shall be avoided in the following manner:

- (1) In accordance with the provisions and subject to the limitations of the law of the United States, as in force from time to time, the United States shall allow to a citizen or resident of the United States as a credit against the United States tax the appropriate amount of Indonesian tax. Such appropriate amount shall be based upon the amount of tax paid to Indonesia, but the credit shall not exceed the limitations provided by United States law for the taxable year. For the purpose of applying the United States credit in relation to taxes paid to Indonesia, the rules set forth in Article 7 (Source of Income) shall be applied to determine the source of income, subject to such source rules in domestic law as apply solely for the purposes of limiting the foreign tax credit.
- (2) In accordance with the provisions and subject to the limitations of the law of Indonesia, as in force from time to time, Indonesia shall allow to a resident of Indonesia as a credit against Indonesian tax the appropriate amount of income taxes paid to the United States. Such appropriate amount shall be based upon the amount of tax paid to the United States but shall not exceed the limitations provided by Indonesian law for the taxable year. For the purpose of applying the Indonesian credit in relation to taxes paid to the United States, the rules set forth in Article 7 (Source of Income) shall be applied to determine the source of income.

Article 24

Non-Discrimination

- (1) A citizen of one of the Contracting States who is a resident of the other Contracting State shall not be subjected in that other Contracting State to more burdensome taxes or connected requirements than a citizen of that other Contracting State who is a resident thereof under the same conditions or circumstances.
- (2) Except as provided in paragraph 4 of Article 11 (Dividends), a permanent establishment which a resident of one of the Contracting States has in the other Contracting State shall not be subject in that other Contracting State to more burdensome taxes or connected requirements than a resident of that other Contracting State carrying on the same activities. This paragraph shall not be construed as obliging a Contracting State to grant to individual residents of the other Contracting State any personal allowances, reliefs, or deductions for taxation purposes on account of civil status or family responsibilities which it grants to its own individual residents.
- (3) A corporation of one of the Contracting States, the capital of which is wholly or partly owned or controlled 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 a corporation of the first-mentioned Contracting State carrying on the same activities, the capital of which is wholly owned or controlled by one or more residents of the first-mentioned Contracting State, is or may be subjected.
- (4) Except where the provisions of paragraph 1 of Article 10 (Related Persons), paragraph 5 of Article 12 (Interest), or paragraph 5 of Article 13 (Royalties) apply, interest, royalties, and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable profits of the first-mentioned resident, be deductible under the same conditions (including rules governing the allowable debt to equity ratio) as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of a resident of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of the first-mentioned resident, be deductible under the same conditions (including rules governing the allowable debt to equity ratio) as if they had been contracted to a resident of the first-mentioned State.
- (5) For the purposes of this Article, the Convention shall apply, notwithstanding the provisions of Article 2 (Taxes Covered), to taxes of every kind imposed by a Contracting State.

Article 25

Mutual Agreement Procedure

- (1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24 (Non-discrimination), to that of the Contracting State of which he is a national. The case must be presented within three years of the first notification of that action. Where a combination of decisions or actions taken in both Contracting States results in taxation not in accordance with the provisions of the Convention, the three years begins to run only from the first notification of the most recent action or decision.
- (2) The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at 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 the Convention. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the Contracting States.
- (3) The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties arising as to the application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.
- (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 this Article. When it seems advisable for the purpose of reaching agreement, the competent authorities may meet together for an oral exchange of opinions.

Article 26

Exchange of Information

- (1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1 (Personal Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to Persons or authorities (including courts and administrative bodies) involved in the assessment, collection or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
- (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.
- (3) If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same manner and to the same extent as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State. If specifically, requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts, and writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of that other State with respect to its own taxes.
- (4) The exchange of information shall be either on a routine basis or on request with reference to particular cases. The competent authorities of the Contracting States may agree on the list of information which shall be furnished on a routine basis.
- (5) The competent authorities of the Contracting States shall notify each other of the publication by their respective Contracting States of any material concerning the application of this Convention, whether in the form of legislation, regulations, rulings, or judicial decisions by transmitting in the ensuing calendar year the texts of any such materials adopted in the course of any given calendar year.
- (6) For the purpose of this Article, the Convention shall apply, notwithstanding the provisions of Article 2 (Taxes Covered), to taxes of every kind imposed by a Contracting State.

Article 27
Diplomatic and Consular Officers

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

Article 28
General Rules of Taxation

- (1) A resident of one of the Contracting States may be taxed by the other Contracting State on any income from sources within that other Contracting State and only on such income, subject to any limitations set forth in this Convention. For this purpose, the rules set forth in Article 7 (Source of Income) shall be applied to determine the source of income.
- (2) The provisions of this Convention shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit, or other allowance new or hereafter accorded:
- (a) by the laws of one of the Contracting States in the determination of the tax imposed by that Contracting State, or
- (b) by any other agreement between the Contracting States.
- (3) Notwithstanding any provisions of this Convention, except paragraph (4), a Contracting State may tax a citizen or resident of that Contracting State as if this Convention had not come into effect. For this purposes, the term "citizen" shall include a former citizen whose loss of citizenship had as one of the principal purposes the avoidance of tax but only for a period of ten years following such loss.
- (4) The provisions of paragraph (3) shall not affect:
- (a) the benefits conferred by a Contracting State under paragraph (3) of Article 10 (Related Persons), paragraph (3) of Article 21 (Private Pensions and Annuities), Articles 22 (Social Security Payments), 23 (Relief from Double Taxation), 24 (Non-discrimination), and 25 (Mutual Agreement Procedure); and
- (b) the benefits conferred by a Contracting State under Articles 18 (Government Service), 19 (Students and Trainees), 20 (Teachers and Researchers), and 27 (Diplomatic and Consular Officers), upon individuals who are neither citizens of, nor have immigrant status in that Contracting State.
- (5) The competent authorities of the Contracting States may each prescribe regulations necessary to carry out the provisions of this Convention.
- (6) Except as provided in paragraph 7, a person (other than an individual) which is a resident of a Contracting State shall not be entitled under this Convention to relief from taxation in the other Contracting State unless:
- (a) more than 50 percent of the beneficial interest in such person (or in the case of a company, more than 50 percent of the number of shares of each class of the company's shares) is owned directly or indirectly by any combination of one or more of:
- (i) individuals who are residents of the United States;
- (ii) citizens of the United States;
- (iii) individuals who are residents of Indonesia;
- (iv) companies as described in paragraph (7) (a); and
- (v) the Contracting States; and
- (b) the income of such person is not used in substantial part, directly or indirectly, to meet liabilities (including liabilities for interest or royalties) to persons other than those enumerated in subparagraphs (a) (i) through (v).
- (7) The provisions of paragraph (6) shall not apply if:
- (a) the person is a company in whose principal class of shares there is substantial and regular trading on a recognized stock exchange; or
- (b) the establishment, acquisition, and maintenance of such person and the conduct of its operations did not have as a principal purpose the purpose of obtaining benefits under the Convention.
- (8) For the purposes of paragraph (7) (a), the term "recognized stock exchange" means:

- (a) the NASDAQ System owned by the National Association of Securities Dealers, Inc., and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for the purposes of the Securities Exchange Act of 1934; and
- (b) the Jakarta stock exchange; and
- (c) any other stock exchange agreed upon by the competent authorities of the Contracting States.

Article 29

Assistance In Collection

(1) Each of the Contracting States shall endeavor to collect on behalf of the other Contracting State such taxes imposed by that other Contracting State such taxes imposed by that other Contracting State as will ensure that any exemption or reduced rate of tax granted under this Convention by that other Contracting State shall not be enjoyed by persons not entitled to such benefits. The competent authorities of the Contracting States may consult together for the purpose of giving effect to this Article.

(2) In no case shall this Article be construed so as to impose upon a Contracting State the obligation to carry out administrative measures at variance with the regulations and practices of either Contracting State or which would be contrary to the first-mentioned Contracting State sovereignty, security, or public policy.

Article 30

Entry Into Force

This Convention shall be subject to ratification and instruments of ratification shall be exchanged at Washington as soon as possible. It shall enter into force one month after the date of exchange of the instruments of ratification. The provisions shall for the first time have effect with respect to taxes withheld at source in accordance with Articles 11 (Dividends), 12 (Interest), and 13 (Royalties), for amount paid or credited on or after the first day of the second month next following the date on which the Convention enters into force, and with respect to other taxes for calendar years or taxable years beginning on or after January 1 of the year in which this Convention enters into force.

Article 31

Termination

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention at any time after 5 years from the date on which the Convention enters into force provided that at least 6 months prior notice of termination has been given through diplomatic channels. In such event, the Convention shall cease to have force and effect as respects income at calendar years or taxable years beginning (or, in the case of taxes payable at the source, payment made) on or after January 1 next following the expiration of the 6 month period.

DONE at Jakarta, in duplicate, in the English language, this eleventh day of July 1988.

For the Government of

For the Government of

the Republic of Indonesia;

The United States of America;

PROTOCOL

At the moment of signing the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion, the undersigned have agreed upon the following understandings:

It is agreed that the provisions of this Convention do not prejudice the legal rights of residents of a Contracting State concerning the taxation by the other Contracting State of income from the operation of ships or aircraft in international traffic with respect to taxable years beginning before January 1 of the year in which this Convention enters into force.

Ad Article 5, paragraph 3

It is agreed that for purposes of this paragraph the term "permanent establishment" shall not be deemed to include the use of facilities or the maintenance of a stock of goods or merchandise belonging to the enterprise for the purpose of occasional delivery of such goods or merchandise.

Ad Article 11, paragraph 4

It is agreed that the tax on interest payments permitted by this paragraph will apply, in the case of the United States, to the excess, if any, of interest deducted in determining the profits of the permanent establishment over the actual payment of interest by the permanent establishment. A permanent establishment may deduct an allocable portion of the interest expense of the home office. Where that deduction exceeds the amount of interest actually paid by the permanent establishment, the excess deduction is treated as if it were remitted to the home office subject to the additional tax under this paragraph.

DONE at Jakarta, in duplicate, in the English language this eleventh day of July 1988.

For the Government of

For the Government of

the Republic of Indonesia;

The United States of America;

PROTOCOL AMENDING THE CONVENTION

BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF INDONESIA
AND
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
FOR

THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH
RESPECT TO TAXES ON INCOME, WITH A RELATED PROTOCOL AND EXCHANGE OF NOTES SIGNED
AT JAKARTA ON THE 11TH DAY OF JULY, 1988

The Government of the Republic of Indonesia and the Government of the United States of America, desiring to conclude a protocol to amend the Convention between the Government of the Republic of Indonesia and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to taxes on Income, with a related protocol and exchange of notes signed at Jakarta on the 11th day of July, 1988, have agreed as follows:

Article 1

1. Paragraph 2 of Article 11 of the Convention shall be deleted and replaced by the following:
“However, if the beneficial owner of the dividends is a resident of the other Contracting State, the tax charged by the first-mentioned State may not exceed:
(a) 10% of the gross amount of the dividends if the beneficial owner is a company that owns directly at least 25% of the voting stock of the company paying the dividends;
(b) 15% of the gross amount of the dividends in all other cases.”
2. Paragraph 4 of Article 11 of the Convention shall be deleted and replaced by the following:

“Where a company which is a resident of a Contracting State has a permanent establishment in the other Contracting State, that other State may impose an additional tax in accordance with its law on the profits attributable to the permanent establishment (after deducting therefrom the company tax and other taxes on income imposed thereon in that other State) and on interest payments allocable to the permanent establishment, but the additional tax so charged shall not exceed 10%.”

Article 2

- Paragraph 2 and 3 of Article 12 of the Convention shall be deleted and replaced by the following:
“(2) The rate of tax imposed by one of the Contracting States on interest derived from sources within that Contracting State and beneficially owned by a resident of the other Contracting State shall not exceed 10% of the gross amount of such interest.
(3) Notwithstanding paragraphs 1 and 2, interest arising in one of the two States shall be taxable only in the other State to the extent that such interest is derived by:
(i) The Government of the other State, including political subdivisions and local authorities thereof; or
(ii) The Central Bank of the other State; or
(iii) A financial institution owned or controlled by the Government of the other State, including political subdivisions and local authorities thereof.”

Article 3

- Paragraph 2 of Article 13 of the Convention shall be deleted and replaced by the following:
“(2) The rate of tax imposed by a Contracting State on royalties derived from sources within that Contracting State and beneficially owned by a resident of the other Contracting State shall not exceed 10% of the gross amount of royalties described in paragraph 3.”

Article 4

This Protocol shall be an integral and inseparable part of the Convention between the Government of the Republic of Indonesia and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, with a related protocol and exchange of notes signed at Jakarta on the 11th day of July, 1988.

Article 5

This Protocol shall be subject to ratification and instruments of ratification shall be exchanged as soon as possible. It shall enter into force on the date of exchange of the instruments of ratification. The provisions shall for the first time have effect for amounts paid or credited on or after the first day of the second month next following the date on which the Protocol enters into force.

In witness whereof, the undersigned, duly authorized thereto by their respective Governments, have signed this Protocol.

Done at Jakarta, in duplicate, in the English language, this 24th day of July, 1996.
For the Government of _____ For the Government of _____

the Republic of Indonesia;

The United States of America;

AGREEMENT

BETWEEN

JAPAN

AND

THE REPUBLIC OF INDONESIA

FOR

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

The Government of Japan and the Government of the Republic of Indonesia,

DESIRING to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

HAVE AGREED AS FOLLOWS:

Article 1

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

Article 2

1. The taxes which are the subject of this Agreement are:

(a) in Japan:

(i) the income tax; and

(ii) the corporation tax

(hereinafter referred to as "Japanese tax");

(b) in Indonesia:

(i) the income tax (Pajak Pendapatan), and

(ii) the company tax (Pajak Perseroan) including any withholding tax, prepayment or advance payment with respect to the aforesaid taxes;

and

(iii) the tax on interest, dividend and royalty (Pajak Atas Bunga, Dividen dan Royalty)

(hereinafter referred to as "Indonesian tax").

2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, those referred to in paragraph 1. The

competent authorities of the Contracting States shall notify each other of any changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

Article 3

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

- (a) the term "Indonesia" comprises the territory of the Republic of Indonesia as defined in its laws and parts of the continental shelf and adjacent seas, over which the Republic of Indonesia has sovereignty, sovereign rights or other rights in accordance with international law;
- (b) the term "Japan", when used in a geographical sense, means all the territory of Japan, including its territorial sea, in which the laws relating to Japanese tax are in force, and all the area beyond its territorial sea, including the seabed and sub-soil thereof, over which Japan has jurisdiction in accordance with international law and in which the laws relating to Japanese tax are in force;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Japan or Indonesia, as the context requires;
- (d) the term "tax" means Japanese tax or Indonesian tax, as the context requires;
- (e) the term "person" includes an individual, a company and any other body of persons;
- (f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (g) 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;
- (h) the term "nationals" means all individuals possessing the nationality of either Contracting State and all juridical persons created or organized under the laws of that Contracting State and all organizations without juridical personality treated for the purposes of tax of that Contracting State as juridical persons created or organized under the laws of that Contracting State;
- (i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (j) the term "competent authority", in relation to a Contracting State, means the Minister of Finance of that Contracting State or his authorized representative.

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

Article 4

- 1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of head or main office, place of management or any other criterion of a similar nature.
- 2. Where by reason of the provisions of paragraph 1 a person is a resident of both Contracting States, then the competent authorities of the Contracting States shall determine by mutual agreement the Contracting State of which that person shall be deemed to be a resident for the purposes of this Agreement.

Article 5

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 farm or plantation;
 - (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than six months.
4. Notwithstanding the provisions of the preceding paragraphs, 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 scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise;
 - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it furnishes in that other Contracting State consultancy services, or supervisory services in connection with a building, construction or installation project through employees or other personnel -- other than an agent of an independent status to whom the provisions of paragraph 8 apply -- provided that such activities continue (for the same project or two or more connected projects) for a period or periods aggregating more than six months within any taxable year. However, if the furnishing of such services is effected under an agreement between the Governments of the two Contracting States regarding economic or technical cooperation, that enterprise shall, notwithstanding any provisions of this Article, not be deemed to have a permanent establishment in that other Contracting State.
6. Where a person (other than an agent of an independent status to whom the provisions of paragraph 8 apply) 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:

- (a) that person has, and habitually exercises in the first-mentioned Contracting State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to those mentioned in paragraph 4; or
 - (b) that person maintains in the first-mentioned Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise.
7. 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 8.
 8. 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.
 9. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other Contracting State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other Contracting State.
2. The term "immovable property" shall have the meaning which it has under the 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 immovable 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 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 income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

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 that other Contracting State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In 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.

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

Article 8

1. Profits from the operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State shall be taxable only in that Contracting State.
2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or the international operating agency but only so much of them as is attributable to the participating enterprise in proportion to its share in such joint operation.

Article 9

Where:

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Article 10

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:
 - (a) 10 percent of the gross amount of the dividends if the beneficial owner is a company which owns at least 25 percent of the voting shares of the company paying the dividends during the period of twelve months immediately before the end of the accounting period for which the distribution of profits takes place;
 - (b) 15 percent of the gross amount of the dividends in all other cases.

The provisions of 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 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 taxation 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 insofar as such dividends are paid to a resident of that other Contracting State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment 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 that other Contracting State.

Article 11

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.
2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 percent 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 political subdivisions and local authorities thereof, the Central Bank of that other Contracting State or any financial institution wholly owned by that Government, or by any resident of the other Contracting State with respect to debt-claims guaranteed or indirectly financed by the Government of that other Contracting State including political subdivisions and local authorities thereof, the Central Bank of that other Contracting State or any financial institution wholly owned by the Government shall be exempt from tax in the first-mentioned Contracting State.
4. For the purposes of paragraph 3, the terms "the Central Bank" and "financial institution wholly owned by the Government" means:
 - (a) in the case of Japan:
 - (i) the Bank of Japan;
 - (ii) the Export-Import Bank of Japan;
 - (iii) the Overseas Economic Cooperation Fund;
 - (iv) the Japan International Cooperation Agency; and
 - (v) such other financial institution the capital of which is wholly owned by the Government of Japan may be agreed upon from time to time between the Governments of the two Contracting States;
 - (b) in the case of Indonesia:
 - (i) the Bank of Indonesia; and

- (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 Governments of the two Contracting States.
5. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from Government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures.
 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 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 such permanent establishment or fixed base. 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 Contracting State itself, a political subdivision or a local authority thereof, 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.
 8. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12

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 percent 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 and 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 Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with 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. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision or a local authority thereof, 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 a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13

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 any property, other than immovable 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 any property, other than immovable 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 together with the whole enterprise) or of such a fixed base, may be taxed in that other Contracting State.
3. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic and any property, other than immovable property, pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State.
4. Gains from the alienation of any property other than that referred to in the preceding paragraphs shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

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 the 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 in the calendar year concerned. 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, 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

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 Contracting State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned Contracting State, if:
 - (a) the recipient is present in that other Contracting State for a period of periods not exceeding in the aggregate 183 days in the calendar year concerned; and
 - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other Contracting State; and

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

3. Notwithstanding the provisions of paragraphs 1 and 2, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that Contracting State.

Article 16

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

Article 17

1. Notwithstanding the provisions of Articles 14 and 15, income derived by an entertainer, such as a theatre, motion picture, radio or television artiste, and a musician, or by an athlete, from his personal activities as such may be taxed in the Contracting State in which these activities of the entertainer or athlete are exercised.

Such income shall, however, be exempt from tax in that Contracting State if such activities are exercised by an individual, being a resident of the other Contracting State, pursuant to a special programme for cultural exchange agreed upon between the Governments of the two Contracting States.

2. Where income in respect of personal activities as such of an entertainer or athlete accrues not to that 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.

Such income shall, however, be exempt from tax in that Contracting State if such income is derived from the activities exercised by an individual, being a resident of the other Contracting State, pursuant to a special programme for cultural exchange agreed upon between the Governments of the two Contracting States and accrues to another person who is a resident of that other Contracting State.

Article 18

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 Contracting State.

Article 19

1. (a) Remuneration, other than a pension, paid by a Contracting State, or a political subdivision or a local authority thereof, to an individual in respect of services rendered to that Contracting State, or political subdivision or local authority thereof, in the discharge of functions of a governmental nature, 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 other Contracting State who:

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

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

2. (a) Any pension paid by, or out of funds to which contributions are made by, a Contracting State, or a political subdivision or a local authority thereof, to an individual in respect of services rendered to that

Contracting State or political subdivision or local authority thereof, 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 or 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

A professor or teacher who makes a temporary visit to a Contracting State for a period not exceeding two years for the purpose of teaching or conducting research at a university, college, school or other accredited educational institution, and who is, immediately before such visit was a resident of the other Contracting State shall be taxable only in that other Contracting State in respect of remuneration for such teaching or research.

Article 21

1. An individual who was 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 university, college, school or other accredited educational institution in that other Contracting State; or
- (b) as a recipient of a grant, allowance or award for the primary purpose of study or research from a governmental, religious, charitable, scientific, literary or educational organization; or
- (c) as a business apprentice;

shall be exempt from tax in that other Contracting State, for a period not exceeding five taxable years from the date of his first arrival in that other Contracting State, in respect of:

- (i) remittances from abroad for the purpose of his maintenance, education, study, research or training;
- (ii) the grant, allowance or award;
- (iii) remuneration for personal services in that other Contracting State paid by his employer who is a resident of the first-mentioned Contracting State; and
- (iv) remuneration for personal services in that other Contracting State other than the remuneration referred to in sub-paragraph (iii) not exceeding the sum of 600,000 Yen if that other Contracting State is Japan, or 900,000 Indonesian Rupiahs if that other Contracting State is Indonesia, during any calendar year.

2. An individual who was 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 for a period not exceeding twelve months as an employee of, or under contract with, an enterprise of the first-mentioned Contracting State, or an organization referred to in sub-paragraph (b) of paragraph 1, solely to acquire technical, professional or business experience, shall be exempt from tax in that other Contracting State on the remuneration for such period for his services directly related to the acquisition of such experience, if the total amount of such remuneration received from abroad by such individual and of remuneration paid in that other Contracting State does not exceed the sum of 1,800,000 Yen if that other Contracting State is Japan, or 2,700,000 Indonesian Rupiahs if that other Contracting State is Indonesia, during any calendar year.

3. An individual who was 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 for a period not exceeding

twelve months under arrangements with the Government of that other Contracting State, solely for the purpose of study, research or training, shall be exempt from tax in that other Contracting State on remuneration for his services directly related to such study, research or training.

4. Notwithstanding the provisions of paragraphs 1, 2 and 3, as respects a period throughout which an individual qualifies for exemption under two or all of these paragraphs, he shall only be entitled to exemption under such one of the paragraphs under which he so qualifies as he may select.
5. For the purposes of this Article, the term "Government" shall be deemed to include any political subdivision or local authority of a Contracting State.

Article 22

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 in only in that Contracting State.
2. The provisions of paragraph 1 shall not apply to income other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

Article 23

1. Subject to the laws of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan:
 - (a) Where a resident of Japan derives income from Indonesia and that income may be taxed in Indonesia in accordance with the provisions of this Agreement, the amount of Indonesian tax payable in respect of that income shall be allowed as a credit against the Japanese tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Japanese tax which is appropriate to that income.
 - (b) Where the income derived from Indonesia is a dividend paid by a company which is a resident of Indonesia to a company which is a resident of Japan and which owns not less than 25 percent either of the voting shares of the company paying the dividend or of the total shares issued by that company, the credit shall take into account Indonesian tax payable by the company paying the dividend in respect of its income.
2. (a) For the purposes of sub-paragraph (a) of paragraph 1, Indonesian tax shall always be deemed to have been paid at the rate of 10 percent in the case of dividends to which the provisions of sub-paragraph (a) of paragraph 2 of Article 10 apply, of interest to which the provisions of paragraph 2 of Article 11 apply, and of royalties to which the provisions of paragraph 2 of Article 12 apply, and at the rate of 15 percent in the case of dividends to which the provisions of sub-paragraph (b) of paragraph 2 of Article 10 apply, if:
 - (i) such dividends, interest or royalties are paid by a company which is a resident of Indonesia and which, at the time of the payment, is engaged in the preferred areas of investment under Law No. 1 of 1967 regarding Foreign Capital Investment as amended by Article 1 of Law No. 11 of 1970 regarding Amendment and Supplement to Law No. 1 of 1967 regarding Foreign Capital Investment, so far as it has not been modified since the date of signature of this Agreement, or has been modified only in minor respects so as not to affect its general character;
 - (ii) such dividends, interest or royalties are those in respect of which Indonesian tax is exempted or reduced in accordance with the provisions of paragraph 3 of Article 16 of Law No. 1 of 1967 as amended, as referred to in (i) above; or (iii) such dividends, interest or royalties are those in respect of which Indonesian tax is exempted or reduced in accordance with any other special incentive measures designed to promote economic development in Indonesia which may be

introduced in the Indonesian laws after the date of signature of this Agreement, and which may be agreed upon by the Governments of the two Contracting States.

(b) For the purposes of sub-paragraph (b) of paragraph 1, the term "Indonesian tax payable" shall be deemed to include the amount of Indonesian tax which would have been paid if the Indonesian tax had not been exempted or reduced in accordance with:

(i) the provisions of paragraphs 1, 2 and 3 of Article 16 of Law No. 1 of 1967 as amended, as referred to in sub-paragraph (a)(i);

(ii) the provisions of sub-paragraph (d) of paragraph 4 of Article 15 of Law No. 1 of 1967 as amended, as referred to in sub-paragraph (a)(i); or

(iii) any other special incentive measures designed to promote economic development in Indonesia which may be introduced in the Indonesian laws after the date of signature of this Agreement, and which may be agreed upon by the Governments of the two Contracting States.

3. In Indonesia, double taxation shall be eliminated 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 Japan in accordance with the provisions of this Agreement;

(b) Where a resident of Indonesia derives income from Japan and that income may be taxed in Japan in accordance with the provisions of this Agreement, the amount of Japanese tax payable in respect of that 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 that income.

Article 24

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. Except where the provisions of Article 9, paragraph 8 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Contracting State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned Contracting State are or may be subjected.

5. Notwithstanding the provisions of the preceding paragraphs, Indonesia may limit to its nationals the enjoyment of tax incentives granted under:

- (a) Law No. 6 of 1968 regarding Domestic Capital Investment, so far as it has not been modified since the date of signature of this Agreement, or has been modified only in minor respects so as not to affect its general character; or
- (b) any other enactment which may be promulgated by Indonesia in pursuance of its programme of economic development and to which the Governments of the two Contracting States may agree that the provisions of the preceding paragraphs shall not apply.

6. In this Article the term "taxation" means the taxes which are the subject of this Agreement.

Article 25

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 Contracting States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.
2. The competent authority shall 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 the provisions of this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 26

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of the provisions of this Agreement or for the prevention of fiscal evasion or for the administration of statutory provisions against tax avoidance in relation to the taxes which are the subject of this Agreement.

Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those including a court, concerned with the assessment and collection 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; or
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

Article 27

Nothing in this Agreement shall be construed as preventing the Governments of the two Contracting States from making special arrangements on taxation such as those on tax exemption in connection with the economic or technical cooperation between the two Contracting States.

Article 28

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 arrangements.

Article 29

1. This Agreement shall be ratified and the instruments of ratification shall be exchanged at Jakarta as soon as possible.
2. This Agreement shall enter into force on the thirtieth day after the date of the exchange of instruments of ratification and shall have effect, in both Contracting States, as respects income derived during any taxable year beginning on or after the first day of January of the calendar year next following that in which this Agreement enters into force.

Article 30

This Agreement shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of three years from the date of its entry into force, give to the other Contracting State, through the diplomatic channels, written notice of termination.

In such event this Agreement shall cease to have effect, in both Contracting States, as respects income derived during any taxable year beginning on or after the first day of January of the calendar year next following that in which the notice is given.

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

DONE in duplicate at Tokyo on the 3rd day of March, 1982, in the English language.

For the Government of

Japan

Yoshio Sakurachi

For the Government of

the Republic of Indonesia

Suryohadiprojo

PROTOCOL

At the signing of the Agreement between Japan and the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (hereinafter referred to as "the Agreement"), the undersigned have agreed upon the following provisions which form an integral part of the Agreement.

1. With reference to paragraph 8 of Article 5 of the Agreement, where a broker, general commission agent or any other agent is acting in a Contracting State wholly or almost wholly for an enterprise of the other Contracting State, he shall not be considered as having an independent status within the meaning of the said paragraph.
2. With reference to Article 8 of the Agreement, the profits from the operation of ships within the meaning of the said Article shall comprise only those derived by an enterprise of a Contracting State which carries on shipping business on its own account and responsibility.

3. With reference to Article 16 of the Agreement, the term "a member of the board of directors of a company" shall include managing directors (anggota pengurus) and supervisory directors (anggota dewan komisaris) of a company which is a resident of Indonesia.
4. For the purposes of sub-paragraph (b) of paragraph 2 of Article 23 of the Agreement, the term "Indonesian tax payable" shall not include the amount of the Indonesian tax which would have been paid if there had not been carried over or carried back the losses incurred by a company which is a resident of Indonesia by application of investment allowance in accordance with the provisions or measures referred to in the said sub-paragraph, except in the case of a company which is a resident of Indonesia for which Indonesian tax has been exempted or reduced in accordance with the provisions of paragraph 3 or Article 16 of Law No. 1 of 1967 as amended, as referred to in sub-paragraph (a)(i) of paragraph 2 of Article 23 of the Agreement.
5. (a) Nothing in the Agreement shall be construed as preventing Indonesia from imposing in accordance with the provisions of Article 7 thereof such part of the tax on interest, dividend and royalty (Pajak Atas Bunga, Dividen dan Royalti) as is relevant to subparagraph b of Article 3b of Dividend Tax Regulations of 1959 as amended and supplemented by Law No. 10 of 1970, so far as it has not been modified since the date of signature of this Protocol, or has been modified only in minor respects so as not to affect its general character, on the earnings (other than those derived from the operation of ships or aircraft in international traffic) of a company being a resident of Japan which has a permanent establishment in Indonesia; but such tax shall not exceed 10 percent of the amount of such earnings, except where such earnings are those derived by such company under its oil or natural gas production-sharing contracts with the Government of the Republic of Indonesia or the relevant state oil company of Indonesia.
- (b) The above-mentioned tax in respect of the earnings of a company being a resident of Japan which has a permanent establishment in Indonesia derived under its oil or natural gas production-sharing contracts with the Government of the Republic of Indonesia or the relevant state oil company of Indonesia shall not be less favourably levied in Indonesia than the above-mentioned tax levied in respect of the earnings of a company being a resident of any third state which has a permanent establishment in Indonesia derived under its oil or natural gas production sharing contracts with the Government of the Republic of Indonesia or the relevant state oil company of Indonesia.
- (c) For the purposes of this paragraph, the term "earnings" means the amount remaining after deducting from the profits attributable to a permanent establishment which a company not being a resident of Indonesia has in Indonesia the amount of the Indonesian tax other than that referred to in (a) above imposed on such profits.

In witness whereof the undersigned, duly authorized thereto by their respective Governments, have signed this Protocol.

Done in duplicate at Tokyo on the 3rd day of March, 1982, in the English language.

For the Government of

Japan

Yoshio Sakurauchi

For the Government of

the Republic of Indonesia

Suryohadiprojo