

**AGREEMENT BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF INDONESIA
AND
THE GOVERNMENT OF THE SWITZERLAND
CONFEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE
PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME**

Article 1

PERSONAL SCOPE

This Agreement shall apply to person who are resident of one or both of the Contracting State.

Article 2

TAXES COVERED

This Agreement shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

The existing taxes to which the Agreement apply are in particular ;

(a) in Indonesia :

the income tax (Pajak Penghasilan) including the company tax and any withholding tax, prepayments or advance payment with respect to the aforesaid tax.

(hereinafter referred to as "Indonesian tax");

(b) in Switzerland :

the federal, cantonal and communal taxes on income (total income, earned income, income from capital, industrial and commercial gains, and other items of income)

(hereinafter referred to as "Swiss tax").

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

Article 3

GENERAL DEFINITIONS

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 the adjacent areas over which the Republic of Indonesia has sovereign rights or jurisdiction in accordance with international law;

(b) the term "Switzerland" means the Swiss Confederation;

(c) the term "a Contracting State" and "the other Contracting State" means Indonesia or Switzerland, as the context requires;

(d)

the term "person" includes an individual, a company and any other 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 terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

- (g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (h) the term "nationals" means:
- (i) all individuals possessing the nationality of a Contracting State;
 - (ii) all legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State;
- (i) the term "competent authority" means:
- (i) in Indonesia, the Minister of Finance or his authorized representative, and
 - (ii) in Switzerland, the Director of the Federal Tax Administration or his authorized representative;
- (j) the term "tax" means Indonesian tax or Swiss tax, as the context requires.
- As regards the application of the Agreement by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies.

Article 4 RESIDENT

For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall settle the question by mutual agreement.

Article 5 PERMANENT ESTABLISHMENT

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.

The term "permanent establishment" includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a Workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a farm of plantation;

(h) a building site, a construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activity continues for a period of more than 183 days.

The term "permanent establishment" shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character;

Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such persons 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 from which he regularly delivers goods or merchandise on behalf of the enterprise.

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 the territory of that other State or insures risks situated there through an employee or through a representative who is not an agent of an independent status within the meaning of paragraph 6.

An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

INCOME FROM IMMOVABLE PROPERTY

Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct

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

The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

Article 7

BUSINESS PROFITS

The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

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

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 State in which the permanent establishment is situated or elsewhere.

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.

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.

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.

Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

SHIPPING AND AIR TRANSPORT

Profits from the operation of ships in international traffic may be taxed in the Contracting State of which the enterprise operating the ship is a resident.

However, such profits may also be taxed in the Contracting State in which such operation is carried on; but the tax so charged shall not exceed 50% of the tax otherwise imposed by the internal law of that State.

Profits from the operation of aircraft in international traffic shall be taxable only in the Contracting State of which the enterprise operating the aircraft is a resident.

The provisions of paragraphs 1, 2 and 3 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

ASSOCIATED ENTERPRISES

Where :

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have 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

DIVIDENDS

Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

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

(a) 10% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends;

(b) 15% of the gross amount of the dividends in all other cases.

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

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

The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends, is a resident, through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In Such a case the provisions of Article 7 shall apply.

Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent

establishment situated in that other State, nor subject the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Where a company which is resident of Switzerland and having a permanent establishment in Indonesia derives profits or income from that permanent establishment, such profits may be taxed in accordance with the laws of Indonesia, but the rate of tax imposed shall not exceed 10% of the amount of such profits, after deducting therefrom the income tax imposed thereon in Indonesia

Article 11 INTEREST

Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State

However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10% of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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 debtors profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures as well as income assimilated to income from money lent by the taxation law of the State in which the income arises. However, the term "interest" does not include income dealt with in Article 10.

The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article

shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12 ROYALTIES

Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 12.5% of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films or films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

The provisions of paragraph 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

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 PAYMENTS FOR SERVICES

Payments for furnishing of services, including consultancy services, arising in a Contracting State and derived by a resident of the other Contracting State may be taxed in that other State.

However, such payments may also be taxed in the Contracting State in which they arise, and according to the laws of that State, provided that the services are furnished in that State by an enterprise through employees or other personnel engaged by the enterprise for such purpose; but the tax so charged shall not exceed 5% of the gross amount of such payments. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

The term "payments for services" as used in this Article means payments for services of any kind including consultancy services furnished by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but excluding payments for professional services or other independent activities of a similar character referred to in Article 15.

The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the payments, being a resident of a Contracting State, carries on business in the other Contracting State in which the payments arise, through a permanent establishment situated therein and the activity in respect of which the payments are made is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

Payments for the furnishing of services shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying for the furnishing of services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the services are rendered, and the payment is borne by such permanent establishment, then such payment shall be deemed to arise in the State in which the permanent establishment is situated.

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 payments for furnishing of services, having regard to the activity 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 14 CAPITAL GAINS

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 State.

Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State.

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

Article 15

PERSONAL SERVICES

Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration in respect of an employment as well as income in respect of professional services or other independent activities of a similar character, derived by a resident of a Contracting State, shall be taxable only in that State, unless the employment, services or activities are exercised or performed in the other Contracting State. If the employment, services or activities are so exercised or performed, such remuneration or income as is derived therefrom may be taxed in that other State.

Notwithstanding the provisions of paragraph 1, remuneration or income derived by a resident of a Contracting State in respect of an employment, services or activities exercised or performed in the other Contracting State shall be taxable only in the first-mentioned State if: (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period; and

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

(c) the remuneration or income is not borne by a permanent establishment which that person has in the other State.

Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that Contracting State.

Article 16

DIRECTORS FEES

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

Article 17

ARTISTES AND SPORTSMEN

Notwithstanding the provisions of Article 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

The provisions of paragraphs 1 and 2 shall not apply to remuneration or profits, salaries, wages and similar income derived from activities performed in a Contracting State by entertainers or sportsmen if their visit to that State is substantially supported from the public funds of the other Contracting State, a political subdivision or a local authority thereof.

Article 18 PENSIONS

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 or any annuity paid to such resident shall be taxable only in that State.

The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or moneys worth.

Article 19 GOVERNMENT SERVICE

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 State or subdivision or authority shall be taxable only in that State.
(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual 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 rendering the services.
2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that 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 State.
3. The provision of Article 15, 16, 18 and 20 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20 STUDENTS

Payments which a student or business apprentice who is or was formerly a resident of one of the Contracting States and who is present in the other Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that other Contracting State.

An individual who is or was formerly a resident of one of the Contracting States and who is present in the other Contracting State for the purpose of study, research or training or of acquiring technical, professional or business experience and who exercises in that other Contracting State an employment for a period or periods not exceeding in the aggregate twelve months shall be exempt from tax in that other Contracting State for remuneration in respect of this employment provided that such employment is directly related to his studies, research, training or acquiring of experience and that the remuneration from the employment does not exceed 18,000.- Swiss francs.

Article 21

ELIMINATION OF DOUBLE TAXATION

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

- (a) Indonesia, when imposing tax on residents of Indonesia, may include in the basis upon which such tax is imposed the items of income which may be taxed in Switzerland in accordance with the provisions of this Agreement.
- (b) Where a resident of Indonesia derives income from Switzerland and such income may be taxed in Switzerland in accordance with the provisions of this Agreement, the amount of Swiss tax payable in respect of the income shall be allowed as a credit against the Indonesian tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Indonesian tax which is appropriate to such income.

In the case of Switzerland, double taxation shall be avoided as follows:

- (a) Where a resident of Switzerland derives income which, in accordance with the provisions of this Agreement, may be taxed in Indonesia, Switzerland shall, subject to the provisions of paragraphs (b) and (c), exempt such income from tax but may, in calculating tax on the remaining income of that resident, apply the rate of tax which would have been applicable if the exempted income had not been so exempted, provided, however, that where profits derived by a resident of Switzerland from sources within Indonesia which in accordance with paragraph 2 of Article 8 are subject to tax in Indonesia, the Swiss tax charged on those profits shall be reduced by one half.
- (b) Where a resident of Switzerland derives dividends, interest or payments for services which, in accordance with the provisions of Articles 10, 11 and 13, may be taxed in Indonesia, Switzerland shall allow, upon request, a relief to such resident. The relief may consist of:
 - (i) a deduction from the tax on the income of that resident of an amount equal to the tax levied in Indonesia in accordance with the provisions of Articles 10, 11 and 13; such deduction shall not, however, exceed that part of the Swiss tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in Indonesia; or
 - (ii) a lump sum reduction of the Swiss tax; or
 - (iii) a partial exemption of such dividends, interest or payments for services from Swiss tax, in any case consisting at least of the deduction of the tax levied in Indonesia from the gross amount of the dividends, interest or payments for services.

Switzerland shall determine the applicable relief and regulate the procedure in accordance with the Swiss provisions relating to the carrying out of international conventions of the Swiss Confederation for the avoidance of double taxation.

(c) Where a resident of Switzerland derives royalties which, in accordance with the provisions of Article 12 may be taxed in Indonesia, Switzerland shall allow, upon request, a relief to such resident which may consist of:

(i) the deduction of 2.5% of the gross amount of such royalties; and

(ii) a deduction from the Swiss tax on the income of that resident, as computed by reference to the relief referred to in sub-paragraph (i), of an amount of 10 per cent of the gross amount of the royalties; such deduction shall, however, be determined pursuant to the general principles of relief referred to in paragraph (b).

Article 22

NON-DISCRIMINATION

Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

The taxation on a permanent establishment which an enterprise of a Contracting state has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

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

The provisions of this Article shall apply to taxes which are the subject of this Agreement.

Article 23

MUTUAL AGREEMENT PROCEDURE

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

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 Agreement.

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

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 24

DIPLOMATIC AGENTS AND CONSULAR OFFICERS

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

Notwithstanding the provisions of Article 4, individuals who are members of a diplomatic mission or permanent mission or consular post of a Contracting State which is situated in the other Contracting State or in a third State and who are nationals of the sending State shall be deemed to be residents of the sending State if they are submitted therein to the same obligations in respect of taxes on income as are residents of that State.

The Agreement shall not apply to international organisations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income.

Article 25

ENTRY INTO FORCE

This Agreement shall be ratified and the instruments of ratification shall be exchanged at Jakarta as soon as possible.

The Agreement shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

- (a) in Indonesia :
in respect of income derived on or after 1 January of the year next following that of the entry into force of the Agreement;
- (b) in Switzerland:

in respect of income derived on or after 1 January of the year next following that of the entry into force of the Agreement.

Article 26

TERMINATION

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination on or before the thirtieth June of any calendar year. In such event, the Agreement shall cease to have effect:

(a) in Indonesia :

in respect of income derived on or after 1 January of the year next following that in which the notice of termination is given;

(b) in Switzerland :

in respect of income derived on or after 1 January of the year next following that in which the notice of termination is given.

In witness whereof the undersigned, duly authorised thereto, have signed this Agreement.

Done in duplicate at Berne this 29th August 1988 in the English, Indonesian and French languages, all texts being equally authentic. In case there is any divergence of interpretation between the Indonesian and the French texts the English text shall prevail.

PROTOCOL

The Swiss Federal Council and the Government of the Republic of Indonesia have agreed at the signing of the Agreement between the two States for the avoidance of double taxation with respect to taxes on income upon the following provisions which shall form an integral part of the said Agreement:

1. With reference to Article 5

In respect of paragraph 3 of Article 5 it is understood that the maintenance of a stock of goods or merchandise for the purpose of delivery or facilities used for delivery of goods and merchandise do not constitute a permanent establishment as long as the conditions of paragraph 4 (b) of the same Article are not fulfilled.

2. With reference to Article 7

In respect of paragraphs 1 and 2 of Article 7, where an enterprise of a Contracting State, having a permanent establishment in the other contracting State, sells goods or merchandise or carries on other business activities in that other State, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of that part of the total receipts which is attributable to the actual activity of the permanent establishment for such sales or such other business activities.

However, in case of abusive constructions, it is understood that paragraph 1 of Article 7 shall also apply if the enterprise sells goods or merchandise or carries on business of the same or similar kind as the sales or business undertaken by the permanent establishment, but only if it can be proved that this permanent establishment has taken a determinant part in these activities.

In the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the State where the permanent establishment is situated.

The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the State of which the enterprise is a resident.

3. With reference to Article 10

In respect of paragraph 6 of Article 10 it is understood that the provisions of that paragraph shall not affect the provisions contained in any production sharing contracts and contracts of work (or any other similar contracts) relating to oil and gas sector or other mining sector concluded on or before 31 December 1983, by the Government of Indonesia, its instrumentality, its relevant state oil and gas company or any other entity thereof with a person who is a resident of Switzerland.

Done in duplicate at Berne this 29 August 1988 in the English, Indonesian and French languages, all texts being equally authentic. In case there is any divergency of interpretation between the Indonesian and the French texts, the English text shall prevail.