

P.U. (A) 263/1976
Signed: 24 October 1973 (Kuala Lumpur)
Effective Date: 1 January 1976

AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF BELGIUM FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of Malaysia and the Government of Belgium,

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 I

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

Article II

1. This Agreement shall apply to taxes on income imposed by each Contracting State, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property and taxes on the total amounts of wages or salaries paid by enterprises.

3. The existing taxes to which the Agreement shall apply are:

(a) in Malaysia:

(i) the income tax;

(ii) the supplementary income tax, that is, the development tax, tin profits tax and timber profits tax; and

(iii) the petroleum income tax

(hereinafter referred to as "Malaysian tax");

(b) in Belgium:

- (i) the individual income tax (l'impôt des personnes physiques);
- (ii) the corporate income tax (l'impôt des sociétés);
- (iii) the income tax on legal entities (l'impôt des personnes morales);
- (iv) the income tax on non-residents (l'impôt des non-résidents);
- (v) the prepayments and additional prepayments (les precomptes et compléments de precomptes); and
- (vi) the surcharges (décimes et centimes additionnels) on any of the taxes referred to in (i) to (v) above including the communal supplement to the individual income tax (taxe communale additionnelle à l'impôt des personnes physiques)

(hereinafter referred to as "Belgian tax").

4. The Agreement shall also apply to any identical or substantially similar tax which is imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes.

5. The competent authorities of the two Governments shall notify regularly to each other any significant changes which have been made in their respective taxation laws. In case of substantial changes in the system of taxation in a Contracting State, the competent authorities of the two Governments shall consult each other with a view to adapting the Agreement to such changes.

6. The provisions of the Agreement in respect of the taxation of income or profits shall likewise apply to the development tax computed other than on the basis of income.

Article III

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

- (a) the term "Malaysia" means the Federation of Malaysia and includes any area adjacent to the territorial waters of Malaysia which in accordance with international law has been or may hereafter be designated under the laws of Malaysia concerning the Continental Shelf as an area within which the rights of Malaysia with respect to the sea bed and sub-soil and their natural resources may be exercised;

- (b) the term "Belgium" means the Kingdom of Belgium; it includes any area outside the Belgian national sovereignty which has been or may hereafter be designated, under the Belgian laws concerning the Continental Shelf and in accordance with international law, as an area within which the rights of Belgium with respect to the sea bed and sub-soil and their natural resources may be exercised;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Malaysia or Belgium, as the context requires;
- (d) the term "tax" means Malaysian tax or Belgian tax, as the context requires;
- (e) the term "person" comprises an individual, a company and any other body of persons; in the case of Malaysia it also includes a corporation sole and a Hindu Joint Family but does not include a partnership;
- (f) the term "company" means any body corporate or any other 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 "competent authorities" means in the case of Malaysia, the Minister of Finance or his authorized representative, and in the case of Belgium, the competent authority according to Belgian legislation.

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

Article IV

1. In this Agreement

- (a) the term "resident of Malaysia" means
 - (i) an individual who is ordinarily resident in Malaysia, or
 - (ii) a person other than an individual who is resident in Malaysia, for the basis year for a year of assessment for the purposes of Malaysian tax;

- (b) the term "resident of Belgium" means any person who is a resident of Belgium for the purposes of Belgian tax;
 - (c) the terms "resident of a Contracting State" and "resident of the other Contracting State" mean a resident of Malaysia or a resident of Belgium, as the context requires.
2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his case shall be determined in accordance with the following rules:
- (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);
 - (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
 - (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
 - (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

Article V

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.
2. The term "permanent establishment" shall include especially:
 - (a) a place of management;
 - (b) a branch;

- (c) an office;
 - (d) a factory;
 - (e) a workshop;
 - (f) a farm or plantation;
 - (g) a mine, oil well, quarry or other place of extraction of natural resources;
 - (h) a building site or construction or assembly project which exists for more than six months;
 - (i) a place of extraction of timber or forest produce.
3. The term "permanent establishment" shall not be deemed to include:
- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.
4. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it carries on supervisory activities in that other Contracting State for more than six months in connection with a construction, installation or assembly project which is being undertaken in that other Contracting State.
5. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State (other than an agent of an independent status to whom paragraph 6 applies) shall be deemed to be a permanent establishment in the first-mentioned State if

- (a) he has, and habitually exercises in the first-mentioned State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
- (b) he maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise.

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 other agent of an independent status, where such persons are acting in the ordinary course of their business.

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

Article VI

1. Income from immovable property may be taxed in the Contracting State in which such property is situated.

2. The term "immovable property" shall be defined in accordance with the law and usage 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 land property apply, usufruct of immovable property and right to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

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

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

Article VII

1. The income 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 income of the enterprise may be taxed in that other Contracting State but only so much of that income as is attributable to that permanent establishment.

2. Without prejudice to the application 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 income which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In the determination of the income of a permanent establishment, there shall be allowed as deductions all expenses, including executive and general administrative expenses, which would be deductible if the permanent establishment were an independent enterprise in so far as they are reasonably allocable to the permanent establishment, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

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

5. Where any item of income is dealt with separately in another Article of this Agreement, the provisions of that other Article shall not be affected by the provisions of this Article.

Article VIII

1. Income of an enterprise of a Contracting State derived from the other Contracting State from the operation of ships or aircraft in international traffic may be taxed in that other Contracting State to the extent of one half of such income and the other half of such income shall be taxable only in the first-mentioned Contracting State.

2. Such income shall be the portion of the world income as computed by the first-mentioned Contracting State, which bears to that world income the same proportion as the receipts from the transportation of passengers, livestock or goods shipped from ports in that other Contracting State bear to the world receipts from the operation of ships or aircraft.

Article IX

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 income which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, has not so accrued, may be included in the income of that enterprise and taxed accordingly.

Article X

1. Dividends paid by a company which is a resident of Belgium to a resident of Malaysia may be taxed in Belgium according to its laws but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

2. Dividends paid by a company which is a resident of Malaysia to a resident of Belgium shall be exempt from any tax in Malaysia which is chargeable on dividends in addition to the tax chargeable in respect of the profits or income of the company:

Provided that nothing in this paragraph shall affect the provisions of the Malaysian law under which the tax in respect of a dividend paid by a company resident in Malaysia from which Malaysian tax has been, or has been deemed to be, deducted may be adjusted by reference to the rate of tax appropriate to the Malaysian year of assessment immediately following that in which the dividend was paid.

3. If after the date of signature of the Agreement the system of taxation in Malaysia applicable to the income and distributions of companies is altered by the introduction of corporation tax (for which no credit is given to the shareholders) and further dividend tax, then Malaysian tax chargeable on dividends paid to a resident of Belgium shall not exceed 15 per cent of the amount of the dividends.

4. Where a company which is a resident of a Contracting State derives profits or income from sources within the other Contracting State, there shall not be imposed in that other Contracting State any form of taxation on dividends paid by the company outside that other Contracting State to persons who are not residents thereof, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the dividends may be taxed in the Contracting State where the permanent establishment is situated.

6. For the purpose of this Article, a dividend shall be deemed to be paid by a company resident of Malaysia where

(a) in the case of a company which is resident both in Malaysia and Singapore, the Directors' meeting at which the dividend was declared was held in Malaysia; or

(b) in the case of a company resident in Singapore, it declares itself when paying the dividend to be a resident of Malaysia pursuant to Article VII of the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income between Singapore and Malaysia signed in Singapore on 26th December, 1968.

Article XI

1. Subject to the provisions of paragraph 2 and 4, interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned Contracting State according to the law of that Contracting State.

2. However, the tax so charged on such interest shall not exceed 10 per cent of the interest, if the loan or indebtedness (excluding indebtedness in respect of consumer goods) in respect of which the interest is paid, is made to, or incurred by, an enterprise of that first-mentioned Contracting State engaged in an industrial undertaking.

3. For the purposes of paragraph 2, the term "industrial undertaking" means an undertaking falling under any of the classes mentioned below

(a) manufacturing, assembling and processing;

- (b) construction, civil engineering and ship building;
- (c) electricity, hydraulic power, gas and water supply;
- (d) plantation, agriculture, forestry and fishery; and
- (e) any other undertaking which may be declared to be an "industrial undertaking" for the purposes of this Article by the competent authority of the Contracting State in which the undertaking is situated.

4. The Government of a Contracting State shall be exempt from tax in the other Contracting State with respect to interest derived by such Government from that other Contracting State. For the purposes of this paragraph, the term "Government"

- (a) in the case of Malaysia means the Government of Malaysia and shall include--
 - (i) the Governments of the States;
 - (ii) the local authorities;
 - (iii) the Bank Negara, Malaysia; and
 - (iv) such institutions, the capital of which is wholly owned by the Government of Malaysia or the Governments of the States or the local authorities, as may be agreed from time to time between the two competent authorities;
- (b) in the case of Belgium means the Government of Belgium and shall include
 - (i) any political subdivision or local authority of Belgium;
 - (ii) the National Bank of Belgium (Banque Nationale de Belgique); and
 - (iii) such institutions the capital of which is wholly owned by the Government of Belgium or the political subdivisions or local authorities of Belgium as may be agreed from time to time between the two competent authorities.

5. The provisions of paragraph 2 shall not apply if the recipient of the interest, being a resident of a Contracting State, has in the other Contracting State in which the interest arises a permanent establishment with which the debt claim from which the interest arises is effectively connected.

6. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that Contracting State. Where, however, the person paying the interest, whether 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 directly borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

Article XII

1. Subject to the provisions of paragraph 2, royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned Contracting State according to the law of that Contracting State.

2. However, the tax so charged on such royalties as defined in paragraph 3 (a) shall not exceed 10 per cent of the amount of the royalties.

3. The term "royalty" as used in this Article means

(a) a payment of any kind received as consideration for the use of, or the right to use, copyright of scientific work, patent, trademark, design or model, plan, secret formula or process or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial or scientific experience; and

(b) a payment of any kind received as consideration for the use of, or the right to use, copyrights of literary or artistic work, motion picture films or tapes for radio or television broadcasting.

4. The provisions of paragraph 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected.

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

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid,

having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, and dealing with each other at arm's length, the provisions of paragraph 2 shall apply only to the last-mentioned amount.

Article XIII

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article VI, may be taxed in the Contracting State in which such property is situated.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional 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. However, gains from the alienation of ships and aircraft operated in international traffic and of movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State of which the operator of such ships or aircraft is a resident.
3. Gains from the alienation of any other property shall be taxable only in the Contracting State of which the alienator is a resident.

Article XIV

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that Contracting State, unless such services or activities are rendered or performed in the other Contracting State. If such services or activities are so rendered or performed, the income derived therefrom may be taxed in that other Contracting 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 XV

1. Subject to the provisions of Articles XVI, XVIII, XIX, XX and XXI, 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) it relates to an activity exercised in that other Contracting State during a period or periods (including the duration of normal work interruptions) not exceeding in the aggregate 183 days in the calendar year, and
- (b) any period for which he is present within that other Contracting State does not form part of a continuous period of more than 183 days throughout which he is present within that other Contracting State, and
- (c) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other Contracting State, and
- (d) the remuneration is not borne as such by a permanent establishment 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 in international traffic operated by an enterprise of a Contracting State may be taxed in that Contracting State.

Article XVI

1. Directors' remuneration derived by way of fees, tantiemes and similar payments by a director who is 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.

2. The provisions of Article XV shall apply in relation to directors' remuneration derived from a company by a director in respect of the discharge of day-to-day functions of a managerial or technical nature as if that remuneration were the remuneration of an employee in respect of an employment.

Article XVII

1. Notwithstanding the provisions of Article XV, 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 these activities are exercised, but tax may be imposed only on that proportion of the income as may be reasonably attributed to

such personal activities exercised in that State.

2. The provisions of paragraph 1 shall not apply if the income is derived from a Contracting State by a resident of the other Contracting State whose visit to that first-mentioned Contracting State is supported, wholly or substantially, from the public funds of the Government of that other Contracting State.

3. Where the services of public entertainers and athletes are provided in a Contracting State by an enterprise of the other Contracting State, then the income derived from providing those services by such enterprise may be taxed in the first-mentioned Contracting State, unless the enterprise is supported, wholly or substantially, from the public funds of the Government of that other Contracting State in connection with the provision of such services.

4. For the purposes of this Article, the term "public funds" shall include funds belonging to the Contracting State or any political subdivision or local authority thereof.

Article XVIII

1. Any pension other than a pension or annuity within the scope of Article XIX or any annuity derived from sources within a Contracting State by an individual who is a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State.

2. The term "pension", as used in this Article, means periodical payments made, whether voluntarily or otherwise, in consideration for services rendered or by way of compensation for injuries received.

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

Article XIX

1. Remuneration paid out of public funds of a Contracting State to any individual in respect of services rendered to that Contracting State in the discharge of functions of a governmental nature shall be exempt from tax in the other Contracting State.

This provision shall not apply if the recipient of this income is a national of the other Contracting State without being a national of the first-mentioned Contracting State.

2. The provisions of paragraph 1 shall not apply to remuneration in respect of services rendered in connection with any trade or business carried on by a Contracting State.

3. Any pension paid out of public funds of a Contracting State to any individual in respect of past services rendered to that Contracting State in the discharge of functions of a governmental nature may be taxed in that Contracting State.

Article XX

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

Article XXI

1. An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in the other Contracting State solely as a student at a recognised university, college, school or other similar recognised educational institution in that other Contracting State or as a business or technical apprentice therein, for a period not exceeding three years from the date of his first arrival in that other Contracting State in connection with that visit, shall be exempt from tax in that other Contracting State on:

- (a) all remittances from abroad for the purposes of his maintenance, education or training; and
- (b) any remuneration not exceeding 60,000 Belgian francs or the equivalent in Malaysian currency during any calendar year in respect of services rendered in that other Contracting State with a view to supplementing the resources available to him for such purposes.

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 Contracting State for the purposes of study, research or training solely as a recipient of a grant, allowance or award from the Government of either of the Contracting States or from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the Government of either of the Contracting States for a period not exceeding two years from the date of his first arrival in that other Contracting State in connection with that visit shall be exempt from tax in that other Contracting State on:

- (a) the amount of such grant, allowance or award;
- (b) all remittances from abroad for the purposes of his maintenance, education or training; and
- (c) any remuneration not exceeding 100,000 Belgian francs or the equivalent in Malaysian currency during any calendar year in respect of services rendered in that other Contracting State if such services are performed in connection with his study, research, training or incidental thereto.

3. An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in that other Contracting State solely as an employee of, or under contract with, the Government or an enterprise of the first-mentioned Contracting State solely for the purpose of acquiring technical, professional or business experience for a period not exceeding twelve months from the date of his first arrival in that other Contracting State in connection with that visit shall be exempt in that other Contracting State on

- (a) all remittances from abroad for the purposes of his maintenance, education or training; and
- (b) any remuneration not exceeding 100,000 Belgian francs or the equivalent in Malaysian currency during any calendar year in respect of services rendered in that other Contracting State if such services are in connection with his studies or training or incidental thereto.

Article XXII

Items of income of a resident of a Contracting State which are not specifically dealt with in the foregoing Articles of this Agreement may be taxed in both Contracting States.

Article XXIII

1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting States except where express provision to the contrary is made in this Agreement. Where income is subject to tax in both Contracting States relief from double taxation shall be given in accordance with the following paragraphs of this Article.

2. Subject to the existing provisions of the law of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia and to any subsequent modification of those provisions, which, however, shall not affect the principle thereof, Malaysia shall allow as a credit

against Malaysian tax, Belgian tax payable, whether directly or by deduction, in respect of income from sources within Belgium which is also liable to Malaysian tax.

Where such income is a dividend paid by a company which is a resident of Belgium to a company which is a resident of Malaysia and which controls directly or indirectly not less than 25 per cent of the voting power in the former company, the credit shall take into account, in addition to any tax appropriate to the dividend, the Belgian tax payable by the company in respect of its income.

3. In the case of income derived from sources in Malaysia which has been taxed in Malaysia in accordance with this Agreement, whether directly or by deduction, and which is liable to tax in Belgium according to Belgian law:

(a) (i) When a company which is a resident of Belgium owns shares in a company which is a resident of Malaysia, the dividends paid thereon to the first-mentioned company and to which paragraph 5 of Article X does not apply shall be exempted in Belgium from the tax referred to in paragraph 3(b)(ii) of Article II to the extent that exemption would have been accorded if the two companies had been residents of Belgium.

(ii) A company which is a resident of Belgium and which owns directly shares in a company which is a resident of Malaysia during the whole of the accounting period of the latter company shall likewise be exempted or granted relief from the prepayment on income from movable property (precompte mobilier) chargeable in accordance with Belgian law on the net amount of the dividends referred to under (i) above which are paid to it by the said company which is a resident of Malaysia and is liable to the tax referred to in paragraph 3(a)(i) or (iii) of Article II, provided that it so requests in writing not later than the time limited for the submission of its annual return, on the understanding that, on redistribution to its own shareholders of dividends not charged to the said prepayment, the income then distributed and chargeable to the said prepayment shall not be reduced by the amount of such dividends notwithstanding Belgian law. This exemption shall not apply when the first-mentioned company has elected that its profits be charged to the individual income tax.

However, the application of this provision will be limited to dividends paid by a company which is a resident of Malaysia to a company which is a resident of Belgium which controls directly or indirectly not less than 25 per cent of the voting power in the first-mentioned company, in cases where, in regard to the exemption of the tax referred to in paragraph 3(b)(ii) of Article II, a similar limitation would be imposed by Belgian legislation in respect of dividends paid by companies not residents of Belgium.

(iii) In cases not covered by sub-paragraph (a) (i), when a resident of Belgium receives from Malaysia dividends, interest or royalties which have been taxed

there in accordance with this Agreement and to which paragraph 5 of Article X, paragraph 5 of Article XI or paragraph 4 of Article XII does not apply, Belgium shall grant to that resident a credit against the Belgian tax chargeable thereon in respect of the Malaysian tax. This credit shall be the fixed proportion of the foreign tax for which provision is made in Belgian law.

However, notwithstanding Belgian law, as regards income to which paragraph 2 of Article XI or paragraph 2 of Article XII applies, the credit shall be allowed at the rate of 20 per cent of the gross amount of such income which is included in the taxable basis in Belgium; it shall also be granted in respect of such income, being chargeable to Malaysian tax in accordance with this Agreement and the general principles of Malaysian law as well as for dividends to which paragraph 5 of Article X does not apply, if such income or dividends have been temporarily exempted from tax in Malaysia by virtue of the Investment Incentives Act, 1968 or of any other provisions which may subsequently be made granting relief which are agreed by the competent authorities of both Contracting States to be of a substantially similar character.

(b) (i) When a resident of Belgium receives income other than that mentioned in sub-paragraph (a) above which is chargeable to tax in Malaysia in accordance with the provisions of this Agreement, Belgium shall exempt such income from tax, but may in calculating the amount of the tax on the remaining income of that resident apply the rate of tax which would have been applicable if the income in question had not been exempted. This provision shall not apply to items of income mentioned in Article XXII.

(ii) Notwithstanding sub-paragraph (b) (i) above, Belgian tax may be charged on income chargeable in Malaysia to the extent that this income has not been charged in Malaysia because of the set-off of losses also deducted, in respect of any accounting period, from income taxable in Belgium.

4. For the purposes of this Article profits or remuneration for personal (including professional) services performed in a Contracting State shall be deemed to be income from sources within that Contracting State, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of a Contracting State shall be deemed to be performed in that Contracting State.

Article XXIV

1. The 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.

2. For the purposes of this Agreement, the term "nationals of a Contracting State" means

- (a) in the case of Malaysia, all individuals possessing the citizenship of Malaysia and all legal persons, partnerships, associations and other entities deriving their status as such from the law in force in Malaysia; and
- (b) in the case of Belgium, all individuals possessing the nationality of Belgium and all legal persons, partnerships, associations and other entities deriving their status as such from the law in force in Belgium.

3. 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 similar activities. This provision shall not be construed as preventing Belgium from charging the total amount of profits of a permanent establishment in Belgium of a company being a resident of Malaysia or of an association having its place of effective management in Malaysia at the rate of tax provided by the Belgian law, but this rate may not (before the surcharges referred to in paragraph 3(b)(vi) of Article II) exceed the maximum rate applicable to the whole or a portion of the profits of companies which are residents of Belgium.

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 that first-mentioned Contracting State are or may be subjected.

5. Nothing in this Article shall be construed as obliging Malaysia to grant to nationals of Belgium not resident in Malaysia those personal allowances, reliefs and reductions for tax purposes which are by law available on the date of signature of this Agreement only to citizens of Malaysia or to such other persons as may be specified therein who are not resident in Malaysia.

Article XXV

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 double taxation not in accordance with this Agreement, he may, independently of the remedies provided by the national laws of those States, address to the competent authority of the State of which he is a resident an application in writing stating the grounds for claiming revision of his taxation. The said application must be submitted before the expiry of a period of two years from the notification of liability to, or the

deduction at source of, the second charge to tax which gives rise to such double taxation.

2. Such competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of double taxation not in accordance with the Agreement.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the application of the Agreement.

4. The ministers of Finance of the Contracting States or their authorized representatives may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs or for the purpose of giving effect to the provisions of the Agreement.

Article XXVI

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of the Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than the taxpayer or his authorized representative and those concerned with the assessment or collection of the taxes which are the subject of the Agreement or the determination of appeals in relation thereto or the enforcement of the laws relating to those taxes.

2. In no case shall the provisions of paragraph 1 be construed so as to impose in a Contracting State the obligation

- (i) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
- (ii) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (iii) 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 XXVII

1. Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.
2. As regards a company which is a resident of Belgium, the provisions of this Agreement shall not limit its taxation in accordance with the Belgian law in the event of the repurchase of its own shares or in the event of the distribution of its assets.
3. The provisions of this Agreement shall not limit the rights and benefits which the laws of a Contracting State grant to residents of the other Contracting State in respect of the taxes which are the subject of Article II.

Article XXVIII

1. This Agreement shall be ratified and the instruments of ratification shall be exchanged at Kuala Lumpur as soon as possible.
2. This Agreement shall enter into force on the 15th day after the date of the exchange of the instruments of ratification and shall have effect :

In Malaysia:

as respects Malaysian tax for the year of assessment beginning on the 1st day of January in the calendar year next following that in which the Agreement enters into force, and for subsequent years of assessment;

In Belgium:

- (a) as respects all tax due at source on income credited or payable on or after the 1st day of January in the calendar year next following that in which the Agreement enters into force;
- (b) as respects all tax other than tax due at source, on income of any accounting period ending on or after the 31st day of December in the calendar year in which the Agreement enters into force.

Article XXIX

This Agreement shall remain in force indefinitely but either of the Contracting States may denounce the Agreement through diplomatic channels, by giving to the other Contracting State, written notice of termination not later than the 30th June of any calendar year from the fifth year following that in which the

instruments of ratification were exchanged. In such event the Agreement shall cease to have effect :

In Malaysia:

as respects Malaysian tax for the year of assessment next following that in which such notice is given and subsequent years of assessment;

In Belgium:

- (a) as respects all tax due at source on income credited or payable on or after the 1st day of January in the calendar year next following that in which the notice of termination is given;
- (b) as respects all tax other than tax due at source, on income of any accounting period ending on or after the 31st day of December in the calendar year in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Agreement.

DONE in duplicate at Kuala Lumpur on the twenty fourth day of October of the year one thousand nine hundred and seventy three in the English language.

PROTOCOL

At the time of signing the Agreement between the Government of Malaysia and the Government of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed that the following provisions shall form an integral part of the Agreement:

1. As regards income derived from a Contracting State by a resident of the other Contracting State from the operation of ships or aircraft in international traffic the competent authority of the first-mentioned Contracting State shall accept the certificate of assessment issued by the competent authority of that other Contracting State for the purpose of ascertaining the portion of the world income referred to in paragraph 2 of Article VIII of the Agreement.
2. Where after the signature of this Agreement Malaysia concludes an Agreement for the Avoidance of Double Taxation under which tax exemption is granted to a resident of a country of Europe or North America in respect of income derived from Malaysia from the operation of aircraft in international traffic, the Government of Malaysia will reconsider the case of Belgian airline companies

with a view to granting, on the basis of reciprocity, a similar treatment to residents of Belgium with respect to income derived from Malaysia from the operation of aircraft in international traffic.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Protocol.

DONE in duplicate at Kuala Lumpur on the twenty fourth day of October of the year one thousand nine hundred and seventy three in the English language.

PROTOCOL

Signed: 25 July 25 1979
Effective: 1 January 1976

SUPPLEMENTARY AGREEMENT TO THE AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF BELGIUM FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF

**FISCAL EVASION WITH RESPECT TO TAXES ON INCOME SIGNED AT
KUALA LUMPUR ON 24 OCTOBER 1973**

THE GOVERNMENT OF MALAYSIA
AND
THE GOVERNMENT OF BELGIUM

Desiring to amend the Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income between the two Governments, signed on the twenty fourth day of October of the year one thousand nine hundred and seventy three (hereinafter referred to as the Principal Agreement):

Have agreed as follows:

Article I

Article VIII of the Principal Agreement is hereby amended by substituting for paragraphs 1 and 2 thereof the following new paragraphs:

- "1. Income derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State.
2. The provisions of paragraph 1 shall also apply to income derived from the participation in a pool, a joint business or in an international operating agency.
3. For the purpose of this Agreement 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."

Article II

The Protocol to the Principal Agreement is hereby deleted.

Article III

This Agreement shall be read as part of the Principal Agreement. It shall enter into force on the date of the signature of this Supplementary Agreement and have effect from the same date as the Principal Agreement.

IN WITNESS WHEREOF, the undersigned duly authorised thereto, have signed this Agreement.

Done in duplicate at Kuala Lumpur, this twenty fifth day of July of the year one thousand nine hundred and seventy nine, in the English language.

For the Government of
Malaysia

For the Government of
Belgium