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AGREEMENT BETWEEN MALAYSIA AND THE FEDERALREPUBLIC OF GERMANY FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND OTHER MATTERS RELATED THERETO

MALAYSIA AND THE FEDERAL REPUBLIC OF GERMANY

Desiring to conclude an Agreement for the Avoidance of Double Taxation with respect to Taxes on Income and other matters related thereto,

Have agreed as follows:

Article 1

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

Article 2

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of each Contracting State or of its States, Lander, political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.

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

(a) in Malaysia:

(aa) the income tax and excess profit tax,

(bb) the supplementary income tax, namely, the development tax, the tin profits tax and the timber profits tax,

(cc) the petroleum income tax

(hereinafter referred to as "Malaysian tax").

(b) in the Federal Republic of Germany:

(aa) the Einkommensteuer (income tax) including the Ergänzungsabgabe (surcharge) thereon,

(bb) the Körperschaftsteuer (corporation tax) including the Ergänzungsabgabe (surcharge) thereon,

(cc) the Vermögensteuer (capital tax), and

(dd) the Gewerbesteuer (trade tax)

(hereinafter referred to as "German tax").

4. This Agreement shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes.

5. The provisions of this Agreement in respect of taxation of income or capital shall likewise apply to the German trade tax and the Malaysian development tax, computed on a basis other than income or capital.

Article 3

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

(a) the term "Federal Republic of Germany", when used in a geographical sense, means the territory in which the Basic Law of the Federal Republic of Germany is in force, as well as any area adjacent to the territorial waters of the Federal Republic of Germany designated, in accordance with international law as related to the rights which the Federal Republic of Germany may exercise with respect to the sea bed and sub-soil and their natural resources, as domestic area for tax purposes;

(b) 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;

(c) the terms "a Contracting State" and "the other Contracting State" mean Malaysia or the Federal Republic of Germany, as the context requires;

(d) the term "tax" means Malaysian tax or German tax, as the context requires;

- (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the term "person" includes an individual (a natural person), a Hindu joint family, a company and any other body of persons which is subject to tax as such;
- (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 "national" means:
 - (aa) in respect of the Federal Republic of Germany all Germans in the meaning of Article 116, paragraph 1, of the Basic Law for the Federal Republic of Germany and all legal persons, partnerships and associations deriving their status as such from the law in force in the Federal Republic of Germany;
 - (bb) in respect of Malaysia all individuals who are citizens of Malaysia and all legal persons, partnerships and associations deriving their status as such from the law in force in Malaysia;
- (i) the term "competent authority" means, in the case of Malaysia, the Minister of Finance or his authorised representative; and in the case of the Federal Republic of Germany, the Federal Minister of Finance.

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

Article 4

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

2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both Contracting States, then this 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 closest (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 of this Article 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 management and control is situated.

Article 5

1. For the purpose 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 mine, oil well, quarry or other place of extraction of natural resources;
- (g) a building site or construction or assembly project which exists for more than six months;
- (h) a farm, plantation or 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. Subject to paragraph 5 of this Article, a person acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the first-mentioned Contracting State if he has, and habitually exercises in that Contracting State, an authority to conclude contracts in the name of the enterprise, unless the activities are limited to the purchase of goods or merchandise for the enterprise.
5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of independent status, where such persons are acting in the ordinary course of their business.
6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other Contracting State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

1. Income 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 of the Contracting State in which the property in question is situated. The term shall in any case include rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil wells, quarries or other places of extraction of natural resources or of timber or forest produce; ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 of this Article 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 of this Article 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

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 the other Contracting State but only so much of it as is attributable to that permanent establishment.
2. Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the 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 deduction expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere.
4. 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 income includes items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

1. Income of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.
2. The provisions of paragraph 1 shall likewise apply in respect of participations in pools, in a joint business or in an international operation agency of any kind by enterprises engaged in the operation of ships or aircraft in international traffic.

Article 9

Where

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and of 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, have not so accrued, may be included in the income of that enterprise and taxed accordingly.

Article 10

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State shall be taxable in the first-mentioned Contracting State.
2. Notwithstanding the provisions of paragraph 1 of this Article dividends paid by a company which is a resident of Malaysia to a resident of the Federal Republic of Germany shall be exempt from any tax in Malaysia which is chargeable on dividends in addition to the tax chargeable on the profits or income of the company:

Provided that nothing in this paragraph shall affect the provisions of Malaysian law under which the tax in respect of a dividend paid by a company which is a resident of 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. Notwithstanding the provisions of paragraph 1 of this Article the German tax on dividends paid by a company which is a resident of the Federal Republic of Germany to a resident of Malaysia shall not exceed:

- (a) 5 per cent of the gross amount of the dividends if the recipient is a company (excluding partnerships) which owns directly at least 25 per cent of the capital of the company paying the dividends;
- (b) 15 per cent of the gross amount of the dividends in cases not dealt with in subparagraph (a).

4. Notwithstanding the provisions of paragraph 3 of this Article the German tax on dividends paid to a company being a resident of Malaysia by a company being a resident of the Federal Republic of Germany, at least 25 per cent of the capital of which is owned directly or indirectly by the former company itself, or by it together with other persons controlling it or being under common control with it, shall not exceed 27 per cent of the gross amount of such dividends as long as the rate of German corporation tax on distributed profits is lower than that on undistributed profits and the difference between those two rates is 20 units or more.

5. The term "dividends" as used in this Article means income from shares as well as income from other corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident, and, in the case of the Federal Republic of Germany, income derived by a sleeping partner from his participation as such and distributions on certificates of an investment-trust.

6. The provisions of paragraphs 1 to 4 of this Article 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 provisions of Article 7 shall apply.

7. 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 to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable in the first-mentioned Contracting State; the tax may not, however, exceed 15 per cent of the gross amount of interest.

2. Notwithstanding the provisions of paragraph 1 of this Article interest paid to a resident of the Federal Republic of Germany on approved loans shall be exempt from Malaysian tax payable thereon. The term "approved loan" means any loan or other indebtedness approved by the competent authority of Malaysia as being made or incurred for the purpose of financing development projects or for the purchase of capital equipment for development projects in Malaysia.

3. Notwithstanding the provisions of paragraph 1 of this Article the Government of a Contracting State shall be exempt from tax in the other Contracting State with respect to interest arising to such Government from that other Contracting State.

4. For purposes of paragraph 3 of this Article the term "Government"--

(a) in the case of Malaysia means the Government of Malaysia and shall include

(aa) the Governments of the States;

(bb) the local authorities;

(cc) the Bank Negara, Malaysia; and

(dd) 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 competent authorities of the two Contracting States;

(b) in the case of the Federal Republic of Germany the Government of the Federal Republic of Germany and shall include

(aa) the Lander;

(bb) the political subdivisions, the local authorities or the local administrations;

(cc) the "Deutsche Bundesbank" (German Federal Bank), the "Kreditanstalt für Wiederaufbau" (Credit Bank for Reconstruction), and the "Deutsche Gesellschaft für

wirtschaftliche Zusammenarbeit (Entwicklungsgesellschaft) mbH" (German Development Company); and

- (dd) such institutions, the capital of which is wholly owned by the Government of the Federal Republic of Germany, the Lander, the political subdivisions, the local authorities or the local administrations, as may be agreed from time to time between the competent authorities of the two Contracting States.

5. The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

6. The provisions of paragraph 1 and 2 of this Article 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. In such a case, the provisions of Article 7 shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a State (a Land), a political subdivision or a local authority thereof 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 Contracting State in which the permanent establishment is situated.

8. 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 interest paid, 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned Contracting State; the tax may not, however, exceed 10 per cent of the gross amount of such royalties.

2. Notwithstanding the provisions of paragraph 1 of this Article, royalties paid to a resident of the Federal Republic of Germany by a resident of Malaysia and approved by the competent authority of Malaysia shall be exempt from Malaysian tax payable thereon.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, royalties of the kind referred to in paragraph 4 (b) of this Article may be taxed in accordance with the law of the Contracting State in which they arise.
4. 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--
 - (a) 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,
 - (b) any copyright of literary, artistic or scientific work, cinematograph films, or tapes for television or broadcasting.
5. The provisions of paragraphs 1 and 2 of this Article 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. In such a case, the provisions of Article 7 shall apply.
6. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a State (a Land), a political sub-division or a local authority thereof 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 Contracting State in which the permanent establishment is situated.
7. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6, 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, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise), may be taxed in the other Contracting State. However, gains from the alienation of movable property of the kind referred to in paragraph 3 of Article 22 shall be taxable only in the Contracting State in which such movable property is taxable according to the said Article.
3. Gains from the alienation of any property other than those mentioned in paragraphs 1 and 2 of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

1. Subject to the provisions of Articles 16, 17 and 18 remuneration derived by an individual who is a resident of a Contracting State in respect of an employment or a profession shall be taxable only in that Contracting State unless the employment or profession is exercised in the other Contracting State. If the employment or profession is so exercised, such income as is derived therefrom may be taxed in that other Contracting State.
2. Notwithstanding the provisions of paragraph 1 of this Article, remuneration derived by an individual who is a resident of a Contracting State in respect of such employment or profession exercised in the other Contracting State shall be taxable only in the first-mentioned Contracting State if:
 - (a) the individual is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and
 - (b) the remuneration is paid by, or on behalf of, a person who is not a resident of the other Contracting State, and
 - (c) the remuneration is not borne by a permanent establishment which the person paying the remuneration has in the other Contracting State.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article remuneration in respect of 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 15

1. The provisions of paragraph 2 of Article 14 shall apply to income derived from the exercise of an employment or a profession in a Contracting State by public entertainers (such as theatre, motion picture, radio or television artistes, and musicians) and athletes from their personal activities as such only if the visit to that Contracting State is substantially supported, directly or indirectly, by public funds of the other Contracting State.

2. Notwithstanding anything contained in this Agreement, where the services mentioned in paragraph 1 of this Article are provided in a Contracting State by an enterprise of the other Contracting State, the income derived from providing those services by such enterprise may be taxed in the first-mentioned Contracting State unless the enterprise is substantially supported, directly or indirectly, by public funds of the other Contracting State in connection with the provision of such services.

3. For the purposes of this Article, the term "public funds of a Contracting State" shall include public funds created by that Contracting State, a State (a Land), a political subdivision, a local authority or a local administration thereof.

Article 16

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

Article 17

1. Remuneration paid by the Government of a Contracting State, a State (a Land), a political subdivision or a local authority thereof to any individual in respect of an employment may be taxed in that Contracting State. When such remuneration is paid to a national of that Contracting State who is not a national of the other Contracting State it shall be taxable only in the first-mentioned Contracting State.

2. Any pension paid by the Government of a Contracting State, a State (a Land), a political subdivision or a local authority thereof to any individual may be taxed in that Contracting State.

3. The provisions of paragraphs 1 and 2 shall likewise apply in respect of remuneration and pensions paid, under a development assistance programme of

a Contracting State, a State (a Land), a political subdivision or a local authority thereof, out of funds exclusively supplied by that Contracting State, that State (that Land), that political subdivision or that local authority to a specialist or volunteer seconded to the other Contracting State with the consent of that other Contracting State.

4. The provisions of this Article shall not apply to remuneration and pensions in respect of an employment in connection with any business carried on by a Contracting State, a State (a Land), a political subdivision or a local authority thereof for the purpose of profits. In such a case the provisions of Articles 14, 15 and 16 shall apply.

Article 18

1. Any pension, annuity or other similar payment (other than a pension of the kind referred to in paragraphs 2 and 3 of Article 17) received by a resident of a Contracting State shall be taxable only in that Contracting State.

2. Any pension, annuity or other recurring or non-recurring payment which is paid to an individual by a Contracting State, a State (a Land), a political subdivision or local authority thereof as compensation for injury or damage sustained as a result of hostilities or political persecution shall be exempt from tax in the other Contracting State.

Article 19

An individual who was a resident of a Contracting State immediately before visiting the other Contracting State, and who is temporarily present in that other Contracting State at the invitation of a university, college, school or other similar recognized institution for the purpose of teaching or research at such institution for a period not exceeding two years from the date of his first arrival in that other Contracting State shall be exempt from tax in that other Contracting State in respect of his remuneration for such teaching or research.

Article 20

1. An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that other Contracting State solely as a student at a recognized university, college, school or other similar recognized educational institution in that other Contracting State or as a business apprentice (including in the case of the Federal Republic of Germany a Volontar or a Praktikant) 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 purposes of his maintenance, education or training, and
- (b) any remuneration not exceeding 6,000 Deutsche Marks or the equivalent in Malaysian dollars during the calendar year for personal services rendered in that other Contracting State with a view to supplementing the resources available to him for such purposes.

2. An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that other Contracting State solely for the purpose of study, research or training as a recipient of a grant, allowance or award from a scientific, educational, religious or charitable organization or under a technical assistance programme entered into by the Government of a Contracting State 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, and
- (b) all remittances from abroad for the purposes of his maintenance, education or training, and
- (c) any remuneration for personal services in that other Contracting State provided that such services are in connection with his study, research, training or incidental thereto.

3. An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that other Contracting State solely as an employee of, or under contract or arrangement with, the Government of the other Contracting State or with an enterprise in pursuance of a programme sponsored by the Government of that other Contracting State 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 from tax in that other Contracting State. on--

- (a) all remittances from abroad for purposes of his maintenance, education or training, and
- (b) any remuneration not exceeding 15,000 Deutsche Marks or the equivalent in Malaysian dollars during the calendar year for personal services rendered in that Contracting State, provided such services are in connection with his studies or training or incidental thereto.

Article 21

1. Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that Contracting State.
2. The provisions of paragraph 1 of this Article shall not affect the taxation of the income of any person derived from a trust or estate under administration as provided for under the laws of Malaysia.

Article 22

1. Capital represented by immovable property, as defined in paragraph 2 of Article 6 may be taxed in the Contracting State in which such property is situated.
2. Capital represented by movable property forming part of the business property of a permanent establishment of an enterprise of a Contracting State may be taxed in the Contracting State in which the permanent establishment is situated.
3. Ships and aircraft operated by an enterprise of a Contracting State in international traffic and assets other than immovable property pertaining to the operation of such ships and aircraft, shall be taxable only in that Contracting State.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that Contracting State.

Article 23

1. Tax shall be determined in the case of a resident of the Federal Republic of Germany as follows:
 - (a) Unless the provisions of sub-paragraph (b) apply, there shall be executed from the basis upon which German tax is imposed, any item of income derived from Malaysia and any item of capital situated within Malaysia, which, according to this Agreement, may be taxed in Malaysia. In the determination of its rate of tax applicable to any item of income or capital not so excluded, the Federal Republic of Germany, however, will take into account the items of income and capital so excluded. In the case of income from dividends the foregoing provisions of this sub-paragraph shall apply to dividends dealt with in paragraph 2 of Article 10 as are paid to a company being a resident of the Federal Republic of Germany by a company being a resident of Malaysia if at least 25 per cent of the capital of the Malaysian company is held directly by the German company. There shall also be excluded from the basis upon

which German tax is imposed any shareholding, the dividends of which, if paid, would be excluded from the basis upon which tax is imposed according to the immediately foregoing sentence.

- (b) Against German income and corporation tax (including the surcharge thereon) payable in respect of items of income derived from Malaysia and referred to below, shall be allowed as a credit:
 - (aa) in the case of dividends within the meaning of paragraph 5 of Article 10 not dealt with in sub-paragraph (a) above an amount of 18 per cent of the dividends received;
 - (bb) in the case of interest dealt with in paragraphs 1 and 2 of Article 11, an amount of 15 per cent of the gross amount of such interest;
 - (cc) in the case of royalties dealt with in paragraphs 1 and 2 of Article 12 and amount of 10 per cent of the gross amount of such royalties;
 - (dd) in the case of royalties dealt with in paragraph 3 of Article 12, and of income to which Articles 15 and 16 apply, the Malaysian tax paid in accordance with this Agreement. The credit shall not, however, exceed that part of the German tax, as computed before the credit is given, which is appropriate to such items of income.

Furthermore, if the rate of Malaysian tax normally applicable to income from interest or royalties should (except under special provisions designed to promote economic development of Malaysia) be reduced in future below 15 per cent in the case of interest or below 10 per cent in the case of royalties, then the credit provided for in letters (bb) and (cc) above shall be reduced to such new normal rate of Malaysian tax.

2. Tax shall be determined in the case of a resident of Malaysia as follows:

- (a) Subject to the provisions of Malaysian tax law regarding credit for foreign tax, there shall be allowed as a credit against Malaysian tax payable in respect of any item of income derived from, and any item of capital situated within the Federal Republic of Germany, the German tax paid under the laws of the Federal Republic of Germany and in accordance with this Agreement. The credit shall not, however, exceed that part of the Malaysian tax, as computed before the credit is given, which is appropriate to such item of income.

- (b) Where such income is a dividend paid by a company which is a resident of the Federal Republic of Germany to a company which is a resident of Malaysia and which owns directly or indirectly not less than 25 per cent of the capital of the German company, the credit shall take into account (in addition to any German tax on dividends) the German corporation tax payable in respect of its profits by the company paying the dividends.

Article 24

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 Contracting State in the same circumstances are or may be subjected.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities. This provision shall not be construed as obliging one of the Contracting States to grant to residents of the other Contracting State those personal allowances, reliefs and reductions for tax purposes which are by law available only to residents of the first-mentioned Contracting State.
3. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned Contracting State are or may be subjected.

Article 25

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the national laws of those Contracting States, present his case to the competent authority of the Contracting State of which he is a resident.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Agreement.

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

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of applying the provisions of this Agreement.

Article 26

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of the provisions of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities (including a court) other than those concerned with the assessment, collection, determination of appeals or prosecution in respect of taxes which are the subject of this Agreement.

2. In no case shall the provisions of paragraph 1 of this Article be construed so as to impose on one of the Contracting States the obligation:

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
- (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting States;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

Article 27

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. Insofar as, due to fiscal privileges granted to diplomatic or consular officials under the general rules of international law or under the provisions of special international treaties, income or capital are not subject to tax in the receiving State, the right to tax shall be reserved to the sending State.

Article 28

If the law of either Contracting State or international obligations existing at present or established hereafter between the Contracting States in addition to

this Agreement contain a regulation entitling a resident of a Contracting State to a treatment more favourable than is provided for by this Agreement, such regulation shall, to the extent that it is more favourable, not be affected by this Agreement.

Article 29

This Agreement shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of Malaysia within three months from the date of entry into force of this Agreement.

Article 30

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 thirtieth day after the date of exchange of the instruments of ratification and shall thereupon have effect:

(a) in Malaysia--

as respects Malaysian tax for the year of assessment beginning on 1st of January, 1972 and for subsequent years of assessment;

(b) in the Federal Republic of Germany--

as respects German tax for the year of assessment 1971 and for subsequent years of assessment.

Article 31

This Agreement shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through the diplomatic channel, written notice of termination and, in such event, this Agreement shall cease to be effective:

(a) in Malaysia--

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

(b) in the Federal Republic of Germany--

as respects German tax for the year of assessment in which such notice is given and subsequent years of assessment.

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

Done at Kuala Lumpur this 8th day of 1977, in two originals, each in Malay, English and German languages, all the texts being equally authentic, except that in the case of divergence of interpretation the English text shall prevail.

PROTOCOL

MALAYSIA AND THE FEDERAL REPUBLIC OF GERMANY

Have Agreed at the Signing at Kuala Lumpur on 8th April, 1977 of the Agreement between the two States for the avoidance of double taxation with respect to taxes on income and other matters related thereto upon the following provisions which shall form an integral part of the said Agreement:

1. With reference to Articles 2 and 23,

in case Malaysia should introduce a tax on capital both Contracting States shall consult each other with a view to take the steps necessary for the application of the Agreement to such tax.

2. With reference to Articles 6 to 21,

where, under any provision of this Agreement, income derived from a Contracting State, except interest to which paragraph 3 of Article 11 applies, is relieved from tax in that State and, under the law in force in the other Contracting State, such income is subject to tax by reference to the amount thereof which is remitted to or received in that other State and not by reference to the full amount thereof, then the relief to be allowed under this Agreement in the first-mentioned State shall apply only to so much of the income as is remitted to or received in the other State:

Provided that where--

(a) in accordance with the foregoing provisions, relief has not been allowed in the first instance in the first-mentioned State in respect of an amount of income, and

- (b) that amount of income has subsequently been remitted to or received in the other State and is thereby subject to tax in that other State--

the competent authority of the first-mentioned State shall, subject to any laws thereof for the time being in force limiting the time and setting out the method for the making of a refund of tax, allow relief in respect of that amount of income in accordance with the appropriate provisions of this Agreement.

3. With reference to Article 5,

- (a) it is understood that 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 State for more than six months in connection with a construction, installation or assembly project which is being undertaken in that other State;
- (b) it is understood that the conditions of paragraph 4 of Article 5 are equally complied with, if contracts concluded by a person within the meaning of this provision in the name of the enterprise are subject to final approval by the enterprise.

4. With reference to Articles 10 and 23,

the provisions of these Articles regarding dividends shall apply where--

- (a) in the case of a company 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 declared itself when paying the dividend to be a resident of Malaysia, the dividend is deemed to be paid by a company resident of Malaysia pursuant to Article VII of the Agreement for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income between Singapore and Malaysia signed in Singapore on 26th December, 1968.

5. With reference to Article 12,

it is understood that the term "royalties" includes periodical payments in respect of the alienation of the rights and property mentioned in paragraph 4 as well as lump sum payments in respect of the use, or the right to use, thereof.

6. With reference to Article 17,

it is agreed that the provisions of paragraph 1 are to be applied to an individual who is present in Malaysia at the expense of the public funds of the Federal Republic of Germany under contract with the "Goethe- Institut".

7. With reference to paragraph 1 of Article 23,

- (a) it is understood that Malaysian income exempted under Section 21, 22 or 26 of the Investment Incentives Act, 1968 of Malaysia is fully entitled to the exemptions provided for in sub-paragraph (a);
- (b) notwithstanding the provisions of paragraph 1, sub-paragraph (a) of Article 23 of the Agreement, the provisions of paragraph 1, sub-paragraph (b), of that Article shall apply likewise to the profits of, and to the capital represented by property forming part of the business property of a permanent establishment; to dividends paid by, and to the shareholding in, a company; or to gains referred to in paragraph 2 of Article 13 of the Agreement, provided that the resident of the Federal Republic of Germany concerned does not prove that the receipts of the permanent establishment or company are derived exclusively or almost exclusively--
 - (aa) from producing or selling goods or merchandise, rendering engineering services, or doing banking or insurance business, within Malaysia, or
 - (bb) from dividends paid by one or more companies, being residents of Malaysia more than 25 per cent of the capital of which is owned by the first-mentioned company, which themselves desire their receipts exclusively or almost exclusively from producing or selling goods and merchandise, rendering engineering services, or doing banking or insurance business, within Malaysia.

8. With reference to Article 24,

this provision shall not be construed as obliging Malaysia to grant to nationals of the Federal Republic of Germany the personal allowances, reliefs and reductions provided for by Section 130 of the Income Tax Act, 1967 of Malaysia to nationals of Malaysia who are not residents of Malaysia.

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

Done at Kuala Lumpur this 8th day of April 1977, in two originals, each in the Malay, English and German languages, all the texts being equally authentic, except that in the case of divergence of interpretation the English text shall prevail.