DOUBLE TAXATION AVOIDANCE AGREEMENT BETWEEN MALAYSIA AND AUSTRALIA

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AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF AUSTRALIA 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 AUSTRALIA

desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

Article 1
PERSONAL SCOPE

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

Article 2
TAXES COVERED

1. The existing taxes to which this Agreement shall apply are-

(a) in Malaysia:

income tax and excess profit tax; supplementary income taxes, that is, tin profits tax, development tax and timber profits tax; and petroleum income tax;

(b) in Australia:

the Australian income tax, including the additional tax upon the undistributed amount of the distributable income of a private company.

2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authority of each Contracting State shall notify the competent authority of the other Contracting State of any significant changes which have been made in the laws of its Contracting State relating to the taxes to which this Agreement applies.

Article 3
GENERAL DEFINITIONS

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 subsoil and their natural resources may be exercised;

(b) the term "Australia" means the Commonwealth of Australia and includes:

(i) the Territory of Norfolk Island;

(ii) the Territory of Christmas Island;

(iii) the Territory of Cocos (Keeling) Islands;

(iv) the Territory of Ashmore and Cartier Islands;

(v) the Coral Sea Islands Territory; and

(vi) any area adjacent to the territorial limits of Australia or of the said Territories in respect of which there is for the time being in force consistently with international law, a law of Australia or of a State or part of Australia, or of a Territory aforesaid dealing with the exploitation of any of the natural resources of the sea bed and subsoil of the continental shelf;

(c) the terms "Contracting State", "one of the Contracting States" and "other Contracting State" mean Malaysia or Australia, as the context requires;

(d) the term "person" includes an individual, a company and such unincorporated bodies of persons as are treated as persons under the taxation laws of the respective Contracting States;

(e) the term "company" means anybody corporate or any entity which is treated as a company for tax purposes;

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

(g) the term "tax" means Malaysian tax or Australian tax, as the context requires;

(h) the term "Malaysian tax" means tax imposed by Malaysia, being tax to which this Agreement applies by virtue of Article 2;

(i) the term "Australian tax" means tax imposed by Australia, being tax to which this Agreement applies by virtue of Article 2;

(j) the term "competent authority" means, in the case of Malaysia, the Minister of Finance or his authorised representative, and in the case of Australia, the Commissioner of Taxation or his authorised representative.

2. In this Agreement, the terms "Malaysian tax" and "Australian tax" do not include any penalty or interest imposed under the taxation laws of either Contracting State.

3. 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 taxation laws of that Contracting State.

Article 4
RESIDENCE

1. For the purposes of this Agreement, a person is a resident of one of the Contracting States:

(a) in the case of Malaysia, if the person is resident in Malaysia for the purposes of Malaysian tax; and

(b) in the case of Australia, if the person is a resident of Australia for the purposes of Australian tax.

2. Where by reason of the preceding provisions an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

(a) he shall be deemed to be a resident solely of the Contracting State in which he has a permanent home available to him;

(b) if he has a permanent home available to him in both Contracting States, or if he does not have a permanent home available to him in either of them, he shall be deemed to be a resident solely of the Contracting State in which he has an habitual abode;

(c) if he has an habitual abode in both Contracting States, or if he does not have an habitual abode in either of them, he shall be deemed to be a resident solely of the Contracting State with which his personal and economic relations are the closer.

3. In determining for the purposes of paragraph 2 of the Contracting State with which an individual's personal and economic relations are the closer, the matters to which regard may be had shall include the citizenship of the individual.

4. 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 solely of the Contracting State in which its place of effective management is situated.

Article 5
PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, oil or gas well, quarry or any other place of extraction of natural resources including timber or other forest produce;

(g) an agricultural, pastoral or forestry property;

(h) a building site or construction, installation or assembly project which exists for more than six months.

3. An enterprise shall not be deemed to have a permanent establishment merely by reason of:

(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 activities which have a preparatory or auxiliary character for the enterprise, such as advertising or scientific research.

4. An enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State and to carry on business through that permanent establishment if:

(a) it carries on supervisory activities in that other State for more than six months in connection with a building site, or a construction, installation or assembly project which is being undertaken in that other State; or

(b) substantial equipment is in that other State being used or installed by, for or under contract with, the enterprise.

5. A person acting in one of the Contracting States 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 of that enterprise in the first-mentioned State if:

(a) he has, and habitually exercises in that first-mentioned State, an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or

(b) there is maintained in that first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he habitually fills orders on behalf of the enterprise; or

(c) in so acting, he manufactures or processes in that first-mentioned State for the enterprise goods or merchandise belonging to the enterprise.

6. An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other

agent of an independent status, where that person is acting in the ordinary course of his business as such a broker or agent.

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

Article 6
INCOME FROM LAND

1. Income from land may be taxed in the Contracting State in which the land is situated.

2. In this Article, the word "land" shall have the meaning which it has under the law of the Contracting State in which the land in question is situated; it shall include any estate or direct interest in the land whether improved or not. A right to receive variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil or gas wells, quarries or other places of extraction or exploitation of natural resources or for the exploitation of, or the right to exploit or to fell any standing trees, plants or forest produce shall be deemed to be an estate or direct interest in land situated in the Contracting State in which the mineral deposits, oil or gas wells, quarries, natural resources or standing trees, plants or forest produce are situated.

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

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

Article 7
BUSINESS INCOME OR PROFITS

1. The income or profits of an enterprise of one of the Contracting States 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 or profits of the enterprise may be taxed in the other State, but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of one of the Contracting States carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the income or profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or

similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment or with other enterprises with which it deals.

3. In the determination of the income or profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise, being expenses (including executive and general administrative expenses) which are reasonably connected with the permanent establishment and which would be deductible if the permanent establishment were an independent entity that incurred those expenses, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

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

5. If the information available to the competent authority of a Contracting State is inadequate to determine the income or profits to be attributed to the permanent establishment of an enterprise, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person by the exercise of a discretion or the making of an estimate by the competent authority, provided that that law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.

6. Where income or profits include any item of income or profits which is dealt with separately in another Article of this Agreement, the provisions of that other Article, (except where otherwise provided in that Article) shall not be affected by the provisions of this Article.

7. Nothing in this Article shall affect the operation of any taxation law:

(a) in the case of Malaysia,
relating to income or profits from an insurance business; and

(b) in the case of Australia,
relating to insurance with non-residents:

Provided that if the relevant law in force in either Contracting State at the date of signature of this Agreement is varied (otherwise than in minor respects so as not to affect its general character), the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

Article 8
SHIPPING AND AIR TRANSPORT

1. Income or profits from the operation of ships or aircraft derived by a resident of one of the Contracting States shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, such income or profits may be taxed in the other Contracting State where they are income or profits from operations of ships or aircraft confined solely to places in that other State.

3. The provisions of paragraphs 1 and 2 shall apply in relation to the share of the income or profits from the operation of ships or aircraft derived by a resident of one of the Contracting States through participation in a pool service, in a joint transport operating organization or in an international operating agency.

4. For the purposes of this Article, income or profits derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise shipped in a Contracting State for discharge at another place in that State shall be treated as income or profits from operations of ships or aircraft confined solely to places in that State.

5. Nothing in this Article shall affect the application of the law of a Contracting State relating to the determination of tax liability by the exercise of a discretion or the making of an estimate by the competent authority in determining the tax liability of a resident of the other Contracting State in respect of operations of ships or aircraft confined solely to places in the first-mentioned State.

Article 9
ASSOCIATED ENTERPRISES

1. Where:

(a) an enterprise of one of the Contracting States 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 one of the Contracting States and an enterprise of the other Contracting State, and in either case conditions operate between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing at arm's length, then any income or profits which, but for those conditions, might have been expected to accrue to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the income or profits of that enterprise and taxed accordingly.

2. If the information available to the competent authority of a Contracting State is inadequate to determine the income or profits to be attributed to an enterprise, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person by the exercise of a discretion or the making of an estimate

by the competent authority, provided that that law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.

Article 10
DIVIDENDS

1. Dividends paid by a company which is a resident of one of the Contracting States, being dividends to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. Dividends paid by a company which is a resident of Australia for the purposes of Australian tax, being dividends to which a resident of Malaysia is beneficially entitled, may be taxed in Australia according to the law of Australia, but the tax so charged shall not exceed 15 percent of the gross amount of the dividends.

3. Subject to paragraph 4, dividends paid by a company which is resident in Malaysia for the purposes of Malaysian tax, being dividends to which a resident of Australia is beneficially entitled, shall be exempt from any tax in Malaysia which is chargeable on dividends in addition to the tax chargeable in respect of the income or profits 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.

4. If after the date of signature of this Agreement the existing system of taxation in Malaysia applicable to the income and distributions of companies is altered by the introduction of a tax on the income or profits of a company (for which no credit or only partial credit is given to its shareholders) and of a further tax on dividends paid by the company, the Malaysian tax on dividends, being dividends paid by a company which is resident in Malaysia for the purposes of Malaysian tax, and to which a resident of Australia is beneficially entitled, shall not exceed 15 percent of the gross amount of the dividends.
5. Dividends paid by a company which is a resident of one of the Contracting States, being dividends to which a person who is not a resident of the other Contracting State is beneficially entitled, shall be exempt from tax in that other State:

> Provided that this paragraph shall not apply in relation to dividends paid by a company which is both a resident of Australia for the purposes of Australian tax and resident in Malaysia for the purposes of Malaysian tax.

6. The provisions of paragraphs 1 to 5 shall not apply if the person beneficially entitled to the dividends, being a resident of one of the Contracting States, has in the other

Contracting State, in which the company paying the dividends is 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. Dividends paid by a company which is a resident of Malaysia shall include dividends paid by a company which is a resident of Singapore which for the purpose of those dividends has declared itself to be a resident of Malaysia, but shall not include dividends paid by a company which is a resident of Malaysia which for the purpose of those dividends has declared itself to be a resident of Singapore.

8. The term "dividends" in this Article includes any item which, under the laws of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend of a company.

9. Nothing in this Agreement shall be construed as preventing a Contracting State from imposing on the income of a company which is a resident of the other Contracting State, tax in addition to the tax which would be chargeable on the chargeable income or taxable income, as the case may be, of a company which is a resident of the first-mentioned State:

> Provided that any additional tax so imposed by the first-mentioned State shall not exceed 15 percent of the amount by which the chargeable income or taxable income for the year of assessment or year of income exceeds the tax which would have been payable on that income if the company had been a resident of the first-mentioned State.

Article 11
INTEREST

1. Interest arising in one of the Contracting States, being interest to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. Such interest may be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 15 percent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest to which a resident of Australia is beneficially entitled shall be exempt from Malaysian tax if the loan or other indebtedness in respect of which the interest is paid is an approved loan or a long-term loan as defined in section 2(1) of the Income Tax Act, 1967 of Malaysia (as amended).

4. The provisions of paragraphs 1, 2 and 3 shall not apply if the person beneficially entitled to the interest, being a resident of one of the Contracting States, has in the other Contracting State in which the interest arises a permanent establishment with which the

debt-claim in respect of which the interest is paid is effectively connected. In such a case the provisions of Article 7 shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself or a political subdivision, a local authority or statutory body thereof or a resident of that State for the purposes of its tax. Where, however, the person paying the interest, whether he is a resident of one of the Contracting States 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.

6. Where the payer is related to the person beneficially entitled to the interest and the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which might be expected to have been agreed upon by the payer and the person so entitled if they had not been related, 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. For the purposes of this paragraph, a person is related to anther person if either person participates directly or indirectly in the management, control or capital of the other, or if any third person or persons participate directly or indirectly in the management, control or capital of both.

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

Article 12
ROYALTIES

1. Royalties arising in one of the Contracting States, being royalties to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. Such royalties may be taxed in the Contracting State in which they arise, and according to the laws of that State, but the tax so charged shall not exceed 15 percent of the gross amount of the royalties.

3. Notwithstanding the provisions of paragraph 2, approved industrial royalties derived from Malaysia by a resident of Australia who is the beneficial owner thereof shall be exempt from Malaysian tax.

4. The provisions of paragraphs 1, 2 and 3 shall not apply if the person beneficially entitled to the royalties, being a resident of one of the Contracting States, has in the other

Contracting State from which the royalties are derived a permanent establishment with which the right, property, knowledge, information or assistance giving rise to the royalties is effectively connected. In such a case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself or a political subdivision, a local authority or statutory body thereof or a resident of that State for the purposes of its tax. Where, however, the person paying the royalties, whether he is a resident of one of the Contracting States 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.

6. Where the payer is related to the person beneficially entitled to the royalties and the amount of the royalties paid or credited, having regard to the use, to the right to use, or to the knowledge, information or assistance, for which they are paid or credited, exceeds the amount which might be expected to have been agreed upon by the payer and the person so entitled if they had not been related, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the royalties paid or credited shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement. For the purposes of this paragraph, a person is related to another person if either person participates directly or indirectly in the management, control or capital of the other, or if any third person or persons participate directly or indirectly in the management, control or capital of both.

7. The term "royalties" in this Article means payments or credits of any kind to the extent to which they are made as consideration for:

(a) the use of, or the right to use, any-

(i) copyright, patent, design or model, plan, secret formula or process, trade mark or other like property or right;

(ii) industrial, commercial or scientific equipment; or

(iii) motion picture film or tape for radio or television broadcasting;

(b) the supply of scientific, technical, industrial or commercial knowledge or information;

(c) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such right or property as is described in paragraph (a) (i), any such equipment as is described in paragraph (a) (ii), or any such knowledge or information as is described in paragraph (b); or

(d) total or partial forbearance in respect of the use of a property or right referred to in this paragraph.

8. The term "approved industrial royalties" in this Article means royalties as defined in paragraph 7 which are approved and certified by the competent authority of Malaysia as payable for the purpose of promoting industrial development in Malaysia and which are payable by an enterprise which is wholly or mainly engaged in activities falling within one of the following classes:

(a) manufacturing, assembling or processing;

(b) construction, civil engineering or ship-building, or

(c) electricity, hydraulic power, gas or water supply.

9. Royalties derived by a resident of Australia, being royalties that, as film rentals, are subject to the cinematograph film-hire duty in Malaysia, shall not be liable to Malaysian tax.

Article 13
ALIENATION OF LAND

Income or profits from the alienation of land as defined in Article 6 may be taxed in the Contracting State in which that land is situated.

Article 14
PERSONAL SERVICES

1. Subject to Articles 15, 18, 19 and 20, remuneration (other than a pension) derived by an individual who is a resident of one of the Contracting States in respect of personal (including professional) services may be taxed only in that Contracting State unless the services are performed in the other Contracting State. If the services are so performed, such remuneration as is derived in respect thereof may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration (other than a pension) derived- by an individual who is a resident of one of the Contracting States in respect of personal (including professional) services performed in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in that other State for a period or periods not exceeding in the aggregate 183 days in the basis year or year of income, as the case may be, of that other State;

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

(c) the remuneration is not deductible in determining taxable profits of a permanent establishment which that person has in that other State.

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

Article 15
DIRECTORS' FEES

Notwithstanding the provisions of Article 14, directors' fees and similar payments derived by a resident of one of the Contracting States 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 State.

Article 16
ENTERTAINERS

1. Notwithstanding the provisions of Article 14, income derived by entertainers (such as theatrical, motion picture, radio or television artistes and musicians and athletes) from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

2. Where income in respect of the personal activities of an entertainer as such accrues not to that entertainer but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to remuneration or profits derived from activities exercised in a Contracting State that are directly connected with a visit to that Contracting State that is arranged by and is directly or indirectly supported wholly or substantially from the public funds of the other Contracting State or a political subdivision, a local authority or statutory body thereof.

Article 17
PENSIONS AND ANNUITIES

1. Any pension (other than a pension of the kind referred to in Article 18) or other similar payment or any annuity paid to a resident of one of the Contracting States shall be taxable only in that Contracting State.

2. 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.

3. Any alimony or other maintenance payment arising in a Contracting State and paid to a resident of the other Contracting State, shall be taxable only in the first-mentioned State.

Article 18
GOVERNMENT SERVICE

1. Remuneration (other than a pension or annuity) paid by a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered in the discharge of governmental functions shall be taxable only in that State. However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the recipient is a resident of that other State who:

(a) is a citizen or national of that State; or

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

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

3. The provisions of paragraphs 1 and 2 shall not apply to remuneration or pensions in respect of service rendered in connection with any trade or business carried on by one of the Contracting States or a political subdivision or a local authority thereof. In such a case, the provisions of Articles 14, 15 and 17 shall apply.

Article 19

PROFESSORS AND TEACHERS

1. An individual who, at the invitation of a university, college, school or other similar recognized educational institution in a Contracting State, visits that Contracting State for a period not exceeding two years solely for the purpose of teaching or conducting research or both at such educational institution and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching or research in respect of which he is, or upon the application of this Article will be, subject to tax in the other Contracting State.

2. This Article shall not apply to remuneration which a professor or teacher receives for conducting research if the research is undertaken primarily for the private benefit of a specific person or persons.

Article 20
STUDENTS

Where a student, who is a resident of one of the Contracting States or who was a resident of that State immediately before visiting the other Contracting State and who is temporarily present in the other State solely for the purpose of his education or training, receives payments from sources outside the other State for the purpose of his maintenance, education or training, those payments shall be exempt from tax in the other State.

Article 21
INCOME OF DUAL RESIDENT

Where a person, who by reason of the provisions of paragraph 1 of Article 4 is a resident of both Contracting States but by reason of the provisions of paragraph 2 or 4 of that Article is deemed for the purposes of this Agreement to be a resident solely of one of the Contracting States, derives income from sources in that Contracting State or from sources outside both Contracting States, that income shall be taxable only in that Contracting State.

Article 22
SOURCES OF INCOME

Income derived by a resident of one of the Contracting States which, under any one or more of Articles 6 to 8, 10 to 16 and 18, may be taxed in the other Contracting State shall for the purpose of Article 23, and of the income tax law of that other State, be deemed to be income from sources in that other State.

Article 23
METHODS OF ELIMINATION OF DOUBLE TAXATION

1. The laws in force in each of the Contracting States shall continue to govern the taxation of income in that Contracting State except where 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.

2. In the case of Malaysia, subject to the provisions of the law of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, the amount of Australian tax payable under the law of Australia and in accordance with the provisions of this Agreement, by a resident of Malaysia in respect of income from sources within Australia, shall be allowed as a credit against Malaysian tax

payable in respect of such income, but in an amount not exceeding the proportion of Malaysian tax which such income bears to the entire income chargeable to Malaysian tax.

3. (a) Subject to the provisions of the law of Australia from time to time in force which relate to the allowance of a credit against Australian tax or tax paid in a country outside Australia (which shall not affect the general principle hereof), Malaysian tax paid, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in Malaysia shall be allowed as a credit against Australian tax payable on the income on which the Malaysian tax was paid. However, where the income consists of a dividend paid by a company which is a resident of Malaysia, the credit shall, subject to sub-paragraph (b), only take into account such tax in respect thereof as is additional and is ultimately borne by the recipient without reference to any tax so payable.

(b) A company which is a resident of Australia is, in accordance with the provisions of the taxation law of Australia in force at the date of signature of this Agreement, entitled to a rebate in its assessment at the average rate of tax payable by the company in respect of dividends that are included in its taxable income and are received from a company which is a resident of Malaysia. However, should the law so in force be amended so that the rebate in relation to the dividends ceases to be allowable under that law, credit shall be allowed under sub-paragraph (a) to the first-mentioned company for the Malaysian tax paid on the profits out of which the dividends are paid, as well as for the Malaysian tax paid on the dividends for which credit is to be allowed under sub-paragraph (a), but only if that company beneficially owns at least 10 per cent of the paid-up share capital of the second-mentioned company.

4. Where the income or profits on which an enterprise of one of the Contracting States has been charged to tax in that Contracting State are also included in the income or profits of an enterprise of the other Contracting State as being income or profits which, because of the conditions operative between the two enterprises, might have been expected to accrue to the enterprise of that other Contracting State if the enterprises had been independent enterprises dealing at arm's length, the income or profits so included shall be treated for the purposes of this Article as income or profits of the enterprise of the first-mentioned Contracting State from a source in the other Contracting State and credit shall be given in accordance with this Article in respect of the extra tax chargeable in that other Contracting State as a result of the inclusion of such income or profits.

5. For the purposes of paragraph 6, the term "Malaysian tax forgone" means:

(a) an amount which, under the laws of Malaysia and in accordance with this Agreement, would have been payable as Malaysian tax on income had that income not been exempted either wholly or partly from Malaysian tax in accordance with-

(i) Schedule 7A of the Income Tax Act 1967 of Malaysia or sections 21, 22, 26 or 30Q of the Investment Incentives Act 1968 of Malaysia, so far as they were in force on, and have not been modified since, the date of signature of this Agreement or have been modified only in minor respects so as not to affect their general character; or

(ii) any other provisions which may subsequently be agreed in an Exchange of Letters between the Governments of the Contracting States to be of a substantially similar character;

(b) in the case of interest derived by a resident of Australia which is exempt from Malaysian tax in accordance with paragraph 3 of Article 11, the amount which, under the law of Malaysia and in accordance with this Agreement, would have been payable as Malaysian tax if the interest were interest to which paragraph 3 of Article 11 did not apply, and if the tax referred to in paragraph 2 of Article 11 were not to exceed 10 per cent of the gross amount of the interest; and

(c) in the case of royalties derived by a resident of Australia, being approved industrial royalties which are exempt from Malaysian tax in accordance with paragraph 3 of Article 12, the amount which, under the law of Malaysia and in accordance with this Agreement, would have been payable as Malaysian tax if the royalties were royalties to which paragraph 3 of Article 12 did not apply and if the tax referred to in paragraph 2 of Article 12 were not to exceed 10 per cent of the gross amount of the royalties.

6. (a) For the purposes of sub-paragraph (a) or (b) of paragraph 3, Malaysian tax forgone which answers the description in sub-paragraph (a) of paragraph 5 shall be deemed to be Malaysian tax paid.

(b) For the purposes of sub-paragraph (a) of paragraph 3, Malaysian tax forgone which answers the description in sub-paragraph (b) or (c) of paragraph 5 shall be deemed to be Malaysian tax paid.

(c) For the purposes of the income tax law of Australia-

(i) in the event that the rebate in relation to dividends, referred to in sub-paragraph (b) of paragraph 3, ceases to be allowable in Australia, the amount of the income referred to in sub-paragraph (a) of paragraph 5 shall be deemed to be increased by the amount that is deemed in accordance with sub-paragraph (a) of this paragraph to be Malaysian tax paid; and

(ii) the amount of interest or royalties referred to in sub-paragraphs (b) and (c) of paragraph 5 shall be deemed to be increased by the amount that is deemed in accordance with sub-paragraph (b) of this paragraph to be Malaysian tax paid.

7. (a) Paragraphs 5 and 6 shall not apply in relation to income derived in any year of income after the year of income that ends on 30 June 1984 or any later date that may be agreed by the Governments of the Contracting States, after the consultations referred to in sub-paragraph (b), in Letter exchanged for this purpose.

(b) The Governments of the Contracting States shall consult each other in order to determine whether the period of application of paragraphs 5 and 6 shall be extended. For this purpose notice of intention to consult may be given not less than six months before the expiration of that period.

8. If in an Agreement for the avoidance of double taxation that is subsequently made between Australia and a third State Australia should agree:

(a) in relation to dividends that are derived by company which is a resident of Australia from a company which is a resident of the third State, to give credit for tax paid on the profits out of which the dividends are paid on the basis of a test of beneficial ownership by the first-mentioned company of less than l0 per cent of the paid-up share capital of the second-mentioned company; or

(b) to give relief from Australian tax of the kind that is provided for in relation to Malaysia in paragraphs 5 and 6, on a basis that, other than in minor respects, is more favourable in relation to the third State than that so provided for, the Government of Australia shall immediately inform the Government of Malaysia and shall enter into negotiations with the Government of Malaysia with a view to providing treatment in relation to Malaysia comparable with that provided in relation to that third State.

9. Where royalties derived by a resident of Australia are, as film rentals, subject to the cinematograph film-hire duty in Malaysia, that duty shall, for the purposes of sub-paragraph (a) of paragraph 3, be deemed to be Malaysian tax.

Article 24
MUTUAL AGREEMENT PROCEDURE

1. Where a resident of one of the Contracting States considers that the actions of the competent authority 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 taxation laws of those States, present his case to the competent authority of the Contracting State of which he is a resident. The case must be presented within two years from the first notification of the action.

2. The competent authority shall endeavour, if the taxpayer's claim 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. If the claim is made within six years of the end of the year of assessment or year of tax, as the case may be, the solution so reached shall be implemented notwithstanding any time limits in the taxation laws of the Contracting States.

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

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

Article 25
EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes to which this Agreement applies. Any information so exchanged shall be treated as secret and shall be disclosed only to persons of authorities (including courts and administrative bodies) concerned with the assessment, collection, enforcement or prosecution in respect of, or the determination of appeals in relation to, those taxes to which this Agreement applies.

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

(a) to carry out any 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 State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

Article 26
DIPLOMATIC AND CONSULAR OFFICIALS

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.

Article 27
LIMITATION OF RELIEF

Where this Agreement provides (with or without other conditions) that income from sources in a Contracting State shall be relieved wholly or partly from tax in that State, and under the laws in force in the other Contracting State the said 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 that other State;
Provided that where-

(a) in accordance with the foregoing provisions of this Article, 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.

Article 28
ENTRY INTO FORCE

This Agreement shall come into force on the date on which the Government of Malaysia and the Government of Australia exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give this Agreement the force of law in Australia and in Malaysia, as the case may be, and thereupon this Agreement shall have effect:

(a) in Malaysia

In respect of Malaysian tax, for the year of assessment beginning on 1 January l980, and subsequent years of assessment.

(b) in Australia-

(i) in respect of withholding tax on income that derived by a nonresident in respect of income derived on or after 1 July 1979;
(ii) in respect of other Australian tax, for any year of income beginning on or after 1 July 1979;

Article 29
TERMINATION

This Agreement shall continue in effect indefinitely, but the Government of Malaysia or the Government of Australia may on or before 30 June in any calendar year after the year 1982 give to the other Government through the diplomatic channel written notice of termination and, in that event, that Agreement shall cease to be effective:

(a) in Malaysia

in respect of Malaysian tax, for the year of assessment beginning on 1 January in the second calendar year next following that in which the notice of termination is given, and subsequent years of assessment;

(b) in Australia-

(i) in respect of withholding tax on income that is derived by a nonresident, in respect of income derived on or after 1 July in the calendar year next following that in which the notice of termination it given;

(ii) in respect of other Australian tax, for any year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given.

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

DONE in duplicate in the Bahasa Malaysia and the English language, both texts being equally authentic at Canberra this 20th day of August One thousand nine hundred and eighty.

P.U. (A) 440/1999
Signed : 2 August 1999
Entry into Force: 27 June 2000
Effective Date : 1 January 1988 /1 January 1994/1 January 2002

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

Article 1
Article 3 of the Agreement is amended by:

(a) deleting sub-paragraphs (a) and (b) of paragraph 1 and substituting the following: "(a) the term "Australia", when used in a geographical sense, excludes all external territories other than:

(i) the Territory of Norfolk Island;
(ii) the Territory of Christmas Island;
(iii) the Territory of Cocos (Keeling) Islands;
(iv) the Territory of Ashmore and Cartier Islands;
(v) the Territory of Heard Island and McDonald Islands; and
(vi) the Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this sub-paragraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploitation of any of the natural resources of the sea-bed and subsoil of the continental shelf;

(b) the term "Malaysia" means the territories of the Federation of Malaysia, the territorial waters of Malaysia and the sea-bed and subsoil of the territorial waters, and includes any area extending beyond the limits of the territorial waters of Malaysia, and the sea-bed and subsoil of any such area, which has been or may hereafter be designated under the laws of Malaysia and in accordance with international law as an area over which Malaysia has sovereign rights for the purposes of exploring and exploiting the natural resources, whether living or non-living;"; and

(b) deleting the full stop at the end of paragraph 3 and adding "from time to time in force.".

Article 2
Article 5 of the Agreement is amended by:

(a) deleting "or" immediately following sub-paragraph (a) of paragraph 4;

(b) deleting the full stop at the end of sub-paragraph (b) of paragraph 4 and substituting "; or"; and

(c) adding after sub-paragraph (b) of paragraph 4 the following sub-paragraph:

"(c) it furnishes services, including consultancy services, in that other State through employees or other personnel engaged by the enterprise for such purpose, but only where those activities continue (for the same or a connected project) within the other State for a period or periods aggregating more than three months within any twelve-month period.".

Article 3
Article 6 of the Agreement is amended by deleting paragraph 2 and substituting the following:

"2.In this Article, the word "land" shall have the meaning which it has under the law of the Contracting State in which the land in question is situated; it shall include any estate or direct interest in land whether improved or not. A right to receive variable or fixed payments either as consideration for the exploitation of or the right to explore for or exploit, or in respect of the exploitation of, mineral deposits, oil or gas wells, quarries or other places of extraction or exploitation of natural resources or for the exploitation of, or the right to exploit or to fell any standing trees, plants or forest produce shall be deemed to be an estate or direct interest in land situated in the Contracting State in which the mineral deposits, oil or gas wells, quarries, natural resources, or standing trees, plants or forest produce, as the case may be, are situated or where the exploration may take place.".

Article 4
Article 7 of the Agreement is amended by adding after paragraph 7 the following paragraph:

"8.Where:
(a) a resident of one of the Contracting States is beneficially entitled, whether directly or indirectly through one or more trusts, to a share of the business profits of an enterprise carried on in the other Contracting State by the trustee of a trust estate other than a trust estate which is treated
as a company for tax purposes; and

(b) in relation to that enterprise, that trustee has, in accordance with the principles of Article 5, a permanent establishment in that other State,

the enterprise carried on by the trustee shall be deemed to be a business carried on in that other State by that resident through a permanent establishment situated therein and the resident's share of business profits shall be attributed to that permanent establishment.".

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Article 5

Article 11 of the Agreement is amended by:

(a) deleting the words "or a long-term loan" in paragraph 3; and

(b) adding after paragraph 7 the following paragraph:

"8.Notwithstanding the provisions of paragraph 2, interest derived from the investment of official reserve assets by the Government of a Contracting State or by a bank performing central banking functions in a Contracting State shall be exempt from tax in the other Contracting State.".

Article 6

Article 13 of the Agreement is deleted and substituted with the following:

"Article 13
Alienation of property

1. Income, profits or gains derived by a resident of one of the Contracting States from the alienation of land as defined in Article 6 and, as provided in that Article, situated in the other Contracting State may be taxed in that other State.

2. Income, profits or gains from the alienation of property, other than land as defined in Article 6, that forms part of the business property of a permanent establishment which an enterprise of one of the Contracting States has in the other Contracting State, including income, profits or gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

3. Income, profits or gains from the alienation of ships or aircraft operated in international traffic, or of property other than land as defined in Article 6 pertaining to the operation of those ships or aircraft, shall be taxable only in the Contracting State of which the enterprise which operated those ships or aircraft is a resident.

4. Income, profits or gains derived by a resident of a Contracting State from the alienation of any shares or other interests in a company, or of an interest of any kind in a partnership, trust or other entity, where the value of the assets of such entity, whether they are held directly or indirectly (including through one or more interposed entities, such as, for example, through a chain of companies), is principally attributable to land as defined in Article 6 and, as referred to in that Article, situated in the other Contracting State, may be taxed in that other State.

5. Nothing in this Agreement affects the application of a law of a Contracting State relating to the taxation of profits or gains of a capital nature derived from the alienation of property other than that to which any of paragraphs 1, 2, 3 and 4 apply.".

Article 7
Article 20 of the Agreement is amended by:

(a) deleting "Students" in the heading and substituting "Students and trainees"; and

(b) inserting "or a trainee" after "student".

Article 8
Article 22 of the Agreement is amended by:

(a) deleting "Sources of income" in the heading and substituting "Sources of income and gains"; and

(b) inserting "or gains" after "Income" in the first line.

Article 9
Article 23 of the Agreement is deleted and substituted with the following:

"Article 23
Methods of elimination of double taxation

1. The laws in force in each of the Contracting States shall continue to govern the taxation of income in that Contracting State except where 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.

2. In the case of Malaysia, subject to the law of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, the amount of Australian tax payable under the law of Australia and in accordance with the provisions of this Agreement, by a resident of Malaysia in respect of income from sources within Australia shall be allowed as a credit against Malaysian tax payable in respect of that income. Where such income is a dividend paid by a company which is a resident of Australia to a company which is a resident of Malaysia and which owns not less than 10 per cent of the voting shares of the company paying the dividend, the credit shall take into account Australian tax payable by that company in respect of its income out of which the dividend is paid. 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.

3. (a) Subject to the provisions of the law of Australia from time to time in force which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia (which shall not affect the general principle hereof), Malaysian tax paid under the law of Malaysia and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in Malaysia shall be allowed as a credit against Australian tax payable in respect of that income.

(b) Where a company which is a resident of Malaysia and is not a resident of Australia for the purposes of Australian tax pays a dividend to a company which is a resident of Australia and which controls directly or indirectly not less than 10 per cent of the voting power of the first-mentioned company, the credit referred to in sub-paragraph (a) shall include the Malaysian tax paid by that first-mentioned company in respect of that portion of its profits out of which the dividend is paid.

4. Where the income or profits on which an enterprise of one of the Contracting States has been charged to tax in that Contracting State are also included in the income or profits of an enterprise of the other Contracting State as being income or profits which, because of the conditions operative between the two enterprises, might have been expected to accrue to the enterprise of that other Contracting State if the enterprises had been independent enterprises dealing at arm's length, the income or profits so included shall be treated for the purposes of this Article as income or profits of the enterprise of the first-mentioned Contracting State from a source in the other Contracting State and credit shall be given in accordance with this Article in respect of the extra tax chargeable in that other Contracting State as a result of the inclusion of such income or profits.

5. For the purposes of paragraph 6, the term "Malaysian tax forgone" means:

(a) an amount which, under the laws of Malaysia and in accordance with this Agreement, would have been payable as Malaysian tax on income had that income not been exempted either wholly or partly from Malaysian tax in accordance with:

(i) Schedule 7A of the Income Tax Act 1967 of Malaysia or sections 22, 23, 29, 35 and 37 of the Promotion of Investments Act 1986 of Malaysia and section 45 of that Act to the extent that it relates to sections 21, 22, 26, or 30Q of the Investment Incentives Act 1968, so far as the sections were in force on, and have not been modified since, the date of signature of the Protocol first amending the Agreement or have been modified only in minor respects so as not to affect their general character; or

(ii) any other provisions which may subsequently be agreed in an Exchange of Letters between the Governments of the Contracting States to be of a substantially similar character;

(b) in the case of interest derived by a resident of Australia which is exempt from Malaysian tax in accordance with paragraph 3 of Article 11, the amount which, under the

law of Malaysia and in accordance with this Agreement, would have been payable as Malaysian tax if the interest were interest to which paragraph 3 of Article 11 did not apply, and if the tax referred to in paragraph 2 of Article 11 were not to exceed 10 per cent of the gross amount of the interest; and

(c) in the case of royalties derived by a resident of Australia, being approved industrial royalties which are exempt from Malaysian tax in accordance with paragraph 3 of Article 12, the amount which, under the law of Malaysia and in accordance with this Agreement, would have been payable as Malaysian tax if the royalties were royalties to which paragraph 3 of Article 12 did not apply and if the tax referred to in paragraph 2 of Article 12 were not to exceed 10 per cent of the gross amount of the royalties.

6. (a) For the purposes of sub-paragraph (a) or (b) of paragraph 3, Malaysian tax forgone which answers the description in sub-paragraph (a) of paragraph 5 shall be deemed to be Malaysian tax paid.

(b) For the purposes of sub-paragraph (a) of paragraph 3, Malaysian tax forgone which answers the description in sub-paragraph (b) or (c) of paragraph 5 shall be deemed to be Malaysian tax paid.

7. Paragraphs 5 and 6 shall apply only in relation to income derived in any of the 5 years of income beginning with the year of income that commenced on 1 July 1987 and in any later year of income that may be agreed in an Exchange of Letters for this purpose by the Governments of the Contracting States, or their authorised representatives.

8. If in an Agreement for the avoidance of double taxation that is subsequently made between Australia and a third state, Australia should agree:

(a) in relation to dividends that are derived by a company which is a resident of Australia from a company which is a resident of the third state, to give credit for tax paid on the profits out of which the dividends are paid on the basis of a test of beneficial ownership by the first-mentioned company of less than 10 per cent of the paid-up share capital of the second-mentioned company; or

(b) to give relief from Australian tax of the kind that is provided for in relation to Malaysia in paragraphs 5 and 6, on a basis that, other than in minor respects, is more favourable in relation to the third state than that so provided for,

the Government of Australia shall immediately inform the Government of Malaysia and shall enter into negotiations with the Government of Malaysia with a view to providing treatment in relation to Malaysia comparable with that provided in relation to that third state.

9. Where royalties derived by a resident of Australia are, as film rentals, subject to the cinematograph film-hire duty in Malaysia, that duty shall, for the purposes of sub-paragraph(a) of paragraph 3, be deemed to be Malaysian tax.

10. Where gains derived by a resident of Australia are subject to real property gains tax in Malaysia, that tax shall, for the purposes of sub-paragraph 3(a), be deemed to be Malaysian tax."

Article 10
Entry into force

1. This Protocol, which shall form an integral part of the Agreement, shall enter into force on the last of the dates on which the Contracting States exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give this Protocol the force of law in Australia and in Malaysia respectively, and thereupon this Protocol shall, subject to paragraph 2, have effect:

(a) in Australia:

(i) subject to sub-paragraph 1(a)(ii), for the purposes of Article 9 of the Protocol in respect of tax on income of any year of income beginning on or after 1 July 1987;

(ii) to the extent that Article 9 of the Protocol has application in respect of Malaysian tax forgone in accordance with section 35 or 37 of the Promotion of Investments Act 1986 of Malaysia, in respect of tax on income of any year of income beginning on or after 1 July 1985;

(iii) in the case of sub-paragraph (c) of Article 2 of the Protocol, in respect of tax on income of any year of income beginning on or after 1 July 1993; and

(iv) in any other case, in relation to income of any year of income beginning on or after 1 July in the calendar year next following that in which this Protocol enters into force;

(b) in Malaysia:

(i) for the purposes of Article 9 of the Protocol in respect of Malaysian tax for any year of assessment beginning on or after 1 January 1988; (ii) in the case of sub-paragraph (c) of Article 2 of the Protocol in respect of tax for any year of assessment beginning on or after 1 January 1994; and

(iii) in any other case, in respect of Malaysian tax for any year of assessment beginning on or after 1 January in the second calendar year following the calendar year in which this Protocol enters into force.

2. Where any provision of the Agreement that is affected by this Protocol would have afforded any greater relief from tax than is afforded by the amendments made by this Protocol, that provision shall continue to have effect:

(a) in Australia, for any year of income; and

(b) in Malaysia, for any year of assessment,
beginning, in either case, before the entry into force of this Protocol.

In witness whereof the undersigned, being duly authorised, have signed this Protocol.

Done in duplicate in English and Bahasa Malaysia, both texts being equally authentic, at Sydney, this second day of August, one thousand nine hundred and ninety-nine.

P.U. (A) 162/2003
Signed : 28 July 2002
Entry into Force: 23 July 2003
Effective Date : 1 January 1993/1 January 2004

SECOND PROTOCOL AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF AUSTRALIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTATION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AS AMENDED BY THE FIRST PROTOCOL OF 2 AUGUST 1999

The Government of Malaysia and the Government of Australia desiring to amend the Agreement between the Government of Malaysia and the Government of Australia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income done at Canberra on 20 August 1980 (as amended by the first Protocol to that Agreement, done at Sydney on 2 August 1999), in this Protocol referred to as "the Agreement, as amended"),

Have agreed as follows:

Article 1
Article 9 of the Agreement, as amended, is amended by adding after paragraph 2 the following paragraph:

"3. Where profits on which an enterprise of one of the Contracting States has been charged to tax in that State are also included, by virtue of the provisions of paragraph 1 or 2, in the profits of an enterprise of the other Contracting State and charged to tax in that other State, and the profits so included are profits which might reasonably have been expected to have accrued to that enterprise of the other State if the conditions operative between the enterprises had been those which might reasonably have been expected to have operated between independent enterprises dealing wholly independently with one another, then the first-mentioned State shall make an appropriate adjustment to the amount of tax charged on those profits in the first-mentioned State. In determining such an adjustment, due regard shall be had to the other provisions of this Agreement and for this purpose the competent authorities of the Contracting States shall if necessary consult each other."

Article 2
Article 10 of the Agreement, as amended, is deleted and substituted with the following:

"Article 10
DIVIDENDS

1. Dividends paid by a company which is a resident of one of the Contracting States for the purposes of its tax, being dividends to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. However, those dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State, but:

(a) in Australia:

(i) no tax shall be charged on dividends to the extent to which those dividends have been "franked" in accordance with Australia's law relating to tax, if the person beneficially entitled to those dividends is a company (other than a partnership) which holds directly at least 10 per cent of the voting power in the company paying the dividends; and

(ii) tax charged shall not exceed 15 per cent of the gross amount of the dividends to the extent to which those dividends are not within subparagraph (a)(i); and

(b) in Malaysia:

no tax shall be charged on dividends paid by a company which is resident in Malaysia for the purposes of Malaysian tax being dividends to which a resident of Australia is beneficially entitled, in addition to the tax chargeable in respect of the income or profits of the company paying the dividends.

3. For the purposes of the paragraph 2, if the relevant law either Contracting State at the date of signature of this Protocol is varied otherwise than in minor respects so as not to affect its general character, the Contracting States shall consult each other with a view to agreeing to any amendment of that paragraph that may be appropriate.

4. The term "dividends" as used in this Article means income from shares, as well as other amounts which are subjected to the same taxation treatment as income from shares by the law of the State of which the company making the distribution is a resident for the purposes of its tax.

5. The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the dividends, being a resident of one of the Contracting States, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated in that other State, and the holding in respect of which the dividends are paid is effectively connected with that permanent establishment. In that case the provisions of Article 7 shall apply.

6. Where a company which is a resident of one of the Contracting States derives profits or income from other Contracting State, that other State may not impose any tax on the

dividends paid by the company – being dividends to which a person who is not a resident of the other Contracting State is beneficially entitled – except insofar as the holding in respect of which, such dividends are paid is effectively connected with a permanent establishment situated in that other State, even if the dividends paid consist wholly or partly of profits or income arising in such other State. This paragraph shall not apply in relation to dividends paid by any company which is a resident of Australia for the purposes of Australian tax and which is also a resident of Malaysia for the purposes of Malaysian tax.

7. Dividends paid by a company which is a resident of Malaysia shall include dividends paid by a company which is a resident of Singapore which for the purpose of those dividends has declared itself to be a resident of Malaysia, but shall not include dividends paid by a company which is a resident of Malaysia which for the purpose of those dividends has declared itself to be a resident of Singapore."

Article 3

Article 12 of the Agreement, as amended, is amended by:

(a) deleting paragraphs 3, 8 and 9 and renumbering the paragraphs 1 to 6;

(b) deleting "paragraphs 1, 2 and 3" and substituting "paragraphs 1 and 2" in renumbered paragraph 3; and

(c) deleting "or" at the end of subparagraph (c) of renumbered paragraph 6, renumbering existing subparagraph "(d)" as "(f)" and inserting the following subparagraphs:

"(d) the use in connection with television, radio or other broadcasting, or the right to use in connection with such broadcasting, visual images or sounds, or both, transmitted by:

(i) satellite; or

(ii) cable, optic fibre or similar technology;

(e) the use of, the right to use, some or all of the part of the radio frequency spectrum specified in a relevant license; or".

Article 4

Article 21 of the Agreement, as amended, is deleted and substituted with the following:

"Article 21

OTHER INCOME

1. Items of income of a resident of one of the Contracting States, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from land as defined in paragraph 2 of Article 6, derived by a resident of one of the Contracting States where that income is effectively connected with a permanent establishment situated in the other Contracting State. In that case the provisions of Article 7 shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of one of the Contracting States not dealt with in the foregoing articles of this Agreement from sources in the other Contracting State may also be taxed in the other Contracting State."

Article 5
Article 23 of the Agreement, as amended, is amended by:

(a) deleting paragraphs 4 to 7 and substituting the following:

"4. For the purposes of paragraph 5, the term "Malaysian tax forgone" means an amount which, under the laws of Malaysia and in accordance with this Agreement, would have been payable as Malaysian tax on income had that income not been exempted either wholly or partly from Malaysian tax in accordance with Schedules 7A and 7B of the Income Tax Act 1967 of Malaysia or sections 22, 23, 29, 29A, 29B, 29C, 29D, 29E, 29F, 29G, 29H, 31E, 35, 37 and 41B of the Promotion of Investments Act 1986 of Malaysia and section 45 of that Act to the extent that it relates to sections 21, 22, 26, or 30Q of the Investment Incentives Act 1968, so far as the sections were in force on, and have not been modified since, the date of signature of the Protocol second amending the Agreement or have been modified only in minor respects so as not to affect their general character.

5. Notwithstanding the operation of paragraph 4, Malaysian tax forgone shall not be deemed to have been paid in respect of income derived from:

(a) banking, insurance, consulting, accounting, auditing or similar services; or

(b) the operation of ships or aircraft, other than ships or aircraft operated principally from places in Malaysia and used solely in carrying on a business in Malaysia; or

(c) any scheme entered into by an Australian resident with the purpose of using Malaysia as a conduit for income or as a location of property in order to evade or avoid Australia tax through the exploitation of the Australian foreign tax credit provisions or to confer a benefit on a person who is neither a resident of Australia, nor of Malaysia.

6. For the purposes of subparagraph (a) or (b) of paragraph 3, Malaysia tax forgone which answers the description in paragraph 4 and is not of a type referred to in paragraph 5 shall be deemed to be Malaysian tax paid.

7. Paragraphs 4, 5 and 6 shall not apply in relation to income derived in any year of income after the year of income that ends on 30 June 2003.";

(b) deleting the words "5 and 6" and substituting "4 and 6" in subparagraph (b) of paragraph 8; and

(c) deleting paragraph 9 and renumbering paragraph 10 as 9.

Article 6

Article 24 of the Agreement, as amended, is amended by adding after paragraph 4 the following paragraph:

"5. For the purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Agreement may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 3 of this Article or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.:.

Article 7

Article 27 of the Agreement, as amended, is amended by numbering the existing paragraph as 1 and adding after that paragraph, the following:

"2. Persons entitled to a particular tax treatment under:

(a) a law of one of the Contracting States which has been identified in an Exchange of Letters between the Contracting States; or

(b) any law substantially similar to such an identified law which is subsequently enacted by the relevant Contracting State,

shall not be entitled to any benefit of this agreement.

1. In the event of either Contracting State becoming aware of a substantially similar law of the type referred to in subparagraph (b) of paragraph 2, the Contracting States shall consult each other with a view to identifying such law in an Exchange of Letters."

Article 8

This protocol, which shall form an integral part of the Agreement, as amended, shall enter into force on the last of the dates on which the Contracting States exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give this Protocol the force of law in Australia and in Malaysia respectively, and thereupon this Protocol shall, have effect:

(a) in Australia:

(i) for the purposes of paragraph (a) of Article 5 of the Protocol, in respect of tax on income of any year of income beginning on or after 1 July 1992; and

(ii) in any other case, in relation to income of any year of income beginning on or after 1 July in the calendar year next following that in which this Protocol enters into force;

(b) in Malaysia:

(i) for the purposes of paragraph (a) of Article 5 of the Protocol, in respect of Malaysian tax for any year of assessment beginning on or after 1 January 1993; and

(ii) in any other case, in respect of Malaysian tax for any year of assessment beginning on or after 1 January in the calendar year next following that in which this Protocol enters into force.

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

DONE in duplicate in English and Malay language, both texts being equally authentic, at Genting Highlands, this 28th day of July, Two Thousand and Two.

Notes Of Exchange

Your Excellency,

I have the honour to refer to the Second Protocol, signed today, amending the Agreement between the Government of Australia and the Government of Malaysia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed at Canberra on 20 August 1980 and amended by the Protocol signed at Sydney on 2 August 1999, and to propose on behalf of the Government of Australia that:

With reference to the provisions inserted by Article 7 of the Second Protocol, and irrespective of the position but for this exchange of letters, the benefits of this Agreement shall not be available to persons carrying on any offshore business activity under the Labuan Offshore Business Activity Tax Act 1990 (as amended).

The term "offshore business activity" means an offshore business activity as defined under Section 2(1) of the Labuan Offshore Business Activity Tax Act 1990 (as amended) and includes any substantially similar activity dealt with in a modification to that Act.

If these proposals are acceptable to the Government of Malaysia, I have the honour to suggest that the present letter and Your Excellency's reply accepting the proposals shall together constitute an Agreement between the two Governments in this matter, which shall enter into force at the same time as entry into force of the Second Protocol.

I avail myself of this opportunity to renew to your Excellency the assurance of my highest consideration.

Dated at Kuala Lumpur, this 28th day of July 2002.

Your Excellency,

I have the honour to acknowledge receipt of your Letter of today's date which reads as follows:

I have the honour to inform you that the foregoing proposals are acceptable to the Government of Malaysia and that your Excellency's Letter and this reply shall together constitute an Agreement between the Government of Malaysia and the Government of Australia which shall enter into force at the same time as entry into force of the Second Protocol.

I avail myself of this opportunity to renew to your Excellency the assurance of my highest consideration.

Dated at Kuala Lumpur, this 28th day of July 2002

Signed : 24 February 2010
Entry into Force: 8 August 2011
Effective Date : 8 August 2011

THIRD PROTOCOL AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF MALAYSIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AS AMENDED BY THE FIRST PROTOCOL OF 2 AUGUST 1999 AND THE SECOND PROTOCOL OF 28 JULY 2002

THE GOVERNMENT OF MALAYSIA
AND
THE GOVERNMENT OF AUSTRALIA

DESIRING to amend the Agreement between the Government of Malaysia and the Government of Australia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income done at Canberra on 20 August 1980 (as amended by the first Protocol to that Agreement, done at Sydney on 2 August 1999 and the Second Protocol to that Agreement, done at Genting Highlands on 28 July 2002), in this Protocol (hereinafter referred to as “the Agreement, as amended”)

Have agreed as follows:

Article 1

Article 25 of the Agreement, as amended, is deleted and substituted with the following:

"Article 25
EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court

proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

(a) To carry out administrative measures at varience with the laws and administrative practice of that or of the other Contracting State;

(b) To supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) To supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure, of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person."

Article 2

This Protocol, which shall form an integral part of the Agreement, as amended, shall enter into force on the last of the dates on which the Contracting States exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give this Protocol the force of law in Australia and in Malaysia respectively, and thereupon this Protocol shall have effect.

IN WITNESS whereof the undersigned, being duly authorised, have signed this Protocol.

Done in duplicate in the English and Malay languages at Canberra, this twenty-fourth day of February two thousand and ten, both texts being equally authentic.