

P.U.(A) 157/1983
Signed: 29 March 1982
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AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE KINGDOM OF THAILAND 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 the Kingdom of Thailand and the 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:

Chapter I
SCOPE OF THE AGREEMENT

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. This Agreement shall apply to taxes on income imposed by each Contracting State, irrespective of the manner in which they are levied.
 2. The existing taxes to which the Agreement shall apply are:
 - (a) in the case of Malaysia:
 - (i) the income tax and excess profit tax;
 - (ii) the supplementary income taxes, that is, tin profits tax, development tax and timber profits tax; and
 - (iii) the petroleum income tax;
- (hereinafter referred to as "Malaysian tax");

(b) in the case of Thailand:

- (i) the income tax;
- (ii) the petroleum income tax;

(hereinafter referred to as "Thai tax").

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

CHAPTER II DEFINITIONS

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 sub-soil and their natural resources may be exercised;
- (b) the term "Thailand" means the Kingdom of Thailand and includes any area adjacent to the territorial waters of the Kingdom of Thailand which by Thai legislation, and in accordance with international law, has been or may hereafter be designated as an area within which the rights of the Kingdom of Thailand 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 Thailand, as the context requires;
- (d) the term "person" includes an individual, a company and any other body of persons which is treated as an entity for tax purposes;
- (e) the term "company" means any body corporate or any entity which is treated as a body corporate under the taxation laws of the respective Contracting States;

- (f) the term "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term "tax" means Malaysian tax or Thai tax, as the context requires;
- (h) the term "national" means:
 - (i) any individual possessing the citizenship of a Contracting State;
 - (ii) any legal person, partnership, association and any other entity deriving its status as such from the laws in force in a Contracting State;
- (i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except where the ship or aircraft is operated solely between places in the other Contracting State;
- (j) the term "competent authority" means:
 - (i) in the case of Malaysia, the Minister of Finance or his authorised representative;
 - (ii) in the case of Thailand, the Minister of Finance or his authorised representative.

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

Article 4

RESIDENT

1. For the purposes of this Agreement, the term "resident of a Contracting State" means:--
 - (a) in the case of Thailand, a person who is resident in Thailand for the purposes of Thai tax; and
 - (b) in the case of Malaysia, a person who is resident in Malaysia for the purposes of Malaysian tax.

2. Where by reason of the provisions of paragraph 1 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 of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
- (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

Article 5

PERMANENT ESTABLISHMENT

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

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

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;

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

- (b) he maintains in the first-mentioned Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise, or
- (c) he secures orders in the first-mentioned State substantially for the enterprise itself or for the enterprise and other enterprises which are controlled by it or have a controlling interest in it.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business. For this purpose, an agent shall not be considered to be an agent of an independent status if it carries on in that other State an activity described in paragraph 5 substantially for the enterprise itself or for the enterprise and other enterprises which are controlled by it or have a controlling interest in it.

7. The fact that 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.

CHAPTER III TAXATION OF INCOME

Article 6

INCOME FROM IMMOVABLE PROPERTY

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

2. For the purposes of this Agreement, the term "immovable property" shall be defined in accordance with the laws of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil or gas wells, quarries and other places of extraction of natural resources including timber or other forest produce. Ships, boats and aircraft shall not be regarded as immovable property.

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

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

Article 7

BUSINESS INCOME OR PROFITS

1. The income or profits of an enterprise of a Contracting State shall be taxable only in that Contracting State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the income or profits of the enterprise may be taxed in the other Contracting State but only on so much thereof 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 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 wholly independently with the enterprise of which it is a permanent establishment.

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

4. In so far as it has been customary in Thailand to determine the income or profits to be attributed to a permanent establishment on the basis of a certain reasonable percentage of the gross receipts of the enterprise or on the basis of an apportionment of the total income or profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude Thailand from determining the income or profits to be taxed by any such method. The method adopted shall, however, be such that the result shall be in accordance with the principles laid down in this Article.

5. 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.

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

Article 8

SHIPPING AND AIR TRANSPORT

1. Income derived by an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in that Contracting State.
2. Income derived by an enterprise of a Contracting State from the operation of ships in international traffic may be taxed in the other Contracting State, but the tax imposed in that other Contracting State shall be reduced by an amount equal to 50 per cent thereof.
3. The provisions of paragraphs 1 and 2 shall likewise apply in respect of participations in pools of any kind by enterprises engaged in shipping or air transport.

Article 9

ASSOCIATED ENTERPRISES

Where--

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any income or profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Article 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other Contracting State.
2. However,
 - (a) dividends paid by a company which is a resident of Thailand to a company which is a resident of Malaysia and which owns not less than 15 per cent of the voting shares of the company paying the dividends, may be taxed in Thailand but the tax so charged shall not exceed:

- (i) 15 per cent of the gross amount of the dividends if the company paying the dividends engages in an industrial undertaking;
 - (ii) 20 per cent of the gross amount of the dividends in other cases;
 - (b) dividends paid by a company which is a resident of Malaysia to a resident of Thailand who is the beneficial owner thereof shall be exempt from any tax in Malaysia which is chargeable on dividends in addition to the tax chargeable in respect of the income of the company. Nothing in this subparagraph shall affect the provisions of the Malaysian laws 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. The provisions of paragraph 1 and 2 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.
4. Where a company which is a resident of a Contracting State derives income or profits from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company to persons who are not residents of that other Contracting 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 income or profits arising in that other Contracting State.
5. The term "dividends" as used in this Article means income from shares or other rights (not being debt-claims) participating in income or profits, as well as income from other corporate rights assimilated to income from shares according to the taxation laws of the Contracting State of which the company making the distribution is a resident.
6. The term "industrial undertaking" means:
- (a) any undertaking engaged in --
 - (i) manufacturing, assembling and processing,
 - (ii) construction, civil engineering and shipbuilding,
 - (iii) production of electricity, hydraulic power, gas or the supply of water,
or

- (iv) agriculture, forestry and fishery and the carrying on of a plantation, and
- (b) any other undertaking entitled to the privileges accorded under the laws of Thailand on the promotion of industrial investment.

Article 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.
2. However,
 - (a) interest arising in Thailand may be taxed according to the laws of Thailand but if the recipient is a resident of Malaysia, the tax so charged shall not exceed:
 - (i) 10 per cent of the gross amount of the interest if it is received by any financial institution (including an insurance company);
 - (ii) in all other cases, 25 per cent of the gross amount of the interest;
 - (b) interest arising in Malaysia may be taxed according to the laws of Malaysia, but if the recipient is a resident of Thailand, the tax so charged shall not exceed 15 per cent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to the Government of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State.
4. For the purposes of paragraph 3, the term "Government"--
 - (a) in the case of Malaysia, means the Government of Malaysia or any State Government and shall include:
 - (i) the Bank Negara Malaysia;
 - (ii) the local authorities; and
 - (iii) such institutions, the capital of which is wholly owned by the Government of Malaysia or any State Government or any local authorities, as may be agreed from time to time between the Governments of the two Contracting States;

(b) in the case of Thailand, means the Government of the Kingdom of Thailand and shall include:

- (i) the Bank of Thailand;
- (ii) the local authorities; and
- (iii) such institutions, the capital of which is wholly owned by the Government of the Kingdom of Thailand or any local authorities, as may be agreed from time to time between the Governments of the two Contracting States.

5. The provisions of paragraphs 1 and 2, shall not apply if the recipient of the interest is a resident of a Contracting State and 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 arises is effectively connected. In such a case, the provisions of Article 7 shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that Contracting State. Where, however, the person paying the interest, whether 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 that interest is borne by that permanent establishment, then such interest 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 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 laws of each Contracting State, due regard being had to the other provisions of this Agreement.

8. The term "interest" as used in this Article means income from debt claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income assimilated to income from money lent by the taxation laws of the Contracting State in which the income arises.

Article 12
ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.
2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the laws of that Contracting State, but if the recipient is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the royalties.
3. Notwithstanding the provisions of paragraph 2, approved industrial royalties derived from Malaysia by a resident of Thailand shall be exempt from Malaysian tax.
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, any copyright of literary, artistic or scientific work, patent, trade mark, design or model, plan, secret formula or process, or for the use of, or right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience. The term, however, does not include any royalty or other amount paid in respect of motion picture films or of tapes for radio or television broadcasting, or of the operation of a mine, oil well, quarry or any other place of extraction of natural resources or of timber or other forest produce.
5. The term "approved industrial royalties" means royalties as defined in paragraph 4 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.
6. Income derived from the alienation of rights or property mentioned in paragraph 4 may be taxed in the Contracting State in which such income arises, but the tax which it imposes shall not exceed 15 per cent of the gross amount thereof.
7. The provisions of paragraphs 1, 2, 3 and 6 shall not apply if the recipient of the royalties or income, being a resident of a Contracting State, has in the other Contracting State in which the royalties or income arise a permanent establishment with which the right or property giving rise to the royalties or

income is effectively connected. In such a case, the provisions of Article 7 shall apply.

8. Royalties or income mentioned in paragraph 6 shall be deemed to arise in a Contracting State if the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that Contracting State. Where, however, the person paying such royalties or income, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties or income was incurred, and those royalties or income are borne by that permanent establishment, then such royalties or income shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

9. 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 or income 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 laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13

GAINS FROM THE ALIENATION OF PROPERTY

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 or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base may be taxed in the other Contracting State. However, gains from the alienation of ships or aircraft operated by an enterprise of a Contracting State in international traffic and movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the enterprise is a resident.

3. Gains from the alienation of any property or assets, other than those mentioned in paragraphs 1 and 2 of this Article and paragraphs 4 and 6 of Article 12 shall be taxable only in the Contracting State of which the alienator is a resident. Nothing in this paragraph shall prevent either Contracting State from taxing the gains or income from the sale or transfer of shares or other securities.

Article 14

PERSONAL SERVICES

1. Subject to the provisions of Articles 15, 17, 18, 19 and 20 remuneration (other than pensions) derived by a resident of a Contracting State in respect of personal (including professional) services shall be taxable only in that Contracting State unless services are performed in the other Contracting State. If the services are so performed, such the remuneration as is derived therefrom may be taxed in the other Contracting State.

2. Notwithstanding the provisions of paragraph 1, remuneration (other than pensions) derived by a resident of a Contracting State in respect of personal (including professional) services performed in any calendar year in the other Contracting State shall be taxable only in the first-mentioned Contracting State, if--

- (a) the recipient 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 services are performed for or on behalf of a person who is a resident of the first-mentioned 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 preceding provisions of this Article, remuneration in respect of an employment exercised on board a ship or aircraft operated in international traffic by an enterprise of a Contracting State, shall be taxable only in that Contracting State.

Article 15

DIRECTOR'S FEES

Director's 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 16

ARTISTES AND ATHLETES

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

2. Where the personal activities referred to in paragraph 1 are provided in a Contracting State by an enterprise of the other Contracting State, the profits derived from providing these activities by such an enterprise may be taxed in the first-mentioned Contracting State.

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

Article 17

PENSIONS AND ANNUITIES

1. Subject to the provisions of Article 18, any pension or other remuneration for past employment or any annuity arising in a Contracting State and paid to resident of the other Contracting State may be taxed in the first-mentioned Contracting State.

2. Pensions or other remuneration for past employment shall be deemed to arise in a Contracting State if the payer is that Contracting State itself, a political subdivision or local authority or a resident of that Contracting State. Where, however, the person paying such income, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment, and such income is borne by the permanent establishment, then the income shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

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

Article 18

GOVERNMENTAL FUNCTIONS

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority thereof to any individual in respect of services rendered to that Contracting State or political sub-division or local authority thereof shall be taxable only in that Contracting State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that Contracting State and the recipient is a resident of that other Contracting State who:

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

(ii) did not become a resident of that Contracting 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 sub-division or a local authority thereof to any individual in respect of services rendered to that Contracting State or political sub-division or local authority thereof may be taxed in the other Contracting State.

3. The provisions of Articles 14, 15 and 17 shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by a Contracting State or a political sub-division or a local authority thereof.

Article 19

STUDENTS AND APPRENTICE

An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in that other Contracting State solely--

- (a) as a student at a recognised university, college or school;
- (b) as a recipient of grant, allowance or award for the primary purpose of study or research from a government, religious, charitable, scientific, literary or educational organization; or
- (c) as a business or technical apprentice, shall be exempt from tax in that other Contracting State in respect of
 - (i) remittances from abroad for the purposes of his maintenance, education, study, research or training,
 - (ii) the grant, allowance or award, and
 - (iii) remuneration for personal services in that other Contracting State not exceeding 3,600 Malaysian ringgit or 28,800 Thai baht during any calendar year or such other amounts as the competent authorities of the Contracting States may from time to time agree upon, provided that such services are in connection with his study, research or training or are necessary for the purpose of his maintenance.

Article 20

PROFESSORS, TEACHERS AND RESEARCHERS

.An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State, and who, at the invitation of any university,

college, school or other similar educational institution, which is recognised by the competent authority in that other Contracting State, visits that other Contracting State for a period not exceeding two years solely for the purpose of teaching or research or both at such educational institution shall be exempt from tax in that other Contracting State on any remuneration for such teaching or research.

Article 21

INCOME NOT EXPRESSLY MENTIONED

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Agreement may be taxed in the Contracting State where the income arises.

CHAPTER IV

METHODS FOR ELIMINATION OF DOUBLE TAXATION

Article 22

LIMITATION OF RELIEF

Where this Agreement provides (with or without other conditions) that income from sources in a Contracting State shall be exempt from tax, or taxed at a reduced rate in that Contracting 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 Contracting State and not by reference to the full amount thereof, then the exemption or reduction of tax to be allowed under this Agreement in the first-mentioned Contracting State shall apply to so much of the income as is remitted to or received in that other Contracting State.

Article 23

ELIMINATION OF DOUBLE TAXATION

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

2. In the case of Malaysia, subject to the laws of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, Thai tax payable in respect of income derived from Thailand 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 Thailand to a company which is a resident of Malaysia and which owns not less than 15 per cent of the voting shares of the company paying the dividend, the credit shall take into account Thai 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. For the purposes of paragraph 2, the term "Thai tax payable" shall be deemed to include the amount of Thai tax which would have been paid if the Thai tax had not been exempted or reduced in accordance with—

- (a) the special incentive laws designed to promote economic development in Thailand so far as they are in force on the date of signature of this Agreement; or
- (b) any other provisions which may subsequently be introduced in Thailand in modification of, or in addition to, the existing special incentive laws so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character.

4. In the case of Thailand, Malaysian tax payable in respect of income derived from Malaysia shall be allowed as a credit against Thai tax payable in respect of that income. The credit shall not, however, exceed that part of the Thai tax, as computed before the credit is given, which is appropriate to such item of income. Where such income is a dividend paid by a company which is a resident of Malaysia to a company which is a resident of Thailand and which owns not less than 15 per cent of the voting shares of the company paying the dividend, the credit shall take into account Malaysian tax payable by that company in respect of its income out of which the dividend is paid.

5. For the purposes of paragraph 4, the term "Malaysian tax payable" shall be deemed to include Malaysian tax which would, under the laws of Malaysia and in accordance with this Agreement, have been payable on :

- (a) any income derived from sources in Malaysia had the income not been exempted from Malaysian tax in accordance with--
 - (i) sections 21, 22 and 26 of the Investment Incentives Act 1968 of Malaysia so far as they were in force on the date of signature of this Agreement; or
 - (ii) any other provisions which may subsequently be introduced in Malaysia in modification of, or in addition to, the Investment Incentives laws so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character; and

- (b) approved industrial royalties to which paragraph 3 of Article 12 applies had those royalties not been exempted from Malaysian tax in accordance with that paragraph.

CHAPTER V SPECIAL PROVISIONS

Article 24

NON-DISCRIMINATION

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.
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.
4. Nothing in this Article shall be construed as obliging:
 - (a) a Contracting State to grant to individuals who are resident of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents;
 - (b) Malaysia to grant to nationals of Thailand not resident in Malaysia those personal allowances, reliefs and reductions for taxation purposes which are by law available on the date of signature of this Agreement only to nationals of Malaysia who are not resident in Malaysia.
5. In this Article, the term "taxation" means taxes which are the subject of this Agreement.

Article 25

MUTUAL AGREEMENT PROCEDURE

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the taxation 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 which is not in accordance with the Agreement.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 26

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 or detection of evasion or avoidance of taxes covered by this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those (including a Court or reviewing authority) concerned with the assessment, collection or enforcement of the taxes which are the subject of the Agreement or the determination of appeals in relation thereto.
2. In no case shall the provisions of paragraph 1 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 States;
 - (b) to supply particulars which are not obtainable under the laws or in the normal course of administration of that or of the other Contracting State;

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

Article 27

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.

CHAPTER VI

FINAL PROVISIONS

Article 28

ENTRY INTO FORCE

1. This Agreement shall be ratified and the instruments of ratification shall be exchanged at Bangkok as soon as possible.
2. This Agreement shall enter into force upon the exchange of the instruments of ratification and shall have effect for the income of the calendar years or accounting periods beginning on or after the first day of January of the calendar year in which the instruments of ratification are exchanged.

Article 29

TERMINATION

This Agreement shall remain in effect indefinitely, but either Contracting State may terminate the Agreement, through diplomatic channels, by giving to the other Contracting State, written notice of termination on or before June 30 of any calendar year from the fifth year from the year in which the Agreement entered into force. In such event, the Agreement shall cease to have effect for the income of the calendar years or accounting periods beginning on or after the first day of January of the calendar year following that in which the notice is given.

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

Done in duplicate at Kuala Lumpur on this 29th day of March 1982, one thousand nine hundred and eighty-two each in the Thai, Bahasa Malaysia and English languages, the three texts being equally authoritative. For the Government of For the Government of Malaysia the Kingdom of Thailand

PROTOCOL

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

Where, for the purposes of Article VII of the Agreement between the Government of Malaysia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed in Singapore on 26th December, 1968-

- (a) a dividend was paid by a company--
 - (i) which was resident in both Malaysia and Singapore and the meeting at which the dividend was declared was held in Malaysia; or
 - (ii) which was resident in Singapore and at the time of payment of that dividend the company declared itself to be a resident of Malaysia,

the dividend shall be deemed to have been paid by a company resident in Malaysia;

- (b) a dividend was paid by a company--
 - (i) which was resident in both Malaysia and Singapore and the meeting at which the dividend was declared was held in Singapore; or
 - (ii) which was resident in Malaysia and at the time of payment of that dividend the company declared itself to be a resident of Singapore, the dividend shall be deemed to have been paid by a company not resident in Malaysia.

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

Done in duplicate at Kuala Lumpur on this 29th day of March, one thousand nine hundred and eighty-two each in the Thai, Bahasa Malaysia and English languages, the three texts being equally authoritative.

P.U. (A) 398
Signed: 10 February 1995
Effective: 1 January 1992

THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE KINGDOM OF THAILAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME SIGNED AT KUALA LUMPUR ON 29TH MARCH 1982

The Government of Malaysia and the Government of the Kingdom of Thailand;

Desiring to conclude a Protocol to amend the Agreement between the Contracting Governments for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at Kuala Lumpur on 29th March 1982 (hereinafter referred to as “the Agreement”);

Have agreed as follows:

Article 1

Article 3 of the Agreement shall be amended by inserting immediately after subparagraph 1(j) the following:

“(k) the term “Joint Authority” means the Authority defined in section 2 of the Malaysia-Thailand Joint Authority Act 1990 and in section 4 of the Thailand-Malaysia Joint Authority Act B.E. 2533;

(l) the term “Joint Development Area” means the area defined in section 2 of the Malaysia-Thailand Joint Authority Act 1990 and in section 4 of the Thailand-Malaysia Joint Authority Act B.E. 2533”

Article 2

The following new Article shall be inserted immediately after Article 7 of the Agreement:

“Article 7A

BUSINESS INCOME OR PROFITS FROM THE JOINT DEVELOPMENT AREA

1. (a) Income or profits derived by a person exercising the right to explore and exploit any petroleum in the Joint Development Area under a contract awarded by the Malaysia-Thailand Joint Authority may be taxable in both Contracting States.

(b) Income or profits derived by a person from carrying out activities directly related to exploration and exploitation of any petroleum in the Joint Development Area may be taxable in both Contracting states. The competent authority of both Contracting States shall communicate with each other to identify activities directly related to exploration and exploitation of any petroleum in the Joint Development Area.

2. Where such income is taxable in both Contracting States, the tax chargeable in each Contracting State shall be reduced by fifty per cent thereof.”

Article 3

The following new Article shall be inserted immediately after Article 12 of the Agreement:

“Article 12A

ROYALTIES FROM THE JOINT DEVELOPMENT AREA

1. Royalties as defined in Article 12 arising from activities in the Joint Development Area and charged as an expense of a business carried out by a person referred to in paragraph 1(a) or (b) of Article 7A may be taxable in both Contracting States.

2. Where such income is taxable in both Contracting States, the tax chargeable in each Contracting State shall be reduced by fifty per cent thereof”.

Article 4

The following new Article shall be inserted immediately after Article 14 of the Agreement:

“Article 14A

PERSONAL SERVICES IN THE JOINT DEVELOPMENT AREA OR WITH THE JOINT AUTHORITY

1. Notwithstanding the provisions of Articles 14 and 15, any remuneration derived by a national of a Contracting State in respect of an employment exercised in the Joint Development Area or with the Joint Authority shall be taxable only in the Contracting State of which he is a resident.

2. Any remuneration derived by a person (other than the national of a Contracting State) in respect of an employment exercised in the Joint Development Area or with the Joint Authority may be taxable in both Contracting States. Where such remuneration is taxable in both Contracting States, the tax chargeable in each Contracting State shall be reduced by an amount equal to fifty per cent thereof.

3. Any income derived by any person in respect of personal (including professional) services performed or carried out in the Joint Development Area or with the Joint Authority may be taxable in both Contracting States. Where such income is taxable in both Contracting States, the tax chargeable in each Contracting State shall be reduced by an amount equal to fifty per cent thereof.

4. For the purposes of this Article, employment exercised in the Joint Development Area means employment with persons referred to in paragraph 1(a) or (b) of Article 7A solely in connection with the exploration and exploitation of petroleum in the Joint Development Area”.

Article 5

The following new Article shall be inserted immediately after Article 20 of the Agreement:

“Article 20A

TECHNICAL FEES FROM THE JOINT DEVELOPMENT AREA

1. Technical fees derived from the Joint Development Area may be taxable in both Contracting States. Where such technical fees is taxable in both Contracting States, the tax chargeable in each Contracting State shall be reduced by an amount equal to fifty per cent thereof.

2. The term “technical fees” as used in this Article means payments of any kind to any person other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.

3. For the purposes of this Article, technical fees derived from the Joint Development Area means technical fees referred to in paragraph 2 solely in connection with the activities carried out by persons referred to in paragraph 1(a) or (b) of Article 7A.”

Article 6

Article 23 of the Agreement shall be amended by inserting immediately after paragraph 5 the following:

“6. The provisions of this Article shall not apply to tax payable in each Contracting State in accordance with the provisions of Articles 7A, 12A, 14A and 20A.”

Article 7

APPLICATION OF PROTOCOL

1. Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Protocol which shall form an integral part of the Agreement. This Protocol shall enter into force on the date of the later of these notifications and, subject to the provisions of paragraph 2 of this Article, shall have effect for the income of the calendar years or accounting periods beginning on or after the first day of January of 1992.
2. This Protocol shall also apply, notwithstanding Article 1 of the Agreement, to persons who are not resident to one or both of the Contracting States.
3. This Protocol shall cease to be effective at such a time as the Agreement ceases to be effective in accordance with Article 29 of the Agreement.

IN WITNESS whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Protocol.

Done in duplicate at Bangkok on this 10th day of February 1995 in the Thai, Bahasa Malaysia and the English languages, the three texts being equally authoritative.