

P.U (A) 242/1989
Signed: 18 April 1989
Effective Date: 1 January 1987

AN AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA FOR RECIPROCAL EXEMPTION WITH RESPECT TO TAXES ON INCOME OF SHIPPING AND AIR TRANSPORT ENTERPRISES BETWEEN THE TWO COUNTRIES

The Government of Malaysia and the Government of the United States of America desiring to conclude an Agreement for reciprocal exemption with respect to taxes on income of shipping and air transport enterprises of the two countries.

Have agreed as follows:

Article 1

TAXES COVERED

1. This Agreement shall apply to taxes on income imposed on behalf of each Contracting State irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable property.
3. The existing taxes to which the Agreement shall apply are in particular:
 - (a) in the case of Malaysia, the income tax, excess profits tax and development tax:
 - (b) in the case of the United States of America, the income tax imposed by the Internal Revenue Code of 1986.
4. This Agreement shall also apply to any identical or substantially similar taxes as are subsequently imposed in addition to, or in place of the existing taxes.

Article 2

DEFINITIONS

In this Agreement, unless the context otherwise requires:

- (a) the terms "a Contracting State" and "the other Contracting State" mean Malaysia or the United States of America, as the context requires;
- (b) the term "exercise of shipping or air transport" means the operational activity of transportation by ship or by air of persons, livestock, goods

and mail conducted by a resident of a Contracting State including sale of tickets and similar documents used for the purposes of transportation;

- (c) the term "international traffic" means any transport by a ship or an aircraft operated by a resident of a Contracting State, except when such transport is made solely between places in the other Contracting State;
- (d) the term "competent authority" means:
 - (i) in the case of Malaysia, the Minister of Finance or his authorized representative; and
 - (ii) in the case of the United States of America, the Secretary of the Treasury or his delegate;
- (e) the term "resident of a Contracting State" means any person, who under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of control and management, place of incorporation, or any other criterion of a similar nature;
- (f) the term "person" includes an individual, a corporation, a company or any other body of persons which is treated as a person for tax purposes.

Article 3

SHIPPING AND AIR TRANSPORT

1. Income and profits derived by a resident of a Contracting State from the exercise of shipping or air transport in international traffic shall be exempted from tax in the other Contracting State.
2. The provisions of paragraph 1 shall also apply to income and profits derived by a resident of a Contracting State from its participation in a pool or a joint business.
3. For the purposes of paragraph 1, income and profits derived by a resident of a Contracting State from the exercise of shipping or air transport in international traffic also include income derived from:
 - (a) the rental of ships or aircraft used in international transport on a full (time or voyage) or bareboat basis which is incidental to income from the exercise of shipping or air transport in international traffic;
 - (b) the rental of containers and related equipment used in international traffic which is incidental to income from the exercise of shipping or air transport in international traffic; and

- (c) gains from the alienation of ships or aircraft by a person whose predominant activity is the exercise of shipping or air transport in international traffic.

4. For the purposes of this Article, a corporation is a resident of a Contracting State if its stocks or shares are:

- (a) more than 50 percent owned, directly or indirectly, by individuals who are residents of that Contracting State or by residents of another State which grants reciprocal exemption to the other Contracting State; or
- (b) primarily and regularly traded on an established securities market in that Contracting State or are wholly owned by a corporation of that Contracting State whose stocks or shares are so traded. For purposes of subparagraph (a), the Government of a Contracting State shall be treated as an individual resident of that State.

Article 4

LIMITATION OF AGREEMENT

Notwithstanding any provision of this Agreement, the United States may tax U.S residents and citizens, including corporations organized in the United States, and Malaysia may tax any person resident in Malaysia, including corporations whose place of control and management is in Malaysia, as if this Agreement had not come into effect.

Article 5

MUTUAL AGREEMENT PROCEDURE

Consultation may be requested at any time by either Contracting State for the purpose of amendment to the present Agreement or for its application or its interpretation. Such consultation shall begin within 60 days from the date of receipt of any such request and decisions shall be by mutual consent.

Article 6

ENTRY INTO FORCE

1. The Contracting States shall notify each other when their respective legal procedures have been met with respect to this Agreement.

2. The Agreement shall enter into force upon the exchange of any necessary instruments of ratification and its provisions shall have effect, in the case of Malaysia, with respect to basis periods beginning on or after January 1, 1987 and in the case of the United States, with respect to taxable years beginning on or after January 1, 1987.

Article 7

TERMINATION

Either government may terminate this agreement by giving written notice of termination through diplomatic channels.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Agreement in duplicate at Kuala Lumpur this day of April 18, 1989 in Bahasa Malaysia and English Language, both texts being equally authentic. In the case of any divergence between the texts the English text shall prevail.