



Double Taxation Avoidance Agreement between Singapore and Malaysia

Entered into force on February 13, 2006

DEZAN SHIRA & ASSOCIATES

Corporate Establishment, Tax, Accounting & Payroll Throughout Asia

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

Date of Conclusion: 5 October 2004.

Entry into Force: 13 February 2006.

Effective Date: 1 January 2007.

NOTE

There was an earlier Agreement signed between the Government of the Republic of Singapore and the Government of Malaysia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

The text of this Agreement signed on 26 December 1968 and is shown in Annex A.

A supplementary agreement signed on 6 July 1973 entered into force on 3 August 1973.

This agreement is incorporated into the main text of the treaty in Annex A.

New articles introduced by this agreement are marked with a hex (#) and those amended articles are marked with an asterisk (*).

The original text of those articles amended by this agreement is shown in the Annex B.

There was an earlier Convention signed between the Government of the Republic of Singapore and the Government of Malaysia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. The text of this Convention which was signed on 16 August 1966 is shown in Annex C.

The Government of the Republic of Singapore and the Government of Malaysia

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

2. The taxes which are the subject of this Agreement are:

- (a) in Malaysia:
 - (i) the income tax; and
 - (ii) the petroleum income tax;(hereinafter referred to as "Malaysian tax");

- (a) in Singapore:
the income tax;
(hereinafter referred to as "Singapore 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.

Article 3 - GENERAL DEFINITIONS

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

- (a) 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 when used in a geographical sense 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:

Provided that nothing contained in the above definition shall be construed as conferring recognition or acceptance by one Contracting State of the outstanding maritime and territorial claims made by the other Contracting State, nor shall be taken as pre-judging the determination of such claims;

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

Provided that nothing contained in the above definition shall be construed as conferring recognition or acceptance by one Contracting State of the outstanding maritime and territorial claims made by the other Contracting State, nor shall be taken as pre-judging the determination of such claims;

- (c) the terms "a Contracting State" and "the other Contracting State" mean Malaysia or Singapore as the context requires;

- (d) the term "person" includes an individual, a company and any other body of persons which is treated as a person for tax purposes;
- (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term "tax" means Malaysian tax or Singapore tax, as the context requires;
- (h) the term "national" means:
 - (i) any individual possessing the nationality or 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;
- (a) the term "international traffic" means any transport by a ship, aircraft or road vehicle operated by an enterprise of a Contracting State, except when the ship, aircraft or road vehicle is operated solely between places in the other Contracting State;
- (b) the term "competent authority" means:
 - (i) in the case of Malaysia, the Minister of Finance or his authorised representative; and
 - (ii) in the case of Singapore, the Minister for Finance or his authorised representative.

2. As regards the application of this Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4 - RESIDENT

1. For the purposes of this Agreement, the term "resident of a Contracting State" means:

- (a) in the case of Malaysia, a person who is resident in Malaysia for the purposes of Malaysian tax;
- (b) in the case of Singapore, a person who is resident in Singapore for the purposes of Singapore tax;

and also includes that State, any political subdivision, local authority or a statutory body thereof.

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 State in which he has a permanent home available to him. If he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the 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 State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where, by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the 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, an oil or gas well, a quarry or any other place of extraction of natural resources; and
- (g) a building site or construction, installation or assembly project, which exists for more than 6 months.

3. The term "permanent establishment" shall be deemed not 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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

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 State for more than 6 months in connection with a building site or a construction, installation or assembly project which is being undertaken in that other State.

5. Where a person (other than a broker, general commission agent or any other agent of an independent status to whom paragraph 6 applies) is acting in a Contracting State on behalf of an enterprise of the other Contracting State that enterprise shall be deemed to have a permanent establishment in the first-mentioned State if that person:

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

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he shall not be considered an agent of an independent status if the transactions between the agent and the enterprise were not made under arm's length conditions.

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

Article 6 - INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

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 extracting of natural resources including timber or other forest produce. Ships 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 independent personal services.

Article 7 - BUSINESS PROFITS

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

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the 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 profits of a permanent establishment, there shall be allowed as deductions 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 State in which the permanent establishment is situated or elsewhere.

4. If the information available to the competent authority is inadequate to determine the 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 the law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.

5. No 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. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where 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, AIR AND ROAD TRANSPORT

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall include profits derived from:

- (a) the rental on a bare boat basis of ships or aircraft used in international traffic;
- (b) the use or rental of containers,

if such profits are incidental to the profits to which the provisions of paragraph 1 apply.

3. Paragraph 1 shall also apply to the share of the profits from the operation of ships or aircraft derived by an enterprise of a Contracting State through participation in a pool, a joint business or an international operating agency.

4. Profits derived by an enterprise of a Contracting State from the operation of road vehicles in international traffic for the carriage of passengers shall be taxable only in that State.

Article 9 - ASSOCIATED ENTERPRISES

1. 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 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.

2. Where a Contracting State includes in the profits of an enterprise of that State -- and taxes accordingly -- profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits where that other State considers the adjustment justified. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

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 State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividend is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

- (a) 5 percent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 percent of the capital of the company paying the dividends; and
- (b) 10 percent of the gross amount of the dividends in all other cases.

The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. Notwithstanding the provisions of paragraph 2, as long as a Contracting State does not impose a tax on dividends in addition to the tax chargeable on the profits or income of a company, dividends paid by a company which is a resident of that Contracting State to a resident of the other Contracting State shall be exempt from any tax in the first-mentioned State which may be chargeable on dividends in addition to the tax chargeable on the profits or income of the company. However, where either or both of the Contracting States impose a tax on dividends in addition to the tax chargeable on the profits or income of a company, the rates as prescribed under the provisions of paragraph 2 shall apply.

4. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Where a company which is a resident of a Contracting State derives income or profits from the other Contracting State, that other State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of income or profits arising in such other State.

7. Nothing in this Article shall be construed to mean that as at the date of the signature of this Agreement either of the Contracting States imposes a tax on dividends in addition to the tax chargeable on the profits or income of a company.

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 State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest to which a resident of Singapore 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 as defined in section 2(1) of the Income Tax Act, 1967 of Malaysia.

4. Notwithstanding the provisions of paragraphs 2 and 3, the Government of a Contracting State shall be exempt from tax in the other Contracting State in respect of interest derived by the Government from that other State.

5. For the purposes of paragraph 4, the term "Government":

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

- (i) the Governments of the States;
- (ii) the Bank Negara Malaysia;
- (iii) the local authorities;
- (iv) the statutory bodies; and
- (v) the Export-Import Bank of Malaysia Berhad;

(a) in the case of Singapore means the Government of the Republic of Singapore and shall include:

- (i) the Monetary Authority of Singapore;
- (ii) the Government of Singapore Investment Corporation Pte. Ltd.; and
- (iii) the statutory bodies.

6. 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 debtors profits, and in particular, income from government securities and income from bonds or debentures.

7. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

8. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

9. Where, by reason of a special relationship between the payer and the beneficial owner 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 beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such 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 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 State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 8 per cent of the gross amount of the royalties.

3. 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 (including cinematograph films, and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information (know-how) concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence

of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a 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 - TECHNICAL FEES

1. Technical fees derived from one of the Contracting States by a resident of the other Contracting State who is the beneficial owner thereof may be taxed in the first-mentioned Contracting State. However, the tax so charged shall not exceed 5 per cent of the gross amount of the technical fees.

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. The provisions of paragraph 1 shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the technical fees are effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

4. Technical fees shall be deemed to arise in a Contracting State when the payer is a resident of that State and the services are performed in that State. Where, however, the person paying the technical fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by such permanent establishment or fixed base, then such technical fees shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated if the services are performed in that State.

5. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the technical fees paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 14 - INDEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Article 13, income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15 - DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21 salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned 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 remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a resident or a permanent establishment which the employer has in the 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, or road vehicle operated in international traffic for the carriage of passengers, by an enterprise of a Contracting State shall be taxable only in that State. However, if the remuneration is derived by a resident of the other Contracting State, it may also be taxed in that other State.

Article 16 - DIRECTORS' FEES

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

Article 17 - ARTISTES AND SPORTSMEN

1. Notwithstanding the provisions of Articles 14 and 15 income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of or in connection with personal activities exercised by an entertainer or a sportsman accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman 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 if the visit to that State is directly or indirectly supported wholly or substantially from the public funds of the other Contracting State, a political subdivision, a local authority or a statutory body thereof.

Article 18 - PENSIONS

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration including any annuity paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

2. 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 19 - GOVERNMENT SERVICE

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority or a statutory body thereof to any individual in respect of services rendered to that State or political subdivision or a local authority or statutory body thereof shall be taxable only in that State.

(b) However, such salaries, wages and other similar 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:

- (i) is a national of that other State; or
- (ii) did not become a resident of that other State solely for the purposes 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 or a statutory body thereof to any individual in respect of services rendered to that State or political subdivision, local authority or statutory body thereof shall be taxable only in that State.

3. The provisions of Articles 15, 16, 17 (paragraphs 1 and 2) and 18 shall apply to salaries, wages and other similar remuneration or pensions in respect of services rendered in connection with any trade or business carried on by a Contracting State or a political subdivision or a local authority or a statutory body thereof.

Article 20 - STUDENTS AND TRAINEES

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

- (a) as a student at a recognised university, college, school or other similar recognised educational institution in that other State;
- (b) as a business or technical apprentice; or
- (c) as a recipient of a grant, allowance or award for the primary purpose of study, research or training from the government of either State or from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the Government of either State;

shall be exempt from tax in that other State on:

- (i) all remittances from abroad for the purposes of his maintenance, education, study, research or training; and
- (ii) the amount of such grant, allowance or award.

Article 21 - TEACHERS AND RESEARCHERS

1. 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 a public university, college, institution which exists primarily for research purposes or other similar public institution, visits that other State for a period not exceeding two years solely for the purpose of teaching or research or both at such public institution shall be exempt from tax in that other State on any remuneration for such teaching or research which is subject to tax in the first-mentioned Contracting State.

2. This Article shall not apply to income from teaching or research if such teaching or research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

Article 22 - 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 shall be taxable only in that Contracting State except that if such income is derived from sources in the other Contracting State, it may also be taxed in that other State.

Article 23 - ELIMINATION OF DOUBLE TAXATION

1. Subject to the laws of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, Singapore tax payable under the laws of Singapore and in accordance with this Agreement by a resident of Malaysia in respect of income derived from Singapore 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 Singapore 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 Singapore 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.

2. For the purposes of paragraph 1, the term "Singapore tax payable" shall be deemed to include Singapore tax which would, under the laws of Singapore and in accordance with this Agreement, have been payable on any income derived from sources in Singapore had the tax not been reduced or exempted in accordance with:

- (a) the provisions of Parts II, III, IIIA, IIIB, VIII and X of the Economic Expansion Incentives (Relief from Income Tax) Act and the provisions of sections 13(4) (only in respect of income referred to in section 12(6)), 13A, 13B (only in respect of exempt dividends paid out of income taxed under section 43C), 13F and 43C of the Income Tax Act, in so far as they were in force and have not been modified since the date of signature of this Agreement, or have been modified in minor respects so as not to affect their general character; or

- (b) any other provisions which may subsequently be introduced in Singapore in modification of, or in addition to, those laws in so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character.

3. Subject to the provisions of the laws of Singapore regarding the allowance as a credit against Singapore tax of tax payable in any country other than Singapore, Malaysian tax payable, whether directly or by deduction, in respect of income from sources in Malaysia shall be allowed as a credit against Singapore tax payable in respect of that income. Where such income is a dividend paid by a company which is a resident of Malaysia to a resident of Singapore which is the beneficial owner of the dividend, the credit shall take into account (in addition to any Malaysian tax on the dividend) the Malaysian 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 Singapore tax, as computed before the credit is given, which is appropriate to such item of income.

4. For the purposes of paragraph 3, 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 tax not been reduced or exempted in accordance with:

- (i) sections 54A, 60A, 60B, Schedule 7A and 7B of the Income Tax Act 1967 of Malaysia; or

- (ii) sections 22, 23, 29, 29A, 29B, 29C, 29D, 29E, 29F, 29G, 29H, 31E and 41B of the Promotion of Investments Act 1986 of Malaysia,

in so far as they were in force and have not been modified since the date of signature of this Agreement, or have been modified in minor respects so as not to affect their general character; or

- (iii) any other provisions which may subsequently be introduced in Malaysia in modification of, or in addition to, those laws in so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character; and

- (a) interest to which paragraph 3 of Article 11 applies had that interest not been exempted from Malaysian tax in accordance with that paragraph.

5. The provisions of paragraphs 2 and 4 shall cease to have effect after ten years from the year of assessment beginning on the first day of January of:

- (a) in Malaysia -

the calendar year following the year in which this Agreement enters into force;

- (b) in Singapore -

the second calendar year following that in which this Agreement enters into force.

The competent authorities of the Contracting States may consult each other to determine whether this period shall be extended.

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 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 State than the taxation levied on enterprises of that other State carrying on the same activities in the same circumstances or under the same conditions.

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 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 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 tax purposes on account of civil status or family responsibilities which it grants to its own residents;
- (b) a Contracting State to grant to nationals of the other Contracting State not resident in the first-mentioned State those personal allowances, reliefs and reductions for tax purposes which are by law available on the date of signature of this Agreement only to nationals of the first-mentioned State who are not resident in that State.

5. Nothing in this Article shall be construed so as to prevent either Contracting State from limiting to its nationals the enjoyment of tax incentives designed to promote social or economic development in that State.

6. In this Article, the term "taxation" means taxes to which this Agreement applies.

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 States, present his case to the competent authority of the State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

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 purposes of reaching an agreement in the preceding paragraphs.

Article 26 - EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting State shall exchange such information as is necessary for the carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the 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 be disclosed only to persons or authorities (including a court or reviewing authority) concerned with the assessment, collection, enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Agreement.

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

Article 27 - DIPLOMATIC AND CONSULAR OFFICERS

Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officers under the general rules of international law or under the provisions of special agreements.

Article 28 - ENTRY INTO FORCE

1. This Agreement shall enter into force on the date on which the Contracting States exchange notes through 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 Malaysia and Singapore, as the case may be, and thereupon this Agreement shall have effect:

- (a) in Malaysia -
 - (i) in respect of Malaysian tax, other than petroleum income tax, to tax chargeable for any year of assessment beginning or after the first day

of January in the calendar year following the year in which this Agreement enters into force;

- (ii) in respect of petroleum income tax, to tax chargeable for any year of assessment beginning on or after the first day of January of the second calendar year following the year in which this Agreement enters into force;

- (a) in Singapore -

in respect of tax chargeable for any year of assessment beginning on or after the first day of January in the second calendar year following that in which this Agreement enters into force.

2. 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 at Singapore on 26 December 1968, as amended by Supplementary Agreement amending 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 at Kuala Lumpur on 6 July 1973, shall be terminated and cease to have effect in respect of income to which this Agreement applies under the provision of paragraph 1.

Article 29 - TERMINATION

This Agreement shall remain in effect indefinitely, but either Contracting States may terminate the Agreement, through diplomatic channel, by giving to the other Contracting State written notice of termination on or before June 30th in any calendar year after the period of five years from the date on which this Agreement enters into force. In such an event the Agreement shall cease to have effect:

- (a) in Malaysia -

- (i) in respect of Malaysian tax, other than petroleum income tax, to tax chargeable for any year of assessment beginning on or after the first day of January in the calendar year following the year in which the notice is given;

- (ii) in respect of petroleum income tax, to tax chargeable for any year of assessment beginning on or after the first day of January of the second calendar year following the year in which the notice is given;

- (a) in Singapore -

in respect of tax chargeable for any year of assessment beginning on or after the first day of January in the second calendar year following that in which the notice is given.

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

DONE in duplicate at Putrajaya this 5th day of October 2004, each in Bahasa Melayu and the English Language, both texts being equally authentic. In the event of there being a dispute in the interpretation and the application of this Agreement, the English text shall prevail.

For the Government of
the Republic of Singapore

For the Government of
Malaysia

PROTOCOL

At the moment of signing the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, this day concluded between the Government of the Republic of Singapore and the Government of Malaysia, the undersigned have agreed that the following provisions shall form an integral part of the Agreement.

1. For the purposes of Article 4, the “place of effective management” is the place where the control and management of the business is exercised.

2. For the purposes of Article 5 paragraph 5(b), the enterprise of a Contracting State will be deemed to have a permanent establishment in the other Contracting State only if the agent acting on behalf of the enterprise also takes orders from customers in addition to regularly filling of the orders out of the stock of goods or merchandise belonging to the enterprise.

3. For the purposes of Article 10 only, a company which is a resident of one of the Contracting States may when paying a dividend declare itself to be a resident of the other Contracting State. In such a case, the last-mentioned State shall allow to the recipient of such dividend a tax set-off under section 46 of the Income Tax Act (Singapore) or section 110 of the Income Tax Act, 1967 (Malaysia), as the case may be, equal to the tax which would have been deducted from such dividend under the provisions of section 44 of the Income Tax Act (Singapore) or section 108 of the Income Tax Act, 1967 (Malaysia), as the case may be, had the dividend been paid by a company resident in that State. The provisions of the second sentence shall not affect the provisions of the law of that State under which the tax deducted from the dividend may be adjusted by reference to the rate of tax appropriate to the year of assessment immediately following that in which the dividend was paid.

4. The provisions of paragraph 3 shall cease to have effect in respect of dividends paid on or after 1st January 2008.

5. For the purposes of this Agreement -

(a) the Government of one of the Contracting States shall be exempt from tax in respect of any income derived from sources within the other Contracting State. For the purposes of this paragraph, the term “Government” shall include -

(i) in the case of Malaysia -

(aa) the Governments of the States;

(bb) the Bank Negara Malaysia;

(cc) any local or statutory authority exempt from tax in Malaysia;
and

(dd) such institutions, as may be agreed from time to time between the two Contracting States;

(ii) in the case of Singapore -

- (aa) the Monetary Authority of Singapore;
 - (bb) the Government of Singapore Investment Corporation Pte. Ltd.;
 - (cc) any statutory authority exempt from tax in Singapore; and
 - (dd) such institutions, as may be agreed from time to time between the two Contracting States; and
- (b) the income derived by any pension or provident fund or society of one of the Contracting States from sources within the other Contracting State shall be exempt from tax in that other Contracting State if such fund or society is an approved fund or society under the taxation law of the first-mentioned Contracting State.

6. Where the income referred to in paragraphs 5(a) and (b) is a dividend paid by a company which is a resident of one of the Contracting States to the Government or to an approved pension or provident fund or society of the other Contracting State, the recipient of the dividends shall also receive from the Contracting State of which the company paying the dividends is a resident a refund of the tax deducted from such dividends under the provisions of section 44 of the Income Tax Act (Singapore) or section 108 of the Income Tax Act, 1967 (Malaysia), as the case may be.

7. The provisions of paragraphs 5 and 6 shall cease to have effect in respect of income derived on or after 1st January 2008.

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

DONE in duplicate at Putrajaya this 5th day of October 2004, each in Bahasa Melayu and the English Language, both texts being equally authentic. In the event of there being a dispute in the interpretation and the application of this Protocol, the English text shall prevail.

For the Government of
the Republic of Singapore

For the Government of
Malaysia

ANNEX A

The Government of the Republic of Singapore and the Government of Malaysia,

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

Article I

1. The taxes which are the subject of this Agreement are -

(a) in Singapore:

the income tax

(hereinafter referred to as "Singapore tax"); and

(b) in Malaysia:

(i) the income tax,

(ii) the tin profits tax, and

(iii) the development tax

(hereinafter referred to as "Malaysian tax").

2. This Agreement shall also apply to any other taxes of a substantially similar character to those referred to in the preceding paragraph imposed in Singapore or Malaysia after the date of signature of this Agreement.

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

Article II

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

(a) the term "Singapore" means the Republic of Singapore;

(b) the term "Malaysia" means the Federation of Malaysia;

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

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

- (e) the term "company" means a body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the term "individual" means a natural person;
- (g) the term "person" includes an individual, a company, a body of persons, a Hindu joint family and a corporation sole;
- (h)
 - (i) the term "resident of Singapore" in relation to a year of assessment means any person who is resident in Singapore for that year of assessment for the purpose of Singapore tax; and a company shall be deemed to be a resident of Singapore if it is managed and controlled in Singapore;
 - (ii) the term "resident of Malaysia" in relation to a year of assessment means any person who is ordinarily resident in Malaysia for the basis year for that year of assessment for the purposes of Malaysian tax:

Provided that -

- (aa) for the purposes of this Agreement references to 30 days in section 7(1)(c) of the Malaysian Income Tax Act, 1967 shall be read as references to 90 days;
- (bb) an individual who is a resident of Singapore shall not be deemed to be ordinarily resident in Malaysia for the basis year 1968;
- (cc) an individual who is a resident of Singapore shall not be deemed to be ordinarily resident in Malaysia for the basis year 1969 solely by the application of the provisions of section 7(1)(b) of the Malaysian Income Tax Act, 1967;
- (dd) in calculating the number of days an individual is in Malaysia under the provisions of section 7(1)(c) of the Malaysian Income Tax Act, 1967, any day that he is in Malaysia solely for the purpose of medical treatment, vacation or recreation, shall be disregarded if that individual has no source of income other than dividend or interest derived from Malaysia, and in the case of a person who derives income from any source any period of hospitalization shall not be taken into account;
- (iii) a company shall be deemed to be a resident of Malaysia for the basis year for a year of assessment if its business; or if more than one, any of its businesses is controlled and managed in Malaysia in that basis year:

Provided that a company which is a resident of Singapore shall not be treated as a resident of Malaysia for the basis year or basis years which coincide with the Singapore year of assessment 1968 or year of assessment 1969;

- (i) the terms "resident of one of the Contracting States" and "resident of the other Contracting State" mean a resident of Singapore or a resident of Malaysia, as the context requires;
- (j) the terms "Singapore enterprise" and "Malaysian enterprise" mean respectively an industrial, mining, commercial, timber, plantation or agricultural enterprise or undertaking carried on by a resident of Singapore, and an industrial, mining, commercial, timber, plantation or agricultural enterprise or undertaking carried on by a resident of Malaysia;
- (k) the terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean a Singapore enterprise or a Malaysian enterprise, as the context requires;
- (l) the terms "income or profits of a Singapore enterprise" and "income or profits of a Malaysian enterprise" do not include rents or royalties in respect of literary or artistic copyrights, motion picture films or of tapes for television or broadcasting or of mines, oil wells, quarries, or other places of extraction of natural resources or of timber or forest produce, or income in the form of dividends, interest, rents, royalties or fees or other remuneration derived from the management, control or supervision of the trade, business or other activity of another enterprise or concern or remuneration for labour or personal services or income derived from the operation of ships or aircraft;
- (m)
 - (i) subject to this sub-paragraph, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on;
 - (ii) a permanent establishment shall include especially -
 - (aa) a place of management;
 - (bb) a branch;
 - (cc) an office;
 - (dd) a factory;
 - (ee) a workshop;
 - (ff) a mine, oil well, quarry or other place of extraction of natural resources;
 - (gg) a building site or installation or construction or assembly project;
 - (hh) a farm or plantation;
 - (ii) a place of extraction of timber or forest produce;
 - (iii) the term "permanent establishment" shall not be deemed to include -

- (aa) the use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise;
 - (bb) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - (cc) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (dd) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
 - (ee) 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;
- (iv) an enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State if it carries on supervisory activities in that other Contracting State in connection with a construction, installation or assembly project which is being undertaken in that other Contracting State;
 - (v) a person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State (other than an agent of independent status to whom sub-paragraph (m)(vi) applies) shall be deemed to be a permanent establishment of that enterprise in the first-mentioned Contracting State if -
 - (aa) he has, and habitually exercises in that 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; or
 - (bb) 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;
 - (vi) 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 Contracting State through a broker, general commission agent or any other agent of independent status where such a person is acting in the ordinary course of the business;
 - (vii) the fact that a company which is a resident of one of the Contracting States 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;

- (n) the term "competent authorities" means, in the case of Singapore, the Minister for Finance or his authorised representative; and in the case of Malaysia, the Federal Minister of Finance or his authorised representative.

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

Article III

Where this Agreement provides (with or without other conditions) that income from sources in one of the Contracting States shall be exempted from tax, or taxed at a reduced rate, by that Contracting State if it is subject to tax in the other Contracting State, and under the law in force in that 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 former Contracting State shall apply only to so much of the income as is remitted to or received in the other Contracting State.

Article IV

1.

- (a) The income or profits of a Singapore enterprise shall not be taxable in Malaysia unless the enterprise carries on business in Malaysia through a permanent establishment situated in Malaysia. If the enterprise carries on business as aforesaid, tax may be imposed in Malaysia on the income or profits of the enterprise but only on so much thereof as is derived by that permanent establishment in Malaysia.
- (b) The income or profits of a Malaysian enterprise shall not be taxable in Singapore unless the enterprise carries on business in Singapore through a permanent establishment situated in Singapore. If the enterprise carries on business as aforesaid, tax may be imposed in Singapore on the income or profits of the enterprise but only on so much thereof as is attributable to that permanent establishment in Singapore.

2. 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 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 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 in so far as they are reasonably allocable to the permanent establishment, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

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

Article V

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 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, 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 income or profits of that enterprise and taxed accordingly.

Article VI

1. Notwithstanding the provisions of Article IV of this Agreement the income or profits of an enterprise of one of the Contracting States from the operation of ships or aircraft in international traffic may be taxed in the other Contracting State only if such income or profits are derived from that other Contracting State:

Provided that -

- (a) where a Singapore enterprise derives income or profits from Malaysia from such operations, the tax charged in Malaysia on such income or profits shall be reduced by an amount equal to fifty per cent thereof;
- (b) where a Malaysian enterprise derives income or profits from Singapore from such operations, the tax charged in Singapore on such income or profits shall be reduced by an amount equal to fifty per cent thereof.

2. The provisions of paragraph 1 shall likewise apply to income or profits arising from participation in shipping or aircraft pools of any kind by such enterprise engaged in shipping or air transport.

3. For the purposes of this Article income or profits derived from the other Contracting State shall mean income or profits from the carriage of passengers, mails, livestock or goods shipped or loaded into an aircraft in that other Contracting State:

Provided that there shall be excluded the income or profits accruing from passengers, mail, livestock or goods which are brought to that other Contracting State solely for transshipment, or for transfer from one aircraft to another or from an aircraft to a ship or from a ship to an aircraft.

Article VII

1. Dividends paid by a company which is a resident of one of the Contracting States shall be treated as derived from that Contracting State.

2. Where a company which is a resident of Malaysia for the basis year for a year of assessment for the purposes of Malaysian tax is also a resident of Singapore for the purposes of Singapore tax for the year of assessment which coincides with that basis year, a dividend paid by the company shall be deemed to be derived from the Contracting State in which the meeting at which the dividend was declared was held.

3. For the purpose of this Article only, a company which is a resident of one of the Contracting States may when paying a dividend declare itself to be a resident of the other Contracting State.

4. Where a dividend is derived or deemed to have been derived from one of the Contracting States in accordance with the provisions of this Article, the Contracting State in which the dividend is derived or deemed to have been derived shall allow to the recipient of such dividend a tax set-off under section 46 of the Income Tax Ordinance (Singapore) or section 110 of the Income Tax Act, 1967 (Malaysia) as the case may be, equal to the tax which would have been deducted from such dividend under the provisions of section 44 of the Income Tax Ordinance (Singapore) or section 108 of the Income Tax Act, 1967 (Malaysia) as the case may be, had the dividend been paid by a company resident in that Contracting State.

5. Nothing in this Article shall affect the provisions of the law of either Contracting State in which the tax in respect of a dividend paid by a company resident in either Contracting State has been, or has been deemed to be, deducted may be adjusted by reference to the rate of tax appropriate to the year of assessment immediately following that in which the dividend was paid.

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

7. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient of the dividends, being a resident of one of the Contracting States, 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 Article IV shall apply.

8. If the system of taxation applicable in either Contracting State to the income and distributions of companies is altered, the taxation authorities may consult each other in order to determine whether it is necessary for this reason to amend the provisions of this Article.

Article VIII

1. Royalties derived from sources within one of the Contracting States by a resident of the other Contracting State may be taxed in the Contracting State from which the royalties are derived.

2. The term "royalties" as used in this Article means payments of any kind received as consideration for the use of, or the right to use, any copyright, patent, trademark, design or

model, plan, secret formula or process or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, but does not include any royalty or other amount paid in respect of literary or artistic copyrights or of motion picture films or of tapes for television or broadcasting or of the operations of a mine, oil well, quarry or other place of extraction of natural resources or of timber or forest produce.

3. Sums derived by a resident of one of the Contracting States from sources within the other Contracting State from the alienation of any right or property from which royalties, as defined in paragraph 2 of this Article, are or may be derived, may be taxed in the Contracting State from which the sums are derived.

4. The provisions of paragraphs 1 and 3 of this Article shall not apply if the recipient of the royalties or sums, being a resident of one of the Contracting States, has in the other Contracting State from which the royalties or sums are derived, a permanent establishment with which the right or property giving rise to the royalties or sums is effectively connected. In such event, the provisions of Article IV shall apply.

5. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of royalties or sums paid, having regard to the use, right, property 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 payment shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

6. Royalties as defined in paragraph 2 of this Article shall be treated as derived from sources within the Contracting State in which the property from which such royalties are derived is used.

7. Sums derived from the alienation of any right or property referred to in paragraph 3 of this Article shall be treated as derived from sources within the Contracting State in which such right or property is used.

Article IX

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

2. The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term shall in any case include rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil wells, quarries or other places of extraction of natural resources or of timber or forest produce.

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.

Article X

1. Remuneration other than a pension paid by the Government of one of the Contracting States to an individual who is a citizen of that Contracting State and who is

subject to tax therein in respect of the services rendered in the discharge of governmental functions in the other Contracting State shall be exempt from tax in that other Contracting State.

2. This Article shall not apply to any remuneration in respect of services rendered in connection with any trade or business carried on for purposes of profit:

Provided that nothing in this paragraph shall affect the right of the Governments of the Contracting States mutually agreeing that any activity shall be deemed to be not carried on for the purposes of profit.

3. Any remuneration to which this Article applies shall be deemed to be income from a source within the Contracting State the Government of which pays the remuneration.

4. For the purposes of this Article, the word "Government" shall include any State Government, or local or statutory authority of either Contracting State.

Article XI

1. Subject to the provisions of this Article and Articles X, XII, XIII and XIV, salaries, wages and other similar remuneration derived by a resident of one of the Contracting States in respect of an employment shall be deemed to have been derived from a source in, and may be taxed in the other Contracting State if the employment is exercised in that other Contracting State.

2. In relation to remuneration of a director of a company from the company, this Article and Article XII shall apply as if the remuneration were remuneration of an employee in respect of an employment. Director's 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 shall be deemed to have been derived from an employment exercised in, and may be taxed in, that other Contracting State.

Article XII

1. An individual who is a resident of Singapore shall be exempt from Malaysian tax on income in respect of an employment exercised in Malaysia in the basis year for a year of assessment which coincides with a year of assessment for which he is a resident of Singapore, if -

- (a) he is present within Malaysia for a period or periods not exceeding in the aggregate 120 days during that basis year; and
- (b) the services are performed for or on behalf of a person who is a resident of Singapore; and
- (c) the income is subject to Singapore tax; and
- (d) the income is not directly deductible for Malaysian tax purposes from the income or profits of a permanent establishment in Malaysia of that person.

2. An individual who is a resident of Malaysia shall be exempt from Singapore tax on income in respect of an employment exercised in Singapore in a year of assessment which

coincides with the basis year for a year of assessment for which he is a resident of Malaysia, if -

- (a) he is present within Singapore for a period or periods not exceeding in the aggregate 120 days during that year of assessment; and
- (b) the services are performed for or on behalf of a person who is a resident of Malaysia; and
- (c) the income is subject to Malaysian tax; and
- (d) the income is not directly deductible for Singapore tax purposes from the income or profits of a permanent establishment in Singapore of that person.

3. The provisions of this Article shall apply to the remuneration or profits derived from sources within one of the Contracting States by public entertainers (such as stage, motion picture, radio or television artistes, musicians and athletes) only if the visit to that Contracting State is supported, wholly or substantially, from the public funds of the Government of the other Contracting State.

4. Notwithstanding anything contained in this Agreement, while services are provided in one of the Contracting States by an enterprise of the other Contracting State, then the profits derived from providing those services by such an enterprise may be taxed in the first-mentioned Contracting State unless the enterprise is substantially supported by the public funds of the Government of the other Contracting State in connection with the provision of such services.

5. For the purposes of this Article, the term "Government" has the same meaning as in paragraph 5 of Article X.

6. For the purposes of this Article, income or profits to which this Article applies shall be treated as derived from sources within the Contracting State in which the services are rendered.

Article XIII

1. Any pension or annuity derived by an individual who is a resident of one of the Contracting States from sources within the other Contracting State may be taxed in the first-mentioned 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. The term "pension" means periodical payments made, whether voluntarily or otherwise, in consideration for services rendered or by way of compensation for injuries received.

4. Any pension paid by the Government of one of the Contracting States shall be deemed to be derived from a source within that Contracting State. Any other pension shall be deemed to be derived from a source within the Contracting State of which the person paying the pension is a resident.

Article XIV

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

- (a) any income not derived from that other Contracting State;
- (b) any grant, allowance or award whether or not in connection with the employment;
- (c) any income derived from that other Contracting State in respect of services rendered in that other Contracting State and which is paid by his employer in the first-mentioned Contracting State; and
- (d) any income (other than income of the kind referred to in paragraph (c) above) derived from the other Contracting State, in respect of services rendered in that other Contracting State with a view to supplementing the resources available to him for such purposes, not exceeding the sum of \$3,000 in a calendar year.

2. An individual who is a resident of one of the Contracting States immediately before making a visit to the other Contracting State and is temporarily present in the other Contracting State for the purposes of study, research or training solely as a recipient of a grant, allowance or award from the Government of either of the Contracting States or from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the Government of either of the Contracting States for a period not exceeding two years from the date of his first arrival in that other Contracting State in connection with that visit shall be exempt from tax in that other Contracting State on -

- (a) the amount of such grant, allowance or award; and
- (b) any income derived from that other Contracting State in respect of services in that other Contracting State if the services are performed in connection with his study, research or training or are incidental thereto.

3. An individual who is a resident of one of the Contracting States immediately before making a visit to the other Contracting State and is temporarily present in the other Contracting State solely as an employee of, or under contract with, the Government or an enterprise of the first-mentioned Contracting State solely for the purpose of acquiring technical, professional or business experience for a period not exceeding twelve months from the date of his first arrival in that other Contracting State shall be exempt in that other Contracting State on any income derived from the first-mentioned Contracting State and any income derived from that other Contracting State in respect of services rendered in that other Contracting State if the services are performed in connection with his studies or training or are incidental thereto:

Provided that where that individual is an employee of, or under contract with an enterprise of one of the Contracting States, this paragraph shall apply only in respect of approved employees.

4. In this Article "approved" means approved by the Contracting State in which the individual will be temporarily present.

Article XV

1. Interest paid by the Government or a resident of Singapore shall be treated as derived from sources within Singapore and interest paid by the Government or a resident of Malaysia shall be treated as derived from Malaysia. Where, however, the person paying the interest, whether he is a resident of one of the Contracting States or not, has in the other 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 be derived from Singapore or from sources within Malaysia as the case may be in which the permanent establishment is situated.

2. The provisions of this Article shall not apply if the recipient of the interest, being a resident of one of the Contracting States, has in the other Contracting State from which the interest is derived a permanent establishment with which the indebtedness in respect of which the interest is derived is effectively connected. In such a case, the provisions of Article IV shall apply.

3. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of interest paid, having regard to the indebtedness 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 and dealing with each other at arm's length, 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 XVI

1. The Government of one of the Contracting States shall be exempt from tax in respect of any income derived from sources within the other Contracting State.

2. For the purpose of this Article the term "Government" shall include -

(a) in the case of Singapore -

- (i) the Board of Commissioners of Currency;
- (ii) any local or statutory authority exempt from tax in Singapore;
- (iii) such institutions, as may be agreed from time to time between the two Contracting States;

(b) in the case of Malaysia -

- (i) the Government of the States;
- (ii) the Bank Negara, Malaysia;
- (iii) any local or statutory authority exempt from tax in Malaysia;

- (iv) such institutions, as may be agreed from time to time between the two Contracting States.

Article XVII

1. Individuals who are residents of Singapore shall for the purpose of Malaysian tax be treated as Malaysian citizens not resident in Malaysia.

2. Individuals who are residents of Malaysia shall for the purposes of Singapore tax be treated as Singapore citizens not resident in Singapore.

Article XVIII

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

2. Subject to the provisions of the laws of Singapore regarding the allowance as a credit against Singapore tax of tax payable in any country other than Singapore, Malaysian tax payable, whether directly or by deduction, in respect of income from sources within Malaysia shall be allowed as a credit against Singapore tax payable in respect of that income.

3.

(i) Subject to the provisions of the laws of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, Singapore tax payable whether directly or by deduction, in respect of income derived from Singapore shall be allowed as a credit against Malaysian tax chargeable in respect of that income.

(ii) For the purposes of this paragraph, the tax chargeable on any income of a person derived from Singapore shall be taken to be so much of the tax chargeable on his chargeable income for a year of assessment as the aggregate of the statutory income for that year of assessment of those sources the income of which is derived from Singapore less the aggregate of losses which if they had been profits would have been derived from Singapore and deductible under the sections 43(2) and 44(2) of the Malaysian Income Tax Act, 1967, bears to the total income for that year of assessment before the deduction of any gifts or donations allowable under section 44(6) or any deduction falling to be made pursuant to Schedule 4 to the same Act for that year of assessment.

4. Notwithstanding the provisions of this Article, where remuneration for services performed on ships or aircraft engaged in international traffic is received by a person who is by the taxation laws of Malaysia treated as resident in Malaysia for the basis year for a year of assessment which coincides with the year of assessment for which he is resident in Singapore and is chargeable to tax on such income in both Contracting States, credit shall be given by the Contracting State in which he does not have a permanent home available to him and if he has a permanent home in both Contracting States, by the Contracting State with which his personal and economic relations are less close.

5. Where the person paying the pension under paragraph 4 of Article XIII, or the person paying the interest under paragraph 1 of Article XV is a resident of both Contracting States, credit shall be given by the Contracting State in which he does not have a permanent home available to him, and if he has a permanent home in both Contracting States, by the Contracting State with which his personal and economic relations are less close.

6. Notwithstanding the provisions of this Article, the income derived by any pension or provident fund or society of one of the Contracting States from the other Contracting State shall be exempt from tax in that other Contracting State if such fund or society is an approved fund or society under the taxation law of the first-mentioned Contracting State.

Article XIX

1. The taxation authorities of the Contracting States shall exchange such information (being information which is available under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of this Agreement or for the prevention of fraud or underpayment of taxes by reasons other than fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than persons, including a court, concerned with the assessment and collection of those taxes or the determination of appeals in relation thereto.

2. In no case shall 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 State;
- (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 any 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 XX

1. Where a person who is a resident of one of the Contracting States considers that the actions of one or both of the Contracting States result or will result in taxation not in accordance with this Agreement he may, notwithstanding the remedies provided by the taxation laws in force in the Contracting States, appeal to the taxation authorities of the first-mentioned Contracting State. If the claim is justified, such taxation authorities shall endeavour to come to an agreement with the taxation authorities of the other Contracting State with a view to avoidance of taxation which is not in accordance with this Agreement.

2. The taxation authorities of the Contracting States may communicate with each other directly for the purposes of giving effect to this Agreement and for resolving difficulty or doubts as to the application or interpretation of this Agreement. In particular the taxation authorities may consult together to resolve disputes arising out of the application of paragraph 2 of Article IV or Article V or the determination of the source of a particular item of income or to endeavour to eliminate double taxation.

Article XXI

1. This Agreement shall come into force on the date when the last of all such things shall be done in Singapore and Malaysia as are necessary to give the Agreement the force of law in Singapore and Malaysia, and shall thereupon have the effect as respects -

- (a) Singapore tax for the year of assessment 1969 and subsequent years of assessment;
- (b) Malaysian tax for the year of assessment 1969 and subsequent years of assessment.

2.* Nothing in this Agreement shall affect:

- (a) anything duly done or suffered to be done; or
- (b) any right, privilege, benefit, obligation or liability acquired, accrued or incurred,

under the provisions of the Agreement between the Government of the Republic of Singapore and the Government of Malaysia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed on the sixteenth day of August 1966 (hereinafter referred to as the 1966 Agreement) up to and including the year of assessment 1968.

3. # Paragraph 2 of this Article shall not extend the 1966 Agreement beyond the last day of the year of assessment 1968.

4. For the purposes of this Agreement the balances as at 31st December, 1968 under section 44(3) of the Income Tax Ordinance (Singapore) or section 108(6) of the Income Tax Act, 1967 (Malaysia) as determined under the provisions of the 1966 Agreement shall be carried forward.

Article XXII

This Agreement shall continue in effect indefinitely, but the Government of either Contracting State may, on or before the 30th June in any calendar year (not earlier than the year 1972) give to the Government of the other Contracting State written notice of termination and in such event this Agreement shall cease to be effective as respects -

- (a) Singapore tax for the year of assessment next following that in which such notice is given and subsequent years of assessment;
- (b) Malaysian tax for the year of assessment next following that in which such notice is given and subsequent years of assessment.

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

DONE in duplicate at Singapore this twenty-sixth day of December of the year one thousand nine hundred and sixty-eight in the English language.

For the Government of the Republic of Singapore. GOH KENG SWEE	For the Government of Malaysia. JAMAL BIN ABDUL LATIFF
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ANNEX B

ARTICLE XXI

2. Nothing in this Agreement shall affect:

- (a) anything duly done or suffered to be done; or
- (b) any right, privilege, benefit, obligation or liability acquired, accrued or incurred,

under the provisions of the Agreement between the Government of the Republic of Singapore and the Government of Malaysia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed on the sixteenth day of August 1966 (hereinafter referred to as the 1966 Agreement).

ANNEX C

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

The Government of the Republic of Singapore and the Government of Malaysia

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

ARTICLE I

1. The taxes which are the subject of this Agreement are -

- (a) in the Republic of Singapore:
the Income Tax
(hereinafter referred to as "Singapore tax"); and

- (b) in Malaysia:
- (i) the Income Tax under the provisions of the Income Tax Ordinance, 1956, of Sabah;
 - (ii) the Salaries Tax, Profits Tax and Interest Tax as provided by the Inland Revenue Ordinance, 1960, of Sarawak;
 - (iii) the Income Tax incorporating the Tin Profits Tax as provided by the Income Tax Ordinance, 1947, of the States of Malaya;
- (hereinafter referred to as "Malaysian tax").

2. This Agreement shall also apply to any other taxes of a substantially similar character to those referred to in the preceding paragraph imposed in either Contracting State after the date of signature of this Agreement.

ARTICLE II

1. In this Agreement, unless the context otherwise requires -
- (a) the terms "one of the Contracting States" and "the other Contracting State" mean Singapore or Malaysia as the context requires;
 - (b) the term "tax" means Singapore tax or Malaysian tax as the context requires;
 - (c) the term "company" means any body corporate;
 - (d) the term "person" includes any body of persons, corporate or not corporate;
 - (e)
 - (i) the term "resident of Singapore" means any person who is resident in Singapore for the purposes of Singapore tax; and the term "resident of Malaysia" means any person who is resident in Malaysia for the purposes of Malaysian tax;
 - (ii) where by reason of the provisions of sub-paragraph (i) an individual is a resident of both Contracting States, then his residence shall be determined in accordance with the following rules:
 - (aa) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him, subject to the qualification mentioned in sub-paragraph (dd) hereunder. 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;
 - (bb) if the Contracting State to which his personal and economic relations are closer, 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;

- (cc) if he has an habitual abode in both Contracting States or in neither of them, the taxation authorities of the Contracting States shall settle the question by mutual agreement;
 - (dd) where an individual is a resident of one Contracting State, and is also deemed to be resident in the other Contracting State, by reason only of the exercise of an employment in that other Contracting State, he shall be deemed to be resident in that Contracting State from which he derives the major part of his total income;
 - (ee) where a person ceases to be a resident of one Contracting State during a year of assessment and thereupon becomes a resident of the other Contracting State he shall in respect of that year of assessment be deemed to be a resident of the Contracting State of which he is a resident for the longer period of time during that year;
- (iii) where by reason of the provisions of sub-paragraph (i) above a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which it is managed and controlled;
- (f) the terms "resident of one of the Contracting States" and "resident of the other Contracting State" mean a resident of Singapore or a resident of Malaysia as the context requires;
- (g) the terms "Singapore enterprise" and "Malaysian enterprise" mean, respectively, an industrial, mining, commercial, plantation or agricultural enterprise or undertaking carried on by a resident of Singapore and an industrial, mining, commercial, plantation or agricultural enterprise or undertaking carried on by a resident of Malaysia;
- (h) the terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean a Singapore enterprise or a Malaysian enterprise, as the context requires;
- (i) the terms "profits of a Singapore enterprise" and "profits of a Malaysian enterprise" do not include rents or royalties in respect of motion picture films or of tapes for telecasting or of mines, oil wells, quarries, timber reserves or other places of extraction of natural resources, or income in the form of dividends, interest, rents, royalties, or fees or other remuneration derived from the management, control or supervision of the trade, business, or other activity of another enterprise or concern, or remuneration for labour or personal services, or profits derived from the operation of ships or aircraft;
- (j)
- (i) subject to the provisions of this sub-paragraph, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on;
 - (ii) a permanent establishment shall include especially -

- (aa) a place of management;
 - (bb) a branch;
 - (cc) an office;
 - (dd) a factory;
 - (ee) a workshop;
 - (ff) a farm or plantation;
 - (gg) a mine, oil well, quarry, timber reserve or other place of extraction of natural resources;
 - (hh) a building site or construction or assembly project;
- (iii) the term "permanent establishment" shall not be deemed to include -
- (aa) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - (bb) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - (cc) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (dd) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
 - (ee) 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;
- (iv) an enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State if -
- (aa) it carries on supervisory activities in that other Contracting State in connection with a construction, installation or assembly project which is being undertaken in that other Contracting State;
 - (bb) it carries on a business which consists of providing the services of public entertainers referred to in paragraph 3 of Article XI in that other Contracting State;
- (v) a person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State (other than an agent of independent status to whom sub-paragraph (j)(vi) applies) shall be

deemed to be a permanent establishment of that enterprise in the former Contracting State if -

- (aa) he has, and habitually exercises in that former 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; or
- (bb) he maintains in that former Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise;
- (vi) 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 Contracting State through a broker, general commission agent or any other agent of independent status, where such a person is acting in the ordinary course of the business;
- (vii) the fact that a company which is a resident of one of the Contracting States 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.

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

ARTICLE III

Where this Agreement provides (with or without other conditions) that income from sources in one of the Contracting States shall be exempted from tax, or taxed at a reduced rate, by that Contracting State if it is subject to tax in the other Contracting State, and under the law in force in that 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 former Contracting State shall apply only to so much of the income as is remitted to or received in the other Contracting State.

ARTICLE IV

1.
 - (a) The profits of a Singapore enterprise shall not be taxable in Malaysia unless the enterprise carries on business in Malaysia through a permanent establishment situated in Malaysia. If the enterprise carries on business as aforesaid, tax may be imposed in Malaysia on the profits of the enterprise but only on so much of them as is attributable to that permanent establishment. No further tax shall be imposed in Singapore in respect of profits of the permanent establishment which are remitted to Singapore.
 - (b) The profits of a Malaysian enterprise shall not be taxable in Singapore unless the enterprise carries on business in Singapore through a permanent

establishment situated in Singapore. If the enterprise carries on business as aforesaid, tax may be imposed in Singapore on the profits of the enterprise but only on so much of them as is attributable to that permanent establishment. No further tax shall be imposed in Malaysia in respect of profits of the permanent establishment which are remitted to Malaysia.

2. 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 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 independently with the enterprise of which it is a permanent establishment.

3. In determining the 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 in so far as they are reasonably allocable to the permanent establishment, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

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

ARTICLE V

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 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, any 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 VI

1. Profits which an enterprise of one of the Contracting States derives from the operation of ships or aircraft shall be exempt from tax of the other Contracting State, unless the ships or aircraft are operated wholly or mainly between places within that other Contracting State.

2. This Article shall likewise apply to the share in respect of participation in shipping or aircraft pools of any kind by such enterprise engaged in shipping or air transport.

ARTICLE VII

1. Dividends paid by a company which is a resident of -

- (a) Singapore, shall be treated as derived from a source in Singapore, except to the extent to which the profits of the company are derived from sources in Malaysia, and
- (b) Malaysia, shall be treated as derived from a source in Malaysia, except to the extent to which the profits of the company are derived from sources in Singapore.

2. Dividends paid by a company which is a resident of one of the Contracting States shall be charged to tax by the respective Contracting States to the extent to which the dividend represents a distribution of profits derived from sources in those Contracting States. No further liability shall be imposed on the shareholder by reference to liability on an income received basis.

3. The following rules shall apply in respect of dividends paid by a company resident in either of the Contracting States -

- (a) the taxation authorities shall consult together to determine:
 - (i) the balance of tax appropriate to each Contracting State as at the commencement of the year of assessment 1966,
 - (ii) in respect of any dividend paid during the calendar year 1965, the proportion of that dividend deemed to be derived from each Contracting State unless the company has declared at the time of the payment of the dividend that such dividend has been paid from the profits of a particular Contracting States;
- (b) on the determination of the allocation of the dividend as in sub-paragraph (a)(ii) above, each portion of the dividend shall be deemed to have borne tax in the respective Contracting States;
- (c) in paying dividends on or after 1st January, 1966, the Company shall indicate the extent to which the dividend has been paid out of the profits liable to tax in each Contracting State;
- (d) a Contracting State shall, in respect of a dividend deemed to have been derived therefrom and computed in accordance with the provisions of this paragraph, allow to the recipient a tax set-off under section 46 of the Income Tax Ordinance (Singapore) or section 42 of the Income Tax Ordinance (States of Malaya) as the case may be, equal to the tax which could have been deducted from such dividend under the provisions of section 44 of the Income Tax Ordinance (Singapore) or section 40 of the Income Tax Ordinance (States of Malaya) as the case may be, had the dividend been derived from a company resident in that Contracting State;
- (e) for the purposes of this Article where a company resident in one Contracting State pays a dividend part of which is, under this Article, deemed to be derived from the other Contracting State the company shall not be entitled to deduct tax in force in the first-mentioned Contracting State from that part but shall be entitled to deduct from that part tax in force in and at the rate in force in that other Contracting State and where any such part has been paid without any such deduction such part shall be deemed to be a dividend

(derived from that other Contracting State) of such a gross amount as, after deduction of tax so in force at the rate so in force at the date of payment of that part of the dividend, would be equal to the net amount paid; and a sum equal to the difference between such gross amount and the net amount paid shall be deemed to have been deducted from such part as tax so in force.

ARTICLE VIII

1. Royalties derived from sources within one of the Contracting States and paid to a resident of the Other Contracting State shall be exempt from tax in that other Contracting State.
2. Profits derived by a resident of one of the Contracting States from sources within the other Contracting State, from the alienation of any right or property, from which royalties are or may be derived, shall be exempt from tax in the former Contracting State.
3. Royalties or profits received by a resident of one of the Contracting States, where such royalties or profits are attributable to a permanent establishment of such resident in the other Contracting State, shall be treated as if they were profits to which the provisions of Article IV are applicable.
4. 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 profits paid, having regard to the use, right, property 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 IX

1. Any pension or any annuity, derived from sources within one of the Contracting States by an individual who is a resident of the other Contracting State, shall be exempt from tax in that other 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 consideration of money paid.
3. The term "pension", as used in this Article, means periodical payments made in consideration for services rendered or by way of compensation for injuries received.

ARTICLE X

1. Any salary, wage or similar remuneration (not including pensions) paid by the Government of Singapore to any individual who is subject to Singapore tax thereon (other than a resident of Malaysia who is not a citizen of Singapore) in respect of services rendered to Singapore in the discharge of governmental functions, shall be exempt from Malaysian tax.
2. Any salary, wage or similar remuneration (not including pensions) paid by the Malaysian Government to any individual who is subject to Malaysian tax thereon (other than a resident of Singapore who is not a citizen of Malaysia) in respect of services rendered to Malaysia in the discharge of governmental functions, shall be exempt from Singapore tax.

3. The provisions of this Article shall not apply to payments in respect of services rendered in connection with any business carried on by either of the Contracting States for purposes of profit.

4. For the purposes of this Article the word "Government" shall include any State Government or any local or statutory authority of either Contracting State.

ARTICLE XI

1. An individual who is a resident of Singapore shall be exempt from Malaysian tax on remuneration or profits in respect of personal (including professional) services performed within Malaysia in any calendar year, if -

- (a) he is present within Malaysia for a period or periods not exceeding in the aggregate 183 days during that year, and
- (b) the services are performed for or on behalf of a person who is a resident of Singapore, and
- (c) the remuneration or profits are subject to Singapore tax, and
- (d) the remuneration or profits are not directly deductible from the profits for Malaysian tax purposes of a permanent establishment in Malaysia of that person.

2. An individual who is a resident of Malaysia shall be exempt from Singapore tax on remuneration or profits in respect of personal (including professional) services performed within Singapore in any calendar year, if -

- (a) he is present within Singapore for a period or periods not exceeding in the aggregate 183 days during that year, and
- (b) the services are performed for or on behalf of a person who is a resident of Malaysia, and
- (c) the remuneration or profits are subject to Malaysian tax, and
- (d) the remuneration or profits are not directly deductible from the profits for Singapore tax purposes of a permanent establishment in Singapore of that person.

3. The provisions of this Article shall not apply to the remuneration or profits derived from one of the Contracting States, of public entertainers (such as stage, motion picture, radio or television artistes, musicians, and athletes) whose visit to that Contracting State is not supported, wholly or substantially, from the public funds of the Government of the other Contracting State.

ARTICLE XII

1. Subject to the provisions of this Article and of Articles IX, X, XI and XIV, salaries, wages and other similar remuneration derived by a resident of one of the Contracting States in respect of an employment shall be deemed to have been derived from a source in, and may be taxed in the other Contracting State if, and only if, the employment is exercised in that other Contracting State.

2. In relation to remuneration of a director of a company derived from the company, the provisions of this Article and of Article XI shall apply as if the remuneration were remuneration of an employee in respect of an employment. Director's 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 shall be deemed to have been derived from an employment exercised in, and may be taxed in, that other Contracting State.

3. A resident of one of the Contracting States shall be exempt from tax in the other Contracting State on remuneration for services performed on ships or aircraft operating outside the other Contracting State provided that he is subject to tax in respect thereof in the first-mentioned Contracting State.

ARTICLE XIII

An individual who is a resident of one of the Contracting States at the beginning of a visit to the other Contracting State and who has made such visit at the invitation of the Government or of a university, college, school or other recognised educational institution of the other Contracting State, solely for the purpose of teaching or engaging in research at such educational institution shall be exempt from tax of the former Contracting State on his remuneration for such teaching or research.

ARTICLE XIV

1. An individual who is a resident of one of the Contracting States at the beginning of 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, school or other educational organisation in that other Contracting State,
- (b) as a recipient of a grant, allowance or award for the primary purpose of study or research from a governmental, religious, charitable, scientific, literary or educational organisation, or
- (c) as a business or technical apprentice,

shall be exempt from tax of that other Contracting State in respect of -

- (i) remittances from the former Contracting State for the purposes of his maintenance, education, study, research or training;
- (ii) the grant, allowance or award;
- (iii) remuneration for personal services in that other Contracting State paid by his employer in the former Contracting State, and
- (iv) remuneration for personal services in that other Contracting State other than the remuneration referred to in sub-paragraph (iii) above not exceeding the sum of 3,000 Malaysian dollars during any calendar year.

2. An individual who is a resident of one of the Contracting States at the beginning of a visit to the other Contracting State and is temporarily present in that other Contracting State

for a period not exceeding two years under arrangements with the Government of that other Contracting State, solely for the purpose of study, research or training, shall be exempt from tax of that other Contracting State on remuneration for services directly related to such study, research or training.

3. With regard to the period during which an individual would qualify for exemption under paragraphs 1 and 2 of this Article, he may opt to be exempted under either of such paragraphs as he may select.

ARTICLE XV

For the purpose of this Agreement -

- (a) interest paid by one of the Contracting States, including a State Government or local or statutory authority thereof, or by an enterprise of one of the Contracting States, shall be treated as income from sources within that Contracting State, except that interest (other than that paid on indebtedness in connection with the purchase of ships or aircraft) which is paid:
 - (i) by an enterprise of one of the Contracting States with a permanent establishment outside both Contracting States to a resident of the other Contracting State, or
 - (ii) by an enterprise of one of the Contracting States with a permanent establishment in the other Contracting State,

on indebtedness incurred for the use of (or, in the case of a banking business, on deposits made with) the permanent establishment in the conduct of its trade or business and which is borne by that permanent establishment shall be treated as income from sources within the territory where the permanent establishment is situated;

- (b) royalties shall be treated as income from sources within the Contracting State in which the property from which such royalties are derived is used;
- (c) profits derived from the alienation of any rights or properties from which royalties may be derived shall be treated as arising from sources within the Contracting State in which such rights or properties are used, and
- (d) royalties in respect of the operation of mines, oil wells, quarries, timber reserves or other places of extraction of natural resources shall be treated as derived from sources within the Contracting State in which such mines, oil wells, quarries, timber reserves or other places of extraction of natural resources are situated.

ARTICLE XVI

1. Individuals who are residents of Singapore shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Malaysian tax as Malaysian citizens not resident in Malaysia.

2. Individuals who are residents of Malaysia shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Singapore tax as Singapore citizens not resident in Singapore.

ARTICLE XVII

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

2. Where a resident of one Contracting State derives income from sources within the other Contracting State and that income in accordance with the income tax laws of each Contracting State and the provisions of this Agreement is subject to tax in the other Contracting State, the former Contracting State shall exempt such income from tax.

3. Notwithstanding the provisions of paragraph 2 of this Article -

(a) a resident of Malaysia shall be exempt from Malaysian tax on profits or dividends which have been exempted from Singapore tax under the provisions of any law for the time being in force in Singapore relating to the exemption of profits or dividends of pioneer industries; and

(b) a resident of Singapore shall be exempt from Singapore tax on profits or dividends which have been exempted from Malaysian tax under the provisions of any law for the time being in force in Malaysia or any part thereof relating to the exemption of profits or dividends of pioneer industries.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, the income derived by the Government, State Government, or local or statutory authority of one of the Contracting States from sources within the other Contracting State shall be exempt from tax in that other Contracting State.

5. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, the income derived by -

(a) any pension or provident fund or society, or

(b) any body of persons, trust or similar institution established for charitable purposes only,

of one of the Contracting States from sources within the other Contracting State shall be exempt from tax in that other Contracting State:

Provided that in the case of -

(i) a fund or society referred to in sub-paragraph (a) it is approved, or

(ii) any body of persons, trust or similar institution referred to in sub-paragraph (b) its income is exempted from tax,

by the taxation authorities in either Contracting State.

ARTICLE XVIII

The taxation authorities of the Contracting States shall exchange such information (being information which is available under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of this Agreement or

for the prevention of fraud or underpayment of tax by reasons other than fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than persons, including a court, concerned with the assessment and collection of those taxes or the determination of appeals in relation thereto. No information shall be exchanged which would disclose any trade secret or trade process.

ARTICLE XIX

1. Citizens of one of the Contracting States 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 citizens of that other Contracting State in the same circumstances are or may be subjected.

2. In this Article, the term "citizen" means -

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

3. In this Article the term "taxation" means taxes which are the subject of this Agreement.

ARTICLE XX

1. Any taxpayer, who shows proof that the action of the taxation authorities of either Contracting State has resulted or may result in double taxation contrary to the provisions of this Agreement, may lodge a claim with the taxation authority of the Contracting State of which the taxpayer is a resident. Should the claim be considered to be justified, such taxation authority shall endeavour to come to an agreement with the taxation authority of the other Contracting State with a view to avoidance of the double taxation in question.

2. The taxation authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Agreement and for resolving any difficulty or doubt as to the application or interpretation of this Agreement. In particular the taxation authorities may consult together to resolve disputes arising out of the application of paragraph 2 of Article IV or Article V, or the determination of the source of particular items of income.

ARTICLE XXI

1. This Agreement shall come into force on the date when the last of all such things shall be done in Singapore and Malaysia as are necessary to give the Agreement the force of law in Singapore and Malaysia, and shall thereupon have effect in both Contracting States for any year of assessment beginning on or after 1st January, 1966.

2. This Agreement shall continue in effect indefinitely, but either of the Contracting States may, on or before the 30th day of June in any calendar year give to the other

Contracting State notice of termination, and, in such event, this Agreement shall cease to be effective after the last day of the calendar year in which the notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments have signed this Agreement.

DONE in duplicate at Kuala Lumpur this sixteenth day of August of the year one thousand nine hundred and sixty-six in the English language.

LIEN YING CHOW

**For the Government of
the Republic of Singapore.**

TAN SIEW SIN

**For the Government of
*Malaysia.***