

**P.U. (A) 302/1999**  
**Signed: 9 March 1998**  
**Effective Date: 1 January 2009**

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

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 or its political subdivisions or local authorities, irrespective of the manner in which they are levied.

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

3. The existing taxes to which the agreement shall apply are:

(a) in Myanmar:

the income tax imposed under the Income Tax Law 1974 (Law No. 7 of 1974)

(hereinafter referred to as "Myanmar tax");

(b) in Malaysia:

- (i) the income tax as imposed under the Income Tax Act 1967; and
- (ii) the petroleum income tax as imposed under the Petroleum Income Tax Act 1967;

(hereinafter referred to as "Malaysian tax").

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

### Article 3

#### **GENERAL DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires:

- (a) the term "Myanmar" means all the territories of the Union of Myanmar, including its territorial sea and any area beyond and adjacent to its territorial sea, which has been or may hereafter be designated under the laws of Myanmar in accordance with international law as fallen within Myanmar's sovereign rights regarding exploration and exploitation of the natural resources thereof;
- (b) the term "Malaysia" means the territories of the Federation of Malaysia, the territorial waters of Malaysia and the sea-bed and subsoil of the territorial waters, and includes any area extending beyond the limits of the territorial waters of Malaysia, and the sea-bed and subsoil of any such area, which has been or may hereafter be designated under the laws of Malaysia as 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;

- (c) the term "a Contracting State" and "the other Contracting State" mean Myanmar or Malaysia as the context requires;
- (d) 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;
- (e) the term "person" includes an individual, a company, a body of persons or any other entity which is treated as a person 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 "company" means any body corporate or any other entity which is treated as a body corporate for tax purposes;
- (h) the term "tax" means Myanmar tax or Malaysian tax as the context requires;
- (i) the term "competent authority" means:
  - (i) in the case of Myanmar, the Minister for Finance and Revenue or his authorised representative;
  - (ii) in the case of Malaysia, the Minister of Finance or his authorised representative;
- (j) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State.

2. As regards the application of the Agreement by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies.

#### Article 4

#### **RESIDENT**

1. 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; and
- (b) in the case of Myanmar, a person who is resident in Myanmar for the purposes of Myanmar tax.

2. Where, by reason of the provisions of paragraph 1 of this Article an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him;
- (b) 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);
- (c) if the State in which he has his centre of vital interests cannot be determined, or if he has no 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;
- (d) 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;
- (e) if the status of resident cannot be determined according to subparagraphs (a) to (d), the competent authorities of the Contracting States shall settle the question by mutual agreements.

3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated. If its place of effective management cannot be determined, the competent authorities of the Contracting States shall settle the question by mutual agreement.

## Article 5

### **PERMANENT ESTABLISHMENT**

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business 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 of any other place of extraction of natural resources, including timber or other forest produce, drilling rig, ship or aircraft used for exploration or exploitation of natural resources;
  - (g) a farm or plantation; and
  - (h) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six months.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, 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 for collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, supply of information, scientific research or similar activities which have a preparatory or auxiliary character, for the enterprise.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person -- other than an 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 Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (b) has no such authority, but habitually maintains in the first- mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

5. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other Contracting State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 6 applies.

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, provided that 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 situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the laws of the Contracting State in which the property in question is situated. However, in the purposes of this Agreement, 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, minerals deposits, sources and other natural resources including timber and other forest produce; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also 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 so much of them as is directly or indirectly attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3 of this Article 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 the 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 AND AIR TRANSPORT**

1. The income of an enterprise of one of the Contracting States derived from the other Contracting State from the operation of ships in international traffic may be taxed in that other Contracting State, but the tax chargeable in that other Contracting State on such income shall be reduced by an amount equal to fifty per cent thereof.
2. Profits from the operation of aircraft in international traffic shall be taxable only in the Contracting State of which the enterprise operating the aircraft is a resident.
3. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.



4. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall mean profits derived from the transportation by sea or air of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of the ships or aircraft, including:

- (a) profits from the sale of tickets for such transportation on behalf of other enterprises;
- (b) income from the lease of ships or aircraft and the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers), where such lease or such use, maintenance or rental, as the case may be, is incidental to the operation of ship or aircraft in international traffic.

#### Article 9

#### **ASSOCIATED ENTERPRISES**

Where:

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions have accrued to one of the enterprises, but by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

#### Article 10

#### **DIVIDENDS**

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

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

3. 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.

4. 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, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

5. 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 that other State.

## 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 recipient is the beneficial owner of the interest, 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 arising in a Contracting State and paid to the Government of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State.

4. For the purpose of paragraph 3, the term "Government":
- (a) in the case of Myanmar means the Government of Myanmar and shall include:
    - (i) the Government of the States;
    - (ii) the local authorities;
    - (iii) the statutory bodies;
    - (iv) the Central Bank of Myanmar; and
    - (v) any institution wholly owned by the Government of Myanmar, as may be agreed from time to time between the competent authorities of the Contracting States;
  - (b) in the case of Malaysia means the Government of Malaysia and shall include:
    - (i) the government of the States;
    - (ii) the local authorities;
    - (iii) the statutory bodies;
    - (iv) the Bank Negara Malaysia; and
    - (v) any institution wholly owned by the Government of Malaysia as may be agreed from time to time between the competent authorities of the Contracting States.

5. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures.

6. The provisions of paragraphs 1 and 2 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 and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

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

8. 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 Contracting State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 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, films or tapes used for television or radio 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 concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 of this Article 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 situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority, a statutory body or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment 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 be agreed upon by the payer and 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 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 and is subject to tax in that other State in respect thereof may be taxed in the first-mentioned Contracting State at a rate not exceeding 10 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 of this Article 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, and the technical fees are effectively connected with such permanent establishment or such services. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

4. Technical fees shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a statutory body thereof, or a resident of 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 in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by such permanent establishment, then such technical fees shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

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 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

#### **CAPITAL GAINS**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the enterprise is resident.

4. Gains from the alienation of shares of the capital stock of a company the property of which consists principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 representing a participation of 35 per cent in a company which is a resident of a Contracting State may be taxed in that State.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

#### Article 15

### **INDEPENDENT PERSONAL SERVICES**

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances, where such income may also be taxed in the other Contracting State:

- (a) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days:
  - (i) in the case of Myanmar, in the fiscal year concerned; and
  - (ii) in the case of Malaysia, in the calendar year concerned; or
- (b) if the remuneration for his services in the other Contracting State is paid by a resident of that Contracting State or is borne by a permanent establishment situated in that Contracting State and exceeds 3000 US dollars:
  - (i) in the case of Myanmar in the fiscal year concerned; and
  - (ii) in the case of Malaysia in the calendar year concerned.

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

## Article 16

### **DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 17, 19 and 20, 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 State for a period or periods not exceeding in the aggregate 183 days:
  - (i) in the case of Myanmar, in the fiscal year concerned; and
  - (ii) in the case of Malaysia, in the calendar year concerned;
- (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 of the other Contracting State 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 by an enterprise of a Contracting State may be taxed in that State.

## Article 17

### **DIRECTORS' FEES**

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



## Article 18

### **ARTISTES AND SPORTSMEN**

1. Notwithstanding the provisions of Articles 15 and 16, 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, 15 and 16 of this Agreement, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.
3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income derived in respect of the activities referred to in paragraph 1 of this Article within the framework of a cultural or sports exchange programme agreed to by both Contracting States shall be exempt from tax in the Contracting State in which these activities are exercised.

## Article 19

### **PENSIONS AND ANNUITIES**

1. Subject to the provisions of paragraph 2 of Article 20, any pension and other similar remuneration for past employment or any annuity arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other 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.

## Article 20

### **GOVERNMENT SERVICE**

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

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

- (i) is a national of that other State; or
- (ii) did not become a resident of that other State solely for the purpose of rendering the services.

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

3. The provisions of Articles 16, 17 and 19 shall apply to remuneration or pensions in respect of services rendered in connection with any business carried on by a Contracting State or a political subdivision or a local authority or a statutory body thereof.

#### Article 21

### **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;
- (ii) the amount of such grant, allowance or award; and

- (iii) any remuneration not exceeding 2500 US dollars per annum in respect of services in that other State provided the services are performed in connection with his study, research or training or are necessary for the purposes of his maintenance.

#### Article 22

#### **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 any public university, college, institution primarily for research purposes or other similar public institutions, visits that other State for a period not exceeding two years solely for the purpose of teaching or research or both at such public institutions 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. The provisions of paragraph 1 of this Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

#### Article 23

#### **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 State except that, if such income is derived from sources within the other Contracting State, it may also be taxed in that other State.

#### Article 24

#### **LIMITATION OF RELIEF**

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

## Article 25

### **ELIMINATION OF DOUBLE TAXATION**

1. The laws in force in either of the Contracting State shall continue to govern the taxation of income in the respective Contracting 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. In the case of Myanmar, Malaysian tax payable in respect of income derived from Malaysia shall be allowed as a credit against Myanmar tax payable in respect of that income. The credit shall not, however, exceed that part of the Myanmar tax, as computed before the credit is given which is attributable to such income.

3. Subject to the laws of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, the Myanmar tax payable under the laws of Myanmar and in accordance with this Agreement by a resident of Malaysia in respect of income derived from Myanmar 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 Myanmar to a company which is a resident of Malaysia and which owns not less than 25 per cent of the voting shares of the company paying the dividend, the credit shall take into account the Myanmar 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 attributable to such income.

4. For the purposes of paragraph 3 of this Article, the term "Myanmar tax payable" shall be deemed to include the amount of Myanmar tax which would have been paid if the Myanmar tax had not been exempted or reduced in accordance with the special incentive laws designed to promote economic development in Myanmar, effective on the date of signature of this Agreement, or which may be introduced hereafter in modification of, or in addition to, those laws so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character.

5. For the purposes of paragraph 2, 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 any income derived from sources in Malaysia had the income not been taxed at a reduced rate or exempted from Malaysian tax in accordance with the provisions of this Agreement and the special incentives under the Malaysian laws for the promotion of economic development of Malaysia or any other provisions which may subsequently be introduced in Malaysia in modification of, or in addition to, those laws so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character.

## Article 26

### **NON-DISCRIMINATION**

1. 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.
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 the 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) Malaysia to grant to nationals of Myanmar not resident in Malaysia 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 Malaysia who are not resident in Malaysia.
5. Where a Contracting State grants tax incentives to its nationals designed to promote economic development in accordance with its national policy and criteria, it shall not be construed as discrimination under this Article.
6. In this Article, the term "taxation" means taxes which are the subject of this Agreement.

## Article 27

### **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 26, 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 this Agreement.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the avoidance of double taxation in cases not provided for in this Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the preceding paragraphs.

## Article 28

### **EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of the provisions of this Agreement or of the domestic taxation laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. Any information so exchanged by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic taxation laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement.

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

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

Article 29

#### **DIPLOMATIC AGENTS AND CONSULAR OFFICIALS**

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

Article 30

#### **ENTRY INTO FORCE**

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

- (a) in Myanmar:
  - (i) in respect of taxes withheld at source, to the income derived on or after the first day of April in the fiscal year following the fiscal year in which this Agreement enters into force;
  - (ii) in respect of other taxes on income, to taxes chargeable for any year of assessment beginning on or after the first day of April of the second fiscal year following the fiscal year in which this Agreement enters into force and subsequent years of assessment;

- (b) in Malaysia:
  - (i) in respect of taxes withheld at source, to income derived on 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 other taxes on income, to taxes 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 and subsequent years of assessment.

#### Article 31

#### **TERMINATION**

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement at any time after five years from the date on which the Agreement enters into force, by giving notice of termination through diplomatic channels at least six months before the end of any calendar year. In such event, the Agreement shall cease to have effect:

- (a) in Myanmar:
  - (i) in respect of taxes withheld at source, to income derived on or after the first day of April in the fiscal year following the year in which the notice is given;
  - (ii) in respect of other taxes on income, to taxes chargeable for any year of assessment beginning on or after the first day of April of the second fiscal year following the year in which the notice is given;
- (b) in Malaysia:
  - (i) in respect of taxes withheld at source, to income derived 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 other taxes on income, to taxes 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.



In witness whereof the undersigned, duly authorised thereto, have signed this Agreement.

Done in duplicate at Yangon this 9th day of March 1998, each in the Malay, Myanmar and the English languages, the three 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.