

Double Taxation Agreement between India and Malaysia

Signed on April 1, 1977

DEZAN SHIRA & ASSOCIATES

Corporate Establishment, Tax, Accounting & Payroll Throughout Asia

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Malaysia

Notification No. 1705/F. No. 11(43)/46-FTD dt. 1-4-1977.

G.S.R. 167(E).----Whereas the Government of India and the Government of Malaysia have concluded an Agreement, as set out in the Annexure hereto, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

And where as all the requirements have been completed in Malaysia and India as are necessary to give the said Agreement the force of law in Malaysia and India respectively, as required by paragraph 1 of Article 27 of the said Agreement;

And whereas the diplomatic notes of this effect have been exchanged between the said two Governments, as required by paragraph 2 of Article 27 of the said Agreement;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961) and section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

ANNEXURE

AGREEMENT BETWEEN THE GOVERNMENT OF INDIA 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 India 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:

CHAPTER I

SCOPE OF THE AGREEMENT

ARTICLE I

Personal Scope

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

ARTICLE II

Taxes covered

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

a. in Malaysia:

- i. the income-tax;
- ii. the supplementary income-tax, that is, tin profits tax, development tax and timber profits tax; and
- iii. the petroleum income-tax;

(hereinafter referred to as "Malaysian tax");

b. in India:

- i. the income-tax and any surcharge on income-tax imposed under the Income-tax Act, 1961 (43 of 1961);

- ii. the surtax imposed under Companies (Profits) surtax Act, 1964 (7 of 1964),
(hereinafter referred to as "Indian tax").
2. The 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.
3. At the end of each year, the competent authorities of the Contracting States shall notify to each other any significant changes which have been made in their respective taxation laws.

CHAPTER II

DEFINITIONS

ARTICLE III

General Definitions

1. In this Agreement, unless the context otherwise requires:----
 - a. the term "Malaysia" means the Federation of Malaysia and includes any area adjacent to the territorial waters of Malaysia which, in accordance with international law, has been or may hereafter be designated under the laws of Malaysia concerning the Continental Shelf as an area within which the rights of Malaysia with respect to the sea bed and sub-soil and their natural resources may be exercised;
 - b. the term "India" means the territory of India and includes any area adjacent to the territorial waters of India which, in accordance with international law, has been or may hereafter be designated under the laws of India as an area within which the rights of India with respect to the sea bed and sub-soil and their natural resources may be exercised;
 - c. the terms "one of the Contracting States" and "the other Contracting State" means Malaysia or India, as the context requires;
 - d. the term "tax" means Malaysian tax or Indian tax, as the context requires;
 - e. the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes under the taxation laws of the respective Contracting States;
 - f. the term "person" shall have the meaning assigned to it in the taxation laws in force in the respective Contracting States;
 - g. the terms "Malaysian enterprise" and "Indian enterprise" mean respectively an enterprise carried on by a resident of Malaysia and an enterprise carried on by a resident of India;
 - h. the terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean a Malaysian enterprise or an Indian enterprise, as the context requires;
 - i. the term "competent authority" means, in the case of Malaysia, the Minister of Finance or his authorised representative; and in the case of India, the Central Government in the Ministry of Finance (Department of Revenue and Insurance).
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 tax which are the subject of this Agreement.

ARTICLE IV

Fiscal Domicile

1. In this Agreement, unless the context otherwise requires:----
 - a. the term "resident of Malaysia" means
 - i. an individual who is ordinarily resident in Malaysia; or
 - ii. a person other than individual who is resident in Malaysia; for the basis year for a year of assessment for the purpose of Malaysian tax;

- b. the term "resident of India" means a person who is treated as a resident of India in the previous year for the relevant assessment year for the purpose of Income-tax;
 - c. the terms "resident of one of the Contracting States" and "resident of the other Contracting State" mean a resident of Malaysia or a resident of India, as the context requires.
2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both Contracting States, then his residential status shall be determined in accordance with the following rules:
 - a. he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer;
 - b. if the Contracting State, with 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;
 - c. if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a citizen;
 - d. if he is a citizen of both Contracting States or of neither of them, the competent authorities of the Contracting States shall determine the question by mutual agreement.
2. Where by reason of the provisions of paragraph 1 of this Article 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 its place of effective management is situated.

ARTICLE V

Permanent Establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.
2. The term "permanent establishment" shall include especially:
 - a. a place of management;
 - b. a branch;
 - c. an office;
 - d. a factory;
 - e. a workshop;
 - f. a warehouse;
 - g. a mine, oil well, quarry or other place of extraction of natural resources;
 - h. a building site or construction, installation or assembly project which exists for more than six months;
 - i. a farm or plantation;
 - j. a place of extraction of timber or forest produce.
3. The term "permanent establishment" shall not be deemed to include:
 - a. the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - b. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - c. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - d. the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or collecting information, for the enterprise;
 - e. the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which has a preparatory or auxiliary character, for the enterprise.
4. An enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State if:

- a. it carries on supervisory activities in that other Contracting State for more than six months in connection with a construction, installation or assembly project which is being undertaken in that other Contracting State;
 - b. it carries on a business which consists of providing the services of public entertainers (such as stage, motion picture, radio or television artistes and musicians) or athletes in that other Contracting State unless the enterprise is directly or indirectly supported, wholly or substantially, from the public funds of the Government of the first-mentioned Contracting State in connection with the provision of such services.
2. Subject to the provisions of paragraph 6 of this Article, a person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the first-mentioned Contracting State if:
 - a. he has, and habitually exercises in that first-mentioned Contracting State, an authority to conclude contracts on behalf of the enterprise unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
 - b. 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.
3. 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 an independent status, where such persons are acting in the ordinary course of their business.
4. 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.

CHAPTER III

TAXATION ON INCOME

ARTICLE VI

Income from Immovable Property

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 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 wells, quarries and other places of extraction of natural resources or of timber or forest produce. Ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 of this Article shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraph 1 and 3 of this Article shall also apply to the income from immovable property of an enterprise.

ARTICLE VII

Business Profits

1. The income or profits of an enterprise of one of the Contracting States shall be taxable only in that Contracting State, unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, tax may be imposed in that other Contracting State on the income or profit of the

enterprise but only on so much of that income or profit as is attributable to that permanent establishment.

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 be in each Contracting State be attributed to that permanent establishment the income or profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In the determination of the income or profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. In so far as it has been customary in a Contracting State to determine the income or profits to be attributed to a permanent establishment on the basis of an apportionment of the total income or profits of the enterprise to its various parts, nothing in paragraph 2 or paragraph 3 of this Article shall preclude such Contracting State from determining the income or profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles laid down in this Article.
5. No income or profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the purpose of export to the enterprise of which it is the permanent establishment.
6. Where income or profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE VIII

Shipping

1. 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 Contracting State on such income shall be reduced by an amount equal to fifty per cent of such tax.
2. For the purposes of paragraph 1 of this Article income derived from the other Contracting State shall mean income from the carriage of passengers, mail, livestock or goods shipped in that other Contracting State:

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

3. Where income from the operation of ship in international traffic is derived by an enterprise of one of the Contracting States from a State other than the Contracting States, such income shall be taxable only in the Contracting State of which the enterprise is a resident.
4. The provisions of paragraphs 1, 2 and 3 of this Article shall likewise apply to income arising from participation in shipping pools of any kind by such enterprise engaged in shipping operations.

ARTICLE IX

Air Transport

1. Income of an enterprise of one of the Contracting States derived from the other Contracting State from the operation of aircraft in international traffic shall not be taxed in the other Contracting State.
2. For the purposes of paragraph 1 of this Article, income derived from the other Contracting State shall mean income from the carriage of passengers, mail, livestock or goods from the other Contracting State.

3. Where income from the operation of aircraft in international traffic is derived by an enterprise of one of the Contracting States from a State other than the Contracting States, such income shall be taxable only in the Contracting State of which the enterprise is a resident.
4. The provisions of paragraphs 1, 2 and 3 of this Article shall likewise apply, to income arising from participation in aircraft pools of any kind by such enterprise engaged in air transport operations.

ARTICLE X

Associated Enterprises

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 of an enterprise of other Contracting State;

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

ARTICLE XI

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 the first-mentioned Contracting State.
2. Where a dividend was paid by a company which was resident in both Malaysia and Singapore and the meeting at which the dividend was declared was held in Malaysia, or where a dividend was paid by a company which was resident in Singapore and at the time of payment of that dividend the company declared itself to be a resident of Malaysia for the purposes of Article VII of the Agreement between the Government of Malaysia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed in Singapore on 26th December, 1968, the dividend shall be deemed to have been paid by a company resident in Malaysia.
3. Where a dividend was paid by a company which was resident in both Malaysia and Singapore and the meeting at which the dividend was declared was held in Singapore, or where a dividend was paid by a company which was resident in Malaysia and at the time of payment of that dividend, the company declared itself to be a resident of Singapore for the purposes of Article VII of the Agreement between the Government of Malaysia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed in Singapore on 26th December, 1968, the dividend shall be deemed to have been paid by a company not resident in Malaysia.
4. Nothing in this Article shall affect the provisions of the law in Malaysia under which the tax in respect of a dividend paid by a company resident in Malaysia from which Malaysian tax has been, or has been deemed to be, deducted may be adjusted by reference to the rates of tax appropriate to the year of assessment immediately following that in which the dividend was paid.
5. Where a company which is a resident of one of 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 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.

ARTICLE XII

Interest

1. Interest derived by a resident of one of the Contracting States from the other Contracting State may be taxed in that other Contracting State.
2. Interest shall be deemed to be derived from a Contracting State if the payer is the Government, a State Government, a political sub-division, a local authority or a resident of that Contracting State. Where, however, the payer has in the other Contracting State a permanent establishment with which the loan or other indebtedness in respect of which the interest is paid, is effectively connected and such interest is borne by such permanent establishment, then such interest shall be deemed to be derived from the Contracting State in which the permanent establishment is situated. In such a case, the provisions of Article 7 shall apply.
3. Where, owing to a special relationship between the payer and the recipient, or between both of them and some other persons, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In that case, the excess part of the payments shall be taxed according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.
4. The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

ARTICLE XIII

Royalties

1. Royalties derived by a resident of one of the Contracting State from the other Contracting State may be taxed in that other Contracting State.
2. Notwithstanding the provisions of paragraph 1 of this Article, royalties of the kind mentioned in clauses (a) and (b) of paragraph 5 of this Article and derived from Malaysia by a resident of India shall be exempt from tax in Malaysia, if the agreement under which such royalties are payable is approved by the Government of Malaysia after this Agreement is signed.
3. Royalties shall be deemed to be derived from a Contracting State if the payer is the Government, a State Government, a political sub-division, a local authority or a resident of that Contracting State. Where, however, the payer has in the other Contracting State a permanent establishment with which the right or property giving rise to the royalties is effectively connected, then, such royalties shall be deemed to be derived from the Contracting State in which the permanent establishment is situated. In such a case, the provisions of Article 7 shall apply.
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 having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In that case, the excess part of the payments shall be taxed according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.
5. The term "royalties" as used in this Article means payment of any kind received as a consideration for the use of, or the right to use---
 - a. any patent, trademark design or model, plan, secret formula or process;
 - b. industrial, commercial, or scientific equipment, or information concerning industrial, commercial or scientific experience
 - c. any copyright of literary, artistic or scientific work, cinematograph films, or tapes for television or broadcasting. but does not include royalties or other amounts paid in respect of operation of mines or quarries or of the extraction or removal of natural resources.

ARTICLE XIV

Dependent Personal Services

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of one of the Contracting States in respect of an employment shall be taxable only in that Contracting 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 Contracting State.
2. Notwithstanding the provisions of paragraph 1 of this Article, an individual who is a resident of Malaysia shall be exempt from tax in India on remuneration in respect of an employment exercised in any previous year in India, if----
 - a. he is present in India for a period or periods not exceeding in the aggregate 183 days during that previous year; and
 - b. any period for which he is present within India does not form part of a continuous period of more than 183 days throughout which he is present within India; and
 - c. the remuneration is paid by, or on behalf of, an employer who is not a resident of India; and
 - d. the amount of remuneration is not deductible in computing the income or profits of an enterprise chargeable to Indian tax.
3. Notwithstanding the provisions of paragraph 1 of this Article, an individual who is a resident of India shall be exempt from tax in Malaysia on remuneration in respect of an employment exercised in any basis year for a year of assessment in Malaysia, if----
 - a. he is present in Malaysia for a period or periods not exceeding in the aggregate 183 days during that basis year; and
 - b. any period for which he is present within Malaysia does not form part of a continuous period of more than 183 days throughout which he is present within Malaysia; and
 - c. the remuneration is paid by or on behalf of an employer who is not a resident of Malaysia; and
 - d. the amount of remuneration is not deductible in computing the income or profits of an enterprise chargeable to Malaysian tax.
4. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft engaged in international traffic and operated by an enterprise of one of the Contracting States may be taxed in that Contracting State.
5. In relation to remuneration of a director of a company derived from the company, the provisions of this Article shall apply as if the remuneration were remuneration of an employee in respect of an employment.

ARTICLE XV

Directors Fees

Notwithstanding the provisions of Article 14, directors' fees and similar payments derived by a resident of one of the 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 XVI

Artistes and Athletes

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

Provided that such income shall not be taxed in the said Contracting State if the visit of the public entertainers or athletes to that State is directly or indirectly supported, wholly or substantially, from the public funds of the Government of the other Contracting State.

2. For the purposes of this Article, the term "Government" includes a State Government, a political sub-division, or a local or statutory authority of either Contracting State.

ARTICLE XVII

Non-Government Pensions and Annuities

Any pension (other than a pension of the kind referred to in Article 18) or any annuity in respect of past services derived by an individual who is a resident of one of the Contracting States from the other Contracting State shall be taxable only in the first-mentioned Contracting State.

ARTICLE XVIII

Government Remuneration and Pension

1. Remuneration (not being a pension) paid by the Government of Malaysia to any individual who is a citizen of Malaysia in respect of services rendered in the discharge of governmental functions in India shall be exempt from Indian tax.
2. Remuneration (not being a pension) paid by the Government of India to any individual who is a citizen of India in respect of services rendered in the discharge of governmental functions in Malaysia shall be exempt from Malaysian tax.
3. Any pension paid by the Government of one of the Contracting State to any individual may be taxed in that Contracting State.
4. The provisions of paragraphs 1 and 2 of this Article shall not apply to payments in respect of services rendered in connection with any business carried on by the Government of either of the Contracting States for the purposes of profit.
5. For the purposes of this Article, the term "Government" shall include any State Government or local or statutory authority of either Contracting State and in particular the Bank Negara Malaysia and the Reserve Bank of India.

ARTICLE XIX

Students and Apprentices

1. An individual who is a resident of one of the Contracting States and who visits the other Contracting State solely as a student at a recognised university, college, school or other similar recognised education institution in that other Contracting State or as a business or technical apprentice therein, for a period not exceeding five 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. all remittances from abroad for the purposes of his maintenance, education or training; and
 - b. any remuneration (not exceeding 3,000 Malaysian dollars or 7,500 Indian Rupees during any basic year or previous year, as the case may be, for any year of assessment) for personal services rendered in that other Contracting State with a view to supplementing the resources available to him for such purposes.
2. An individual who is a resident of one of the Contracting States and who visits 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 five 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;
 - b. all remittances from abroad for the purposes of his maintenance, education or training; and
 - c. any remuneration (not exceeding 3,000 Malaysian Dollars or 7,500 Indian Rupees for any basic year or previous year, as the case may be, for any year of assessment) in respect of

- services in that other Contracting State if the services are performed in connection with his study, research, training or are incidental thereto.
3. An individual who is a resident of one of the Contracting States and who visits the other Contracting State solely as an employee of or under contract with, the Government of 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 in connection with that visit shall be exempt in that other Contracting State on:---
 - a. all remittances from abroad for the purposes of maintenance, education or training; and
 - b. any remuneration, so far as it is not in excess of 5,000 Malaysian Dollars or 12,500 Indian Rupees, as the case may be, for personal services rendered in that other Contracting State, provided such services are in connection with his studies or training or are incidental thereto.
 4. For the purposes of this Article and Article 20:---
 - i. the term "Government" shall have the same meaning as in paragraph 5 of Article 18;
 - ii. an individual shall be deemed to be a resident of a Contracting State if he is resident in that Contracting State in the basic year or the previous year, as the case may be, in which he visits the other Contracting State or in the immediately preceding basic year or the previous year.

ARTICLE XX

Professors, Teachers and Researchers

1. An individual who is a resident of one of the Contracting States and who, at the invitation of the Government of the other Contracting State or of a university or other recognised educational institution situated in that other Contracting State, visits that other Contracting State for the primary purpose of teaching or engaging in research or both, at a university or other recognised educational institution shall be exempt from tax in that other Contracting State on his income from personal services for teaching or research or both at the university or the recognised educational institution, for a period not exceeding two years from the date of his arrival in that other Contracting State.
2. This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

ARTICLE XXI

Income of Government Institutions

1. The Government of one of the Contracting States shall be exempt from tax in the other Contracting State in respect of any income derived by such Government from that other Contracting State.
2. For the purpose of paragraph 1 of this Article, 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 of Negara Malaysia;
 - iii. any such institution or body as may be agreed from time to time between the two Contracting States;
 - b. in the case of India means the Government of India and shall include:---
 - i. the Government of the States and the Union territories of India;
 - ii. the Reserve Bank of India;
 - iii. any such institution or body as may be agreed from time to time between the two Contracting States.

CHAPTER IV

ELIMINATION OF DOUBLE TAXATION

ARTICLE XXII

1. The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Agreement.
2.
 - a. The amount of Malaysian tax payable, under the laws of Malaysia, and in accordance with the provisions of this Agreement, whether directly or by deduction, by a resident of India, in respect of income from sources within Malaysia which has been subjected to tax both in India and Malaysia, shall be allowed as a credit against the Indian tax payable in respect of such income but in an amount not exceeding that proportion of Indian tax which such income bears to the entire income chargeable to Indian tax.
 - b. For the purposes of the credit referred to in sub-paragraph (a) above, there shall be deemed to have been paid by the resident of India:----
 - i. the amount of tax which would have been paid in respect of royalties but for the exemption provided in paragraph 2 of Article 13; and (ii) the amount of tax which would have been paid if the Malaysian tax had not been reduced or relieved in accordance with the special incentive measures designed to promote economic development in Malaysia--
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 - aa. which are set forth in section 21, 22 and, 26 of the Investment Incentives Act, 1968 of Malaysia; or
 - bb. which may be introduced in future in Income-Tax Act 1967, Supplementary Income-Tax Act, 1967, Petroleum (Income-Tax) Act, 1967 or Investment Incentives Act, 1968 in modification of or in addition to the existing measures;

Provided an agreement is made between the two Contracting States in respect of the scope of the benefit accorded by the said measures.

3.
 - a. The amount of Indian tax payable, under the laws of India and in accordance with the provisions of this Agreement, whether directly or by deduction, by a resident of Malaysia, in respect of income from sources within India which has been subjected to tax both in India and Malaysia, shall be allowed as a credit against Malaysian tax payable in respect of such income, but in an amount not exceeding that proportion of Malaysian tax which such income bears to the entire income chargeable to Malaysian tax.
 - b. For the purposes of the credit referred to in sub-paragraph (a) above, there shall be deemed to have been paid by the resident of Malaysia the amount which would have been paid if the Indian tax had not been reduced or relieved in accordance with the special incentive measures designed to promote economic development in India:----
 - i. in relation to royalties, as set forth in the relevant annual Finance Act of India; and
 - ii. in relation to other income as set forth in the following sections of the Income-tax Act, 1961 of India or which may be introduced in future in the Indian tax laws in modification of or in addition to the existing measures, provided that an agreement is made between the two Government in respect of the scope of the benefit accorded by the said measures:---
 - ae. (aa) Section 10 (15) (iv) (b) and (c)----relating to exemption from tax of (a) an approved foreign financial institution in respect of interest on moneys lent by it to an industrial undertaking in India under a loan agreement; and (b) a non-resident in respect of interest on moneys lent or credit facilities allowed by him to an industrial undertaking in India for the purchase outside India of raw materials or capital plant and machinery;
 - bb. Section 33---relating to development rebate in respect of ships, machinery or plant;
 - ce. Section 80J---relating to deduction in respect of profits and gains from eligible industrial undertaking or ships or hotels;
 - dd. Section 80K----relating to deduction in respect of dividends attributable to profits and gains from eligible industrial undertakings or ships or hotels; and

- ee. Section 80M---relating to deduction in respect of certain dividends received by a company from a domestic company. This Sub-clause shall apply in relation to a company which is a resident of Malaysia only if such company beneficially holds shares (either singly or together with any company controlling it or any company controlled by it) carrying not less than ten per cent of the voting power in the domestic company and the domestic company is an industrial company,
- iii. any other incentive measure as may be agreed from time to time between the two Contracting States.

CHAPTER V

SPECIAL PROVISIONS

ARTICLE XXIII

Non-Discrimination

1. Citizens or nationals 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 or nationals of that other Contracting State in the same circumstances and under the same conditions are or may be subjected. This provision shall not be construed as obliging one of the Contracting States to grant to citizens of the other Contracting State not resident in the first-mentioned Contracting State those personal allowances, relief and reductions for tax purposes which are by law available only to citizens of that first-mentioned Contracting State and to such other persons as may be specified in such law who are not resident in that first-mentioned Contracting State.
2. The taxation on a permanent establishment which an enterprise of one of the Contracting States has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities in the same circumstances and under the same conditions.
3. Enterprises of one of the Contracting States, the capital of which is wholly or partly owned or controlled, directly or indirectly by one or more residents of the other Contracting State, shall not be subjected in the first mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned Contracting State are or may be subjected in the same circumstances and under the same conditions.
4. In this Article, the term "citizens or nationals" in relation to a Contracting State means:---
 - a. all individuals possessing the citizenship or nationality of that Contracting State;
 - b. all legal persons, partnerships, associations and other entities deriving their status as such from the law in force in that Contracting State.

ARTICLE XXIV

Mutual Agreement Procedure

1. Where 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 present his case to the competent authority of the Contracting State of which he is a resident.
2. The competent authority of the first-mentioned Contracting State 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 that case by the 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 this Agreement.

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

ARTICLE XXV

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information or document as is necessary for carrying out the provisions of this Agreement or for the prevention or detection of evasion or avoidance of the taxes which are the subject of this Agreement. Any information or document so exchanged shall be treated as secret but may be disclosed to persons (including a court or administrative body) concerned with the assessment collection, enforcement, or prosecution in respect of taxes which are the subject matter of this Agreement or to persons with respect to whom the information or document relates.
2. The exchange of information or documents shall be either on a routine basis or on request with reference to particular cases. The competent authorities of the Contracting States shall agree from time to time on the list of the information or documents which shall be furnished on a routine basis.
3. 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 of administrative practice of that or of the other Contracting State;
 - b. to supply information or documents which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
 - c. to supply information or documents 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 XXVI

Diplomatic and Consumer Officials

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

CHAPTER VI

FINAL PROVISIONS

ARTICLE XXVII

Entry into Force

1. This Agreement shall come into force on the date when the last of all such things shall have been done in Malaysia and India as are necessary to give the Agreement the force of law in Malaysia and India respectively.
2. The Contracting States shall notify each other of the completion of the requirements mentioned in paragraph 1 of this Article. The exchange of diplomatic notes certifying that this requirement has been completed shall take place at Kuala Lumpur.
3. Upon the exchange of such diplomatic notes this Agreement shall have effect.
 - a. in Malaysia---

as respect Malaysian tax for the year of assessment beginning on 1st January, 1973, and subsequent years of assessment;

- b. in India,-----

as respects Indian tax for the assessment year commencing on the 1st day of April, 1973, and subsequent years of assessment.

ARTICLE XXVIII

Termination

1. This Agreement shall continue in effect indefinitely, but either of the Contracting States may, on or before 30th June in any calendar year after the year 1975 give to the other Contracting State written notice of termination and in such event this Agreement shall cease to be effective----
 - a. in India----

as respects Indian tax for the year of assessment commencing on the 1st day of April of the calendar year next following the calendar year in which such notice is given and subsequent years of assessment;

- b. in Malaysia-----

as respects Malaysia tax for the year of assessment next following the calendar year 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 New Delhi, this twenty-fifth day of October one thousand nine hundred and seventy-six in the Hindi, Malay and English languages, all the texts being equally authentic, except that in the case of divergence of interpretation the English text shall prevail.

(Sd/-) PRANAB KUMAR MUKHERJEE.

For the Government of the Republic of India

(Sd/-) TAN SRI HAJI ABDUL KHALID BIN AWANG OSMAN.

For the Government of Malaysia.

PROTOCOL

At the time of signing the Agreement between the Government of India and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed that as regards income derived from a Contracting State by a resident of the other Contracting State from the operation of ships in international traffic the competent authority of the first-mentioned Contracting State shall accept a certificate issued by the competent authority of the other Contracting State for the purpose of Article 8 of the Agreement.

2. The certificate shall show the following:----
 - a. the gross income from wherever derived;
 - b. income or loss in respect of shipping operations computed for the purpose of taxation in the other Contracting State; and
 - c. the total depreciation allowances (excluding any allowance brought forward from a previous period) given by the competent authority of that other Contracting State.
3. Further, it is also agreed that this Protocol shall constitute an integral part of the Agreement.

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

DONE in duplicate at New Delhi on the 25th day of October, 1976 in the Hindi, Malay and English languages, all the texts being equally authentic, except that in the case of divergence of interpretation the English text shall prevail.

(Sd/-) PRANAB KUMAR MUKHERJEE,

For the Govt. of India.

Sd/-) TAN SRI HAJI ABDUL

KHALID BIN AWANG OSMAN,

For the Govt. of Malaysia