



# **Double Taxation Avoidance Agreement between The Philippines and Malaysia**

## **DEZAN SHIRA & ASSOCIATES**

Corporate Establishment, Tax, Accounting & Payroll Throughout Asia

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

The Government of Malaysia and the Government of the Republic of the Philippines desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

Article 1

**PERSONAL SCOPE**

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

Article 2

**TAXES COVERED**

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

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

(a) in Malaysia:

- (i) the income tax and excess profit tax;
  - (ii) the supplementary income taxes, that is, tin profits tax, development tax and timber profits tax; and
  - (iii) the petroleum income tax;
- (hereinafter referred to as "Malaysian tax");

(b) in the Philippines:

the income taxes, including the corporate development tax and the branch profit remittance tax, imposed under Title II of the National Internal Revenue Code of the Philippines, as amended, and all other taxes on income imposed by the Government of the Republic of the Philippines;

(hereinafter referred to as "Philippine tax").

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

### Article 3

#### **GENERAL DEFINITIONS**

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

- (a) the term "Malaysia" means the 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 "Philippines" means the Republic of the Philippines and when used in a geographical sense means the national territory comprising the Republic of the Philippines;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Malaysia or the Philippines, as the context requires;
- (d) the term "person" includes an individual, an estate, a trust, a company and any other body of persons which is treated as an entity for tax purposes;
- (e) the term "company" means any body corporate or an entity which is treated as a body corporate for tax purposes;
- (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term "tax" means Malaysian tax or Philippine tax, as the context requires;
- (h) the term "National" means:
  - (i) any individual possessing the citizenship of a Contracting State;

- (ii) any legal person, partnership, association and any other entity deriving its status as such from the laws in force in a Contracting State;
- (i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (j) the term "competent authority" means:
  - (i) in the case of Malaysia, the Minister of Finance or his authorized representative;
  - (ii) in the case of the Philippines, the Minister of Finance or his authorized representative.

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

#### Article 4

#### **RESIDENT**

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

- (a) in the case of Malaysia, a person who is resident in Malaysia for the purposes of Malaysian tax; and
- (b) in the case of the Philippines, a person who is resident in the Philippines for the purpose of Philippine tax.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him. If he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has a permanent home available to him in either

State, he shall be deemed to be a resident of the State in which he has an habitual abode;

- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where, by reason of paragraph 1, a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question having regard to its day-to-day management, the place where it is incorporated or otherwise constituted and any other relevant factors.

#### Article 5

#### **PERMANENT ESTABLISHMENT**

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

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

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or other place of extraction of natural resources including timber or other forest produce;
- (g) a farm or plantation;
- (h) a building site or construction, installation or assembly project which exists for more than 6 months.

3. The term "permanent establishment" shall not be deemed to include:
- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
  - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
  - (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.
4. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if:
- (a) it carries on supervisory activities in that other State for more than 6 months in connection with a construction, installation or assembly project which is being undertaken in that other State; or
  - (b) substantial equipment is in that other State being used or installed by, for or under contract with, the enterprise.
5. A person (other than a broker, general commission agent or any other agent of an independent status to whom paragraph 6 applies) acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the first-mentioned State, if:
- (a) he has, and habitually exercises in the first-mentioned State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise;
  - (b) he maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly delivers goods or merchandise on behalf of the enterprise;
  - (c) he manufactures or processes in the first-mentioned State for the enterprise goods or merchandise belonging to the enterprise.

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

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

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

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

#### Article 7

### **BUSINESS PROFITS**

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State

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

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

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

4. Notwithstanding the provisions of paragraph 3, there shall not be allowed any deduction for payments by that permanent establishment to the head office or any other part of the enterprise, by way of royalties, fees or other similar payments for the use of patents or other rights, by way of commission for specific services performed or for management or (except in the case of a banking enterprise) by way of interest on moneys lent to the permanent establishment, unless such payments reimburse expenses actually incurred by the enterprise.

5. Notwithstanding the provisions of paragraphs 1 and 2, in determining the profits of a permanent establishment amounts receivable by the permanent establishment from the head office or any other part of the enterprise by way of royalties, fees or other similar payments for the use of patents or other rights, by way of commission for specific services performed or for management or (except in the case of a banking enterprise) by way of interest on moneys lent to the head office or any other part of the enterprise shall not be included in the receipts of the permanent establishment, except insofar as they represent reimbursement of expenses which it has actually incurred.

6. 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.

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 tax payable in a Contracting State by a resident of the other Contracting State in respect of profits from the operation of ships or aircraft in international traffic shall not exceed the lesser of:

- (a) 1 1/2 per cent of the gross revenue derived from sources in that State; and
- (b) the lowest rate of Philippine tax that may be imposed on profits of the same kind derived under similar circumstances by a resident of a third State.

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

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. Dividends paid by a company which is a resident of the Philippines to a resident of Malaysia who is subject to tax in Malaysia in respect thereof, may be taxed in the Philippines in accordance with the laws of the Philippines but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

(a) 15 per cent of the gross amount of the dividends if the recipient is a company;

(b) in all other cases, 25 per cent of the gross amount of the dividends.

3. Dividends paid by a company which is a resident of Malaysia to a resident of the Philippines who is the beneficial owner thereof and is subject to Philippine tax in respect thereof shall be exempt from any tax in Malaysia which is chargeable on dividends in addition to the tax chargeable in respect of the income of the company: Provided that nothing in this paragraph shall affect the provisions of the Malaysian law under which the tax in respect of a dividend paid by a company which is a resident of Malaysia from which Malaysian tax has been, or has been deemed to be, deducted may be adjusted by reference to the rate of tax appropriate to the Malaysian year of assessment immediately following that in which the dividend was paid.

4. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State in which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of Article 7 shall apply.

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.

6. The term "dividends" as used in this Article means income from shares or other rights (not being debt-claims) participating in income or profits, as well as income from other corporate rights assimilated to income from shares according to the taxation laws of the Contracting State of which the company making the distribution is a resident.

#### 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 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 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest paid to a resident of the Philippines on an approved loan or a long-term loan shall be exempt from Malaysian tax.

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

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

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

- (i) the governments of the states;
- (ii) the local authorities;
- (iii) the Bank Negara Malaysia;
- (iv) such institutions, the capital of which is wholly owned by the Government of Malaysia or the governments of the states or the local authorities, as may be agreed from time to time between the competent authorities of the Contracting State;

(b) in the case of the Philippines means the Government of the Republic of the Philippines and shall include:

- (i) the Central Bank of the Philippines;
- (ii) such institutions, the capital of which is wholly owned by the Government of the Republic of the Philippines, as may be agreed upon from time to time between the competent authorities of the Contracting States.

6. 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 according to the taxation laws of the Contracting State in which the income arises.

7. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, 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.

8. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or statutory body thereof, 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 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.

9. Where, by reason of a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## Article 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, if such resident is the beneficial owner of the royalties.

2. Such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State. However, if the recipient is the beneficial owner of the royalties:

(a) in the case of Malaysia:

- (i) the tax so charged shall not exceed 15 per cent of the gross amount of the royalties; and
- (ii) approved industrial royalties derived from Malaysia by a resident of the Philippines shall be exempt from tax.

(b) in the case of the Philippines:

the tax so charged shall not exceed:

- (i) 15 per cent of the gross amount of the royalties where the royalties are paid by a registered enterprise as well as royalties defined in paragraph 4(a)(ii); and

(ii) 25 per cent of the gross amount of the royalties in all other cases.

3. Royalties derived by a resident of the Philippines, being royalties that, as film rentals, are subject to the cinematograph film-hire duty in Malaysia, shall not be liable to Malaysian tax.

4. (a) The term "royalties" as used in this Article means payments of any kind received as consideration for:

- (i) the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, any copyright of literary, artistic or scientific work, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience;
- (ii) the use of, or the right to use, cinematograph films, or tapes for radio or television broadcasting.

(b) The term "approved industrial royalties" as used in this Article means royalties included in the definition in subparagraph 4(a)(i) which are approved and certified by the competent authority of Malaysia as payable for the purpose of promoting industrial development in Malaysia and which are payable by an enterprise which is wholly or mainly engaged in activities falling within one of the following classes:

- (i) manufacturing, assembling or processing;
- (ii) construction, civil engineering or shipbuilding; or
- (iii) electricity, hydraulic power, gas or water supply.

(c) The term "registered enterprise" as used in this Article means an enterprise registered with the Philippine Board of Investments and engaged in preferred areas of activities.

5. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of Article 7 shall apply.

6. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or statutory body thereof, or a resident of that State. Where, however, the person paying such royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation 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.

7. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

#### Article 13

### **GAINS FROM THE ALIENATION OF PROPERTY**

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6, may be taxed in the Contracting State in which such property is situated.

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

3. Gains from the alienation of shares of a company, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State. Gains from the alienation of an interest in a partnership or a trust, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State.

4. Gains from the alienation of any property or assets, other than those mentioned in paragraphs 1, 2 and 3 of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

#### Article 14

### **PERSONAL SERVICES**

1. Subject to the provisions of Articles 15, 17, 18, 19 and 20, salaries, wages and similar remuneration or income derived by a resident of a Contracting State in

respect of professional services or other activities of a similar character, shall be taxable only in that State unless the services or activities are exercised or performed in the other Contracting State. If the employment, services or activities are so exercised or performed, such remuneration or income as is derived therefrom may be taxed in the other State.

2. Notwithstanding the provisions of paragraph 1, remuneration or income derived by a resident of a Contracting State in respect of an employment, services or activities exercised or performed in any calendar year in the other Contracting State shall be taxable only in the first-mentioned State, if:

- (a) the recipient is present in that other State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and
- (b) the services or activities are exercised or performed for or on behalf of a person who is a resident of the first-mentioned State, and
- (c) the remuneration or income is not borne by a permanent establishment which the person paying the remuneration has in the other State.

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

4. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised on board a ship or aircraft operated in international traffic by an enterprise of a Contracting State, shall be taxable only in that State.

#### Article 15

#### **DIRECTORS' FEES**

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

2. The remuneration which a person to whom paragraph applies derives from the company in respect of the discharge of day-to-day functions of a managerial or technical nature may be taxed in accordance with the provisions of Article 14.

#### Article 16

#### **ARTISTES AND ATHLETES**

1. Notwithstanding the provisions of Article 14, 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 an athlete, 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 personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14 be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

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

#### Article 17

### **PENSIONS AND ANNUITIES**

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

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

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

#### Article 18

### **GOVERNMENT SERVICE**

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or political subdivision or local authority 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 State and the recipient is a resident of that State who:

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

2. Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or political subdivision or local authority thereof may be taxed in the other Contracting State.

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

#### Article 19

#### **STUDENTS AND TRAINEES**

1. 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 as a student at a recognised university, college, school or other similar recognised educational institution in that other State or as a business or technical apprentice therein, for a period not exceeding 5 years from the date of his first arrival in that other State in connection with that visit, shall be exempt from tax in that other State on:

- (a) all remittances from abroad for the purposes of his maintenance, education or training; and
- (b) any remuneration not exceeding five thousand Malaysian ringgit or the equivalent in Philippine currency per annum for personal services rendered in that other State with a view to supplementing the resources available to him for such purposes.

2. 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 for the purposes of study, research or training solely as a recipient of a grant, allowance or award 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 for a period not exceeding 2 years from the date of his first arrival in that other State in connection with that visit shall be exempt from tax in that other 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 five thousand Malaysian ringgit or the equivalent in Philippine currency 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 incidental thereto.

3. 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 as an employee of, or under contract with, the Government or an enterprise of the first-mentioned State solely for the purpose of acquiring technical, professional or business experience for a period not exceeding 12 months from the date of his first arrival in that other State in connection with that visit shall be exempt from tax in that other State on:

- (a) all remittances from abroad for the purposes of his maintenance, education or training; and
- (b) any remuneration not exceeding six thousand Malaysian ringgit or the equivalent in Philippine currency per annum for personal services rendered in that other State provided such services are in connection with his studies or training or are incidental thereto.

4. For the purposes of this Article the term "Government" shall have the same meaning as in paragraph 5 of Article 11.

5. The amounts referred to in paragraphs 1, 2 and 3 of this Article may be reviewed and agreed upon by the competent authorities of both Contracting States from time to time.

#### Article 20

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

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 21

**INCOME NOT EXPRESSLY MENTIONED**

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

Article 22

**ELIMINATION OF DOUBLE TAXATION**

1. Subject to the laws of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, Philippine tax payable in respect of income derived from the Philippines 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 the Philippines to a company which is a resident of Malaysia and which owns not less than 15 per cent of the voting shares of the company paying the dividend, the credit shall take into account Philippine tax payable by that company in respect of its income out of which the dividend is paid. The credit shall not, however, exceed that part of the Malaysian tax, as computed before the credit is given, which is appropriate to such item of income.

2. For the purposes of paragraph 1, the term "Philippine tax payable" shall be deemed to include the amount of Philippine tax which would have been paid if the Philippine tax had not been exempted or reduced in accordance with this Agreement and

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

3. Subject to the laws of the Philippines regarding the allowance as a credit against Philippine tax of tax payable in any country other than the Philippines, Malaysian tax payable in respect of income derived from Malaysia shall be allowed as a credit against the Philippine tax payable in respect of that income. Where such income is a dividend paid by a company which is a resident of Malaysia to a company which is a resident of the Philippines and which owns not less than 15 per cent of the voting shares of the company paying the dividend, the credit shall take in to account Malaysian tax payable by that company in respect of its income out of which the dividend is paid. The credit shall not,

however, exceed that part of the Philippine tax, as computed before the credit is given, which is appropriate to such item of income.

4. For the purposes of paragraph 3, the term "Malaysian tax payable" shall be deemed to include Malaysian tax which would, under the laws of Malaysia and in accordance with this Agreement, have been payable on:

- (a) any income derived from sources in Malaysia had the income not been taxed at a reduced rate or exempted from Malaysian tax in accordance with:
  - (i) sections 54A and 60A and Schedule 7A of the Income Tax Act, 1967 of Malaysia; or
  - (ii) sections 21, 22, 26 and 30Q of the Investment Incentives Act, 1968 of Malaysia; so far as they were in force on the date of signature of this Agreement; and
  - (iii) any other provisions which may subsequently be introduced in Malaysia in modification of, or in addition to, the investment incentives laws so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character;
- (b) interest to which paragraph 3 of Article 11 applies had that interest not been exempted from Malaysian tax in accordance with that paragraph; and
- (c) approved industrial royalties to which paragraph 2(a)(ii) of Article 12 applies had those royalties not been exempted from Malaysian tax in accordance with that paragraph.

5. For the purposes of paragraph 3, where royalties derived by a resident of the Philippines are, as film rentals, subject to cinematograph film hire duty in Malaysia, that duty shall be deemed to be Malaysian tax.

Article 23

### **NON-DISCRIMINATION**

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that 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 that first-mentioned State are or may be subjected.

4. Nothing in this Article shall be construed as obliging:

(a) a Contracting State to grant to individuals who are resident of the other Contracting State any personal allowances, reliefs and reductions for tax purposes on account of civil status or family responsibilities which it grants to its own residents;

(b) Malaysia to grant to nationals of the Philippines 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. Nothing in this Article shall be construed so as to prevent either Contracting State from limiting to its nationals the enjoyment of tax incentives designed to promote economic development in that State.

6. Nothing in this Agreement shall be construed as preventing the Philippines from taxing its citizens, who are residents of Malaysia, in accordance with its domestic legislation. No credit shall be given by Malaysia for such taxes paid.

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

#### Article 24

#### **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 23, to that of the State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

#### Article 25

### **EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement or for the prevention or detection of evasion or avoidance of taxes covered by this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those (including a Court or reviewing authority) concerned with the assessment, collection or enforcement of the taxes which are the subject of the Agreement or the determination of appeals in relation thereto.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

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

Article 26

**DIPLOMATIC AND CONSULAR OFFICERS**

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 27

**ENTRY INTO FORCE**

1. This Agreement shall be ratified and the instruments of ratification shall be exchanged at .....as soon as possible.
2. This Agreement shall enter into force upon the exchange of the instruments of ratification and shall have effect:
  - (a) in respect of tax withheld or deducted at source on income paid to non-residents on or after the 1st day of January in the calendar year following that in which the exchange of instruments of ratification takes place; and
  - (b) in all other cases, in respect of tax for the taxation year or year of assessment beginning on the 1st day of January of the calendar year immediately following the year in which the exchange of instruments of ratification takes place, and subsequent taxation years or years of assessment.

Article 28

**TERMINATION**

This Agreement shall remain in effect indefinitely, but either Contracting State may terminate the Agreement, through diplomatic channels, by giving to the other Contracting State written notice of termination on or before June 30 in any calendar year from the fourth year from the year in which the Agreement entered into force. In such an event the Agreement shall cease to have effect:

- (a) in respect of tax withheld or deducted at source on income paid to non-residents on or after the 1st day of January in the calendar year following that in which the notice is given; and
- (b) in all other cases, in respect of tax for the taxation year or year of assessment beginning on the 1st day of January of the calendar year following that in which the notice is given.

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

DONE in duplicate at Manila this 27th day of April 1982 each in Bahasa Malaysia and the English language, both texts being equally authentic.

## PROTOCOL

1. At the time of signing the Agreement between the Government of Malaysia and Government of the Republic of the Philippines for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, both Governments have agreed that the following provisions shall form an integral part of the Agreement:

2. In connection with Article 7 "Business Profits":

Nothing in this Agreement shall affect the operation of any law of a Contracting State relating to the taxation of income or profits from any insurance business provided that if the relevant law in force in either Contracting State at the date of signature of this Agreement is amended (otherwise than in minor respects so as not to affect its general character) the States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

3. In connection with Article 10 "Dividends":

- A. The Philippine tax on remittances of profits of a branch to its head office shall not exceed 15 per cent of the amount remitted.
- B. 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, shall be taken into consideration.

4. In connection with Article 11 "Interest":

The term "approved loan" means any loan or other indebtedness approved by the competent authority of Malaysia as being made or incurred for the purpose of financing development projects or for the purchase of capital equipment for development projects in Malaysia. The term "long-term loan" means any loan made or funds deposited as defined in Section 2 of the Income Tax Act 1967 of Malaysia.

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

DONE in duplicate at Manila this 27th day of April 1982 each in Bahasa Malaysia and the English language, both texts being equally authentic.