

**1973 No. 1330****INCOME TAX****The Double Taxation Relief (Taxes on Income)  
(Malaysia) Order 1973***Laid before the House of Commons in draft**Made - - - 27th July 1973*

At the Court at Buckingham Palace, the 27th day of July 1973

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the Commons House of Parliament in accordance with the provisions of section 497(8) of the Income and Corporation Taxes Act 1970(a), and an Address has been presented to Her Majesty by that House praying that an Order may be made in the terms of this Order:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 497 of the said Income and Corporation Taxes Act 1970, section 98(2) of the Finance Act 1972(b) and section 39 of the Finance Act 1965(c), as amended, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Malaysia) Order 1973.

2. It is hereby declared—

- (a) that the arrangements specified in the Agreement set out in the Schedule to this Order have been made with the Government of Malaysia with a view to affording relief from double taxation in relation to income tax, corporation tax or capital gains tax and taxes of a similar character imposed by the laws of Malaysia; and
- (b) it is expedient that those arrangements should have effect.

*W. G. Agnew.*

---

(a) 1970 c. 10.

(b) 1972 c. 41.

(c) 1965 c. 25.

## SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN  
AND NORTHERN IRELAND AND THE GOVERNMENT OF MALAYSIA FOR THE AVOIDANCE  
OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT  
TO TAXES ON INCOME

The Government of the United Kingdom of Great Britain and Northern Ireland  
and the Government of Malaysia;

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

Have agreed as follows:

## ARTICLE I

**Taxes covered**

(1) The taxes which are the subject of this Agreement are:

(a) in Malaysia:

- (i) the income tax; and
- (ii) the supplementary income tax, that is, tin profits tax, development tax  
and timber profits tax

(hereinafter referred to as "Malaysian tax");

(b) in the United Kingdom:

- (i) the income tax (including surtax);
- (ii) the corporation tax; and
- (iii) the capital gains tax

(hereinafter referred to as "United Kingdom tax").

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

## ARTICLE II

**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 "United Kingdom" means Great Britain and Northern Ireland,  
including any area outside the territorial sea of the United Kingdom which in  
accordance with international law has been or may hereafter be designated,  
under the laws of the United Kingdom concerning the Continental Shelf, as an  
area within which the rights of the United Kingdom 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"  
mean the United Kingdom or Malaysia, as the context requires;

- (d) the term "tax" means United Kingdom tax or Malaysian 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;
  - (f) the term "individual" means a natural person;
  - (g) the term "person" includes an individual, a company and a body of persons, but does not include a partnership, and in the case of Malaysia, also includes a Hindu joint family and a corporation sole;
  - (h) the terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of one of the Contracting States and an enterprise carried on by a resident of the other Contracting State;
  - (i) the term "national" means:
    - (i) in relation to Malaysia:
      - (aa) any individual possessing the citizenship of Malaysia;
      - (bb) any legal person, partnership, association and other entity deriving its status as such from the law in force in Malaysia;
    - (ii) in relation to the United Kingdom:
      - (aa) any citizen of the United Kingdom and Colonies who derives his status as such from his connection with the United Kingdom;
      - (bb) any legal person, association or other entity deriving its status as such from the law of the United Kingdom;
  - (j) the term "competent authority" means, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative; and in the case of Malaysia, the Minister of Finance or his authorised representative.
- (2) In the application of this Agreement by one of the Contracting States, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Agreement.

### ARTICLE III

#### Fiscal domicile

- (1) In this Agreement, subject to the provisions of paragraphs (2) and (3) of this Article, and 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 an 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 the United Kingdom" means a person who is resident in the United Kingdom for the purposes of United Kingdom tax;
  - (c) the terms "resident of one of the Contracting States" and "resident of the other Contracting State" mean a resident of the United Kingdom or a resident of Malaysia, 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 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 national;
  - (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall determine the question by mutual agreement.
- (3) 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 IV

##### 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, oil well, quarry or other place of extraction of natural resources;
  - (g) a building site or construction, installation or assembly project which exists for more than six months;
  - (h) a farm or plantation;
  - (i) 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 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 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 of the kind referred to in Article XV in that other Contracting State.

(5) 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 in the name 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.

(6) 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.

(7) 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.

#### ARTICLE V

##### **Limitation of relief**

Where under any provision of this Agreement any person is relieved from tax in one of the Contracting States on certain income if (with or without other conditions) that person is subject to tax in the other Contracting State in respect of that income and that person is subject to tax in respect of that income in that other Contracting State by reference to the amount thereof which is remitted to or received in that other Contracting State, the relief from tax to be allowed under this Agreement in the first-mentioned Contracting State shall apply only to the amount so remitted or received.

#### ARTICLE VI

##### **Business income or 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 profits of the enterprise but only on so much thereof 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 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 at arm's length with the enterprise of which it is a permanent establishment.

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

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

(5) Where income or profits include any item of income or profits which is dealt with separately in another Article of this Agreement, the provisions of that other Article shall not be affected by the provisions of this Article.

#### ARTICLE VII

##### **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 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 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 VIII

##### **Shipping and air transport**

A resident of one of the Contracting States shall be exempt from tax in the other Contracting State on income or profits from the operation of ships or aircraft other than income or profits from voyages of ships or aircraft confined solely to places in the other Contracting State.

#### ARTICLE IX

##### **Dividends**

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

(2) (a) Dividends paid by a company which is a resident of the United Kingdom to a resident of Malaysia may be taxed in Malaysia on the aggregate of the amount or value of the dividends and the amount of the tax credit (if any) to which he is entitled under paragraph (3) of this Article.

(b) Where a resident of Malaysia is entitled to a tax credit in respect of such a dividend under paragraph (3) of this Article tax may also be charged in the United Kingdom and according to the laws of the United Kingdom, on the aggregate of the amount or value of that dividend and the amount of that tax credit at a rate not exceeding 15 per cent.

(c) Except as aforesaid dividends paid by a company which is a resident of the United Kingdom to a resident of Malaysia who is subject to tax in Malaysia on them shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

(3) A resident of Malaysia who receives dividends from a company which is a resident of the United Kingdom shall, subject to the provisions of paragraph (4) of this Article and provided he is subject to tax in Malaysia on the dividends, be entitled to the tax credit in respect thereof in the United Kingdom to which an individual resident in the United Kingdom would have been entitled had he received those dividends, and to the payment of any excess of such credit over his liability to United Kingdom tax.

(4) Paragraph (3) of this Article shall not apply where the recipient of the dividend is a company which either alone or together with one or more associated companies controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend. For the purpose of this paragraph two companies shall be deemed to be associated if one is controlled directly or indirectly by the other, or both are controlled directly or indirectly by a third company.

(5) Dividends paid by a company which is a resident of Malaysia to a resident of the United Kingdom may be taxed in the United Kingdom. If the recipient of the dividends is subject to United Kingdom tax in respect thereof they 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 resident in 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.

(6) The provisions of paragraphs (2) and (3) or, as the case may be, paragraph (5) of this Article shall not apply where a resident of one of the Contracting States has in the other Contracting State a permanent establishment and the holding by virtue of which the dividends are paid is effectively connected with the business carried on through such permanent establishment. In such a case, the provisions of Article VI shall apply.

(7) If the recipient of the dividend is a company which owns 10 per cent or more of the class of shares in respect of which the dividend is paid then neither the provisions of paragraphs (2) and (3) nor those of paragraph (5) of this Article shall apply to the dividend to the extent that it can have been paid only out of profits which the company paying the dividend earned or other income which it received in a period ending twelve months or more before the relevant date. For the purposes of this paragraph the term "relevant date" means the date on which the recipient of the dividend became the owner of 10 per cent or more of the class of shares in question:

Provided that this paragraph shall not apply if the recipient of the dividend shows that the shares were acquired for bona fide commercial reasons and not primarily for the purpose of securing the benefit of this Article.

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

(9) The term "dividends" as used in this Article includes any item which, under the law of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

(10) If the system of taxation applicable in either Contracting State to the income or distributions of companies is altered the competent authorities of both Contracting States may consult each other in order to determine whether it is necessary for this reason to amend the provisions of this Article.

## ARTICLE X

### Interest

(1) Subject to the provisions of paragraph (2) of this Article, interest derived from one of the Contracting States by a resident of the other Contracting State who is subject to tax in respect thereof in that other Contracting State may be taxed in the first-mentioned Contracting State at a rate not exceeding 15 per cent of the gross amount thereof.

(2) Interest derived from Malaysia by a resident of the United Kingdom who is subject to United Kingdom tax in respect thereof shall be exempt from Malaysian tax if the loan or other indebtedness in respect of which the interest is paid is an approved loan as defined by Section 2(1) of the Income Tax Act 1967 of Malaysia (as amended by Act A 98 of 1972).

(3) 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 other 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.

(4) Interest shall be treated as derived from one of the Contracting States when the payer is the Government, the Government of a State, a local authority or a resident of that Contracting State, except that the interest which is paid:

- (a) by an enterprise of one of the Contracting States with a permanent establishment outside both Contracting States to a resident of the other Contracting State; or
- (b) by an enterprise of one of the Contracting States with a permanent establishment in the other Contracting State;

on indebtedness incurred for the use of (or, in the case of a banking or financial institution, on deposits made with) that permanent establishment in the conduct of its trade or business and which is borne by that permanent establishment shall be treated as derived from the State where that permanent establishment is situated.

(5) The provisions of paragraphs (1) and (2) of this Article shall not apply if the recipient of the interest, being a resident of one of the Contracting States, has in the other Contracting State from which the interest is derived a permanent establishment with which the indebtedness from which the interest arises is effectively connected. In such a case the provisions of Article VI shall apply.

(6) 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 interest paid, having regard to the indebtedness for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In such a case, the excess part of the payment shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

(7) The provisions of this Article shall not apply if the loan or other indebtedness in respect of which the interest is paid was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.



**ARTICLE XI****Royalties**

(1) Subject to the provisions of paragraph (2) of this Article, royalties derived from one of the Contracting States by a resident of the other Contracting State who is subject to tax in that other Contracting State in respect thereof may be taxed in the first-mentioned Contracting State at a rate not exceeding 15 per cent of the gross amount thereof.

(2) Approved industrial royalties derived from Malaysia by a resident of the United Kingdom who is subject to United Kingdom tax in respect thereof shall be exempt from Malaysian tax.

(3) The term "royalties" as used in this Article means a payment of any kind received as consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, any patent, trademark, design or model, plan, secret formula or process or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience. The term, however, does not include any royalty or other amount paid in respect of motion picture films or of tapes for radio or television broadcasting, or of the operation of a mine, oil well, quarry or any other place of extraction of natural resources or of timber or forest produce. The term "approved industrial royalties" as used in this Article means royalties as defined in this paragraph 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:

- (a) manufacturing, assembling or processing;
- (b) construction, civil engineering or shipbuilding;
- or
- (c) electricity, hydraulic power, gas or water supply.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the recipient of the royalties, being a resident of one of the Contracting States, has in the other Contracting State from which the royalties are derived 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 VI shall apply.

(5) Where owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of 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 payment shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

(6) Royalties shall be deemed to be derived from a Contracting State where the payer is the Government, the Government of a State, a local authority or a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred and the royalties are borne by that permanent establishment, then the royalties shall be deemed to be derived from the Contracting State in which the permanent establishment is situated.

## ARTICLE XII

**Governmental functions**

(1) Remuneration paid out of public funds of Malaysia or of the funds of any State government or local authority of Malaysia to any individual who is a Malaysian national in respect of services rendered to the Government of Malaysia or any State government or local authority of Malaysia in the discharge of governmental functions shall be exempt from United Kingdom tax.

(2) Remuneration paid out of public funds of the United Kingdom or Northern Ireland or of the funds of any local authority in the United Kingdom to any individual who is a United Kingdom national in respect of services rendered to the Government of the United Kingdom or Northern Ireland or a local authority in the United Kingdom in the discharge of governmental functions shall be exempt from Malaysian tax.

(3) Pensions paid out of public funds of Malaysia or of the funds of any State government or local authority of Malaysia to any individual in respect of services rendered to the Government of Malaysia or any State government or local authority of Malaysia in the discharge of governmental functions shall be exempt from United Kingdom tax unless the individual is ordinarily resident in the United Kingdom.

(4) Pensions paid out of public funds of the United Kingdom or Northern Ireland or of the funds of any local authority in the United Kingdom to any individual in respect of services rendered to the Government of the United Kingdom or Northern Ireland or a local authority in the United Kingdom in the discharge of governmental functions shall be exempt from Malaysian tax unless the individual is ordinarily resident in Malaysia.

(5) The preceding provisions of this Article shall not apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by the Government of either of the Contracting States for the purposes of profit.

## ARTICLE XIII

**Employments**

(1) Subject to the provisions of this Article and of Articles XII, XIV, XVI, XVII and XVIII, 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 preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

(3) (a) In relation to remuneration of a director of a company derived from the company, the provisions of the preceding paragraphs of this Article and Article XIV shall apply as if the remuneration were remuneration of an employee in respect of an employment.

(b) Notwithstanding the preceding provisions of this Article, directors' fees and similar payments derived by a resident of one of the Contracting States in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

**ARTICLE XIV****Business visitors**

(1) Subject to the provisions of Article XV, an individual who is a resident of the United Kingdom shall be exempt from Malaysian tax on income in respect of an employment exercised in any calendar year in Malaysia, if;

- (a) he is present within Malaysia for a period or periods not exceeding in the aggregate 183 days during that year; and
- (b) the services are performed for or on behalf of a person who is not a resident of Malaysia; and
- (c) the income is not directly deductible from the income of a permanent establishment which the person has in Malaysia.

(2) Subject to the provisions of Article XV, an individual who is a resident of Malaysia shall be exempt from United Kingdom tax on income in respect of an employment exercised in any year of assessment in the United Kingdom, if:

- (a) he is present within the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year; and
- (b) the services are performed for or on behalf of a person who is not a resident of the United Kingdom; and
- (c) the income is not directly deductible from the income of a permanent establishment which the person has in the United Kingdom.

**ARTICLE XV****Artistes and athletes**

(1) The provisions of Article XIV shall not apply to the income derived from one of the Contracting States from an employment exercised by a public entertainer (such as a stage, motion picture, radio or television artiste or musician) or athlete being a resident of the other Contracting State whose visit to that first-mentioned Contracting State is not directly or indirectly supported, wholly or substantially, from the public funds of the Government of that other Contracting State.

(2) Where the services mentioned in paragraph (1) of this Article are provided in one of the Contracting States by an enterprise of the other Contracting State, then the income derived from providing those services by such enterprise shall be exempt from tax in the first-mentioned Contracting State, if the enterprise is directly or indirectly supported, wholly or substantially, from the public funds of the Government of that other Contracting State in connection with the provision of such services.

(3) In the application of this Article reference to a Government shall include, in relation to Malaysia, reference to the Government of a State.

**ARTICLE XVI****Pensions**

(1) Any pension (other than a pension of the kind referred to in Article XII) or any annuity 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.

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

## ARTICLE XVII

**Teachers**

An individual who, at the invitation of a university, college, school or other similar recognised educational institution in one of the Contracting States, visits that Contracting State for a period not exceeding two years solely for the purpose of teaching at such educational institution and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching in respect of which he is subject to tax in the other Contracting State.

## ARTICLE XVIII

**Students**

(1) An individual who is or was a resident of one of the Contracting States immediately before making a visit to the other Contracting State and is temporarily present in that other Contracting State solely as a student at a university, college, school or other similar recognised educational institution in that other Contracting State or as a business or technical apprentice therein, shall be exempt from tax in that other Contracting State on:

- (a) all remittances from the first-mentioned Contracting State for the purposes of his maintenance, education or training; and
- (b) any income derived from the other Contracting State in respect of services rendered in that other Contracting State (other than any rendered by a business or technical apprentice to the person or partnership to whom he is apprenticed), with a view to supplementing the resources available to him for such purposes, not exceeding the sum of 3,000 Malaysian Dollars in the case of Malaysia during any basis year or the equivalent in pounds sterling in the case of the United Kingdom during any year of assessment.

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

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

(3) An individual who is or was a resident of one of the Contracting States immediately before making a visit to the other Contracting State and is temporarily present in that other Contracting State solely as an employee or, or under contract with, the Government or an enterprise of the first-mentioned Contracting State 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 the first-mentioned Contracting State for the purposes of his maintenance, education or training; and

(b) any remuneration, so far as it is not in excess of 5,000 Malaysian Dollars or the equivalent in pounds sterling, 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) In this Article, references to a Government shall include references to a statutory body established in a Contracting State in order to carry on a public utility undertaking under national control.

#### ARTICLE XIX

##### Capital gains

(1) Capital gains from the alienation of immovable property may be taxed in the Contracting State in which such property is situated.

(2) Capital gains from the alienation of any 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 including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) may be taxed in the other Contracting State.

(3) Notwithstanding the provisions of paragraph (2) of this Article, capital gains derived by a resident of a Contracting State from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that Contracting State.

(4) Capital gains from the alienation of any property other than those mentioned in paragraphs (1) and (2) of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

(5) The provisions of paragraph (4) of this Article shall not affect the right of a Contracting State to levy according to its own law a tax on capital gains from the alienation of any property derived by an individual who is a resident of the other Contracting State but is ordinarily resident in the first-mentioned Contracting State.

#### ARTICLE XX

##### Government income

(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 purposes 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 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 Governments of the two Contracting States;

(b) in the case of the United Kingdom means the Government of the United Kingdom of Great Britain and Northern Ireland and shall include:

- (i) the local authorities;
- (ii) the Bank of England;
- (iii) such institutions, the capital of which is wholly owned by the Government of the United Kingdom of Great Britain and Northern Ireland or the local authorities, as may be agreed from time to time between the Governments of the two Contracting States.

## ARTICLE XXI

**Elimination of double taxation**

(1) The laws of each of the Contracting States shall continue to govern the taxation of income whether derived from the Contracting State or elsewhere except where express provisions to the contrary are made in this Agreement. Where income derived from one of the Contracting States is subject to tax in both Contracting States, relief from tax chargeable on such income shall be given in accordance with the provisions of paragraphs (2) and (3) of this Article.

(2) Subject to the laws of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, United Kingdom tax payable in respect of income derived from the United Kingdom shall be allowed as a credit against Malaysian tax payable in respect of that income. Where such income is a dividend paid to a company which is a resident of Malaysia and which owns not less than 10 per cent of the entire shares with voting power of the company paying the dividend, the credit shall take into account United Kingdom tax payable in respect of its income by the company paying the dividend.

(3) (a) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom and subject to sub-paragraph (b) of this paragraph, Malaysian tax payable under the laws of Malaysia in respect of profits, income or capital gains derived from Malaysia and in accordance with this Agreement shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or capital gains by reference to which the Malaysian tax is computed.

(b) Where such income is a dividend paid by a company which is a resident of Malaysia the credit shall only take into account such tax in respect thereof as is additional to any tax payable by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient without reference to any tax so payable. Where, however, the dividend is paid to a company which is a resident of the United Kingdom and which controls directly or indirectly not less than 10 per cent of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Malaysian tax appropriate to the dividend) the Malaysian tax payable in respect of its profits by the company paying the dividend.

(4) For the purpose of paragraphs (2) and (3) of this Article profits, income and capital gains derived by a resident of one of the Contracting States which may be taxed in the other Contracting State in accordance with this Agreement shall be deemed to be derived from that other Contracting State.

(5) For the purposes of paragraph (3) of this Article, the term "Malaysian tax payable" shall be deemed to include:

- (a) any amount which would have been payable as Malaysian tax but for an exemption or reduction of tax granted for that year or any part thereof under:
  - (i) Sections 21, 22 and 26 of the Investment Incentives Act 1968 of Malaysia so far as they were in force on, and have not been modified since, the date of signature of the present Agreement, or have been modified only in minor respects so as not to affect their general character; or
  - (ii) any other provisions which may subsequently be made granting an exemption which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character; or
- (b) in the case of interest to which paragraph (2) of Article X applies, an amount not exceeding a sum equivalent to tax at a rate of 15 per cent on the gross

amount of the interest in respect of Malaysian tax which would have been payable but for the reduced rate of tax granted under Section 6(1)(b) of the Income Tax Act 1967 of Malaysia; or

- (c) in the case of any approved industrial royalties as defined in paragraph (3) of Article XI, an amount not exceeding a sum equivalent to tax at a rate of 15 per cent on the gross amount of the royalties which would have been payable as Malaysian tax but for the exemption granted under paragraph (2) of Article XI.

## ARTICLE XXII

### Non-discrimination

(1) The 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 nationals of that other Contracting State in the same circumstances are or may be subjected.

(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 an enterprise of that other Contracting State carrying on the same activities.

(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.

(4) Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that Contracting State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident.

(5) Moreover nothing contained in this Article shall be construed as obliging a Contracting State to grant to nationals of the other Contracting State not resident in the first-mentioned Contracting State those personal allowances, reliefs and reductions for tax purposes which are by law available on the date of signature of this Agreement only to nationals of the first-mentioned Contracting State or to such other persons specified therein who are not resident in that Contracting State.

(6) In this Article the term "taxation" means taxes which are the subject of this Agreement.

## ARTICLE XXIII

### Exchange of information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or for the prevention of fiscal evasion or for the administration of statutory provisions against tax avoidance in relation to the taxes which are the subject of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those, including a court or administrative body, concerned with assessment, collection, enforcement or prosecution in respect of those taxes or the determination of appeals in relation thereto.

(2) In no case shall the provisions of paragraph (1) of this Article be construed so as to impose on one of the Contracting States the obligation:

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;

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

#### ARTICLE 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 for him 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 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

##### **Territorial extension**

(1) This Agreement may be extended, either in its entirety or with modifications, to any territory for whose international relations the United Kingdom or Malaysia is responsible and which imposes taxes substantially similar in character to those which are the subject of this Agreement, and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the Governments of the Contracting States in Notes to be exchanged for this purpose.

(2) The termination in respect of the United Kingdom or Malaysia of this Agreement under Article XXVII shall, unless otherwise expressly agreed by the Governments of both Contracting States, terminate the application of this Agreement to any territory to which this Agreement has been extended under this Article.

#### ARTICLE XXVI

##### **Entry into force**

(1) This Agreement shall enter into force on the date when the last of all such things shall have been done in the United Kingdom and Malaysia as are necessary to give the Agreement the force of law in the United Kingdom and Malaysia respectively, and shall thereupon have effect:

- (a) in Malaysia:
  - as respects Malaysian tax for any year of assessment beginning on or after 1 January, 1973;



(b) in the United Kingdom:

- (i) as respects income tax and capital gains tax, for any year of assessment beginning on or after 6 April, 1973;
- (ii) as respects corporation tax, for any financial year beginning on or after 1 April, 1973.

(2) The Governments of the Contracting States shall, as soon as possible, inform one another in writing when the last of all such things shall have been done as are necessary to give the Agreement the force of law in the respective Contracting States.

## ARTICLE XXVII

### Termination

This Agreement shall continue in effect indefinitely but the Government of either Contracting State may, on or before the thirtieth day of June in any calendar year give notice of termination to the Government of the other Contracting State and, in such event, the Agreement shall cease to be effective:

(a) in Malaysia:

as respects Malaysian tax for the year of assessment next following that in which such notice is given and subsequent years of assessment;

(b) in the United Kingdom:

- (i) as respects income tax and capital gains tax, for any year of assessment beginning on or after 6 April in the calendar year next following that in which such notice is given;
- (ii) as respects corporation tax, for any financial year beginning on or after 1 April in the calendar year next following that in which such notice is given.

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

Done in duplicate at London this 30th day of March in the year 1973 in the English language.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

ANTHONY ROYLE.

For the Government of Malaysia:

TAN S. S.

## PROTOCOL

At the time of signing the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland 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 the following provisions shall form an integral part of the Agreement:

1. 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 26 December, 1968, the dividend shall be deemed to have been paid by a company which is a resident of Malaysia.

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 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 26 December, 1968, the dividend shall be deemed to have been paid by a company which is not a resident of Malaysia.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

ANTHONY ROYLE.

For the Government of Malaysia:

TAN S. S.

## EXPLANATORY NOTE

*(This Note is not part of the Order.)*

The Agreement with Malaysia scheduled to this Order contains many provisions similar to those included in the previous Agreement signed on 17th July 1967 which was terminated with effect from 6th April 1971. The most important are those relating to the taxation of shipping and air transport profits, business profits, pensions, earnings from employment, remuneration of visiting teachers and payments made for the maintenance of visiting students. Where income continues to be taxable in both countries credit will, as in the earlier Agreement, be given by the country of the taxpayer's residence for the tax payable in the country of origin of the income, including United Kingdom credit for tax spared under certain provisions of the Malaysian law. In addition United Kingdom credit will now be given for Malaysian tax spared under Article XI(2) of the Agreement.

The most significant changes are in the treatment provided for dividends, interest and royalties.

The treatment of dividends has been altered as a consequence of the introduction of the new United Kingdom corporation tax system. The Agreement provides that where a United Kingdom company pays a dividend to a resident of Malaysia (other than a company which controls 10 per cent or more of the voting power in the paying company), the recipient is, subject to certain conditions, to receive the tax credit to which an individual resident in the United Kingdom and in receipt of such a dividend would be entitled, less income tax at a rate not exceeding 15 per cent on the aggregate of the dividend and the tax credit. Dividends paid by Malaysian companies to residents of the United Kingdom will, in general, be exempt from any Malaysian tax which is additional to the tax charged on the company's income.

The rate of tax in the source country on interest and royalties flowing from one country to the other is, in general, not to exceed 15 per cent, but interest on certain approved loans (as defined by Malaysian tax law) and approved industrial royalties (as defined in the Agreement) received by a resident of the United Kingdom are, in general, to be exempt from Malaysian tax.

There is provision for the taxation of capital gains on immovable property by the country in which the property is situated. Capital gains arising from the disposal of movable property are normally to be taxed only in the country of the taxpayer's residence unless they arise from the disposal of assets of a permanent establishment which the taxpayer has in the other country.

There are also provisions safeguarding nationals and enterprises of one country against discriminatory taxation in the other country and for the exchange of information and consultation between the taxation authorities of the two countries.

The Protocol to the Agreement ensures that the rules for determining the source of dividends paid by companies resident, or deemed to be resident, in both Malaysia and Singapore, are consistent with the rules in the Double Taxation Agreement between Malaysia and Singapore.

The Agreement is to take effect in the United Kingdom as respects income tax and capital gains tax for 1973-74 and subsequent years and as respects corporation tax for the financial year commencing on 1st April 1973 and subsequent years.

SI 1973/1330  
ISBN 0-11-031330-5

