STATUTORY INSTRUMENTS

1997 No. 2987

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Malaysia) Order 1997

Made - - - - 17th December 1997

At the Court at Buckingham Palace, the 17th day of December 1997

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the House of Commons in accordance with the provisions of section 788(10) of the Income and Corporation Taxes Act 1988(**1**), and an Address has been presented to Her Majesty by that House praying that an Order may be made in the terms of that draft:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 788 of the said Act, 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 1997.

2. It is hereby declared—

(a) that the arrangements specified in the Agreement set out in Part I of the Schedule to this Order and in the Exchange of Notes constituting an Agreement set out in Part II of that Schedule 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;

(b) that those arrangements include provisions with respect to the exchange of information necessary for carrying out the domestic laws of the United Kingdom and the laws of Malaysia concerning taxes covered by the arrangements including, in particular, provisions about the prevention of fiscal evasion with respect to those taxes; and

(c) that it is expedient that those arrangements should have effect.

(**1**) 1988 c. 1; section 788 is extended by section 277 of the Taxation of Chargeable Gains Act 1992 (c. 12).

N. H. Nicholls
Clerk of the Privy Council

SCHEDULE

PART I

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 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) The existing taxes to which this Agreement shall apply are:

(a) in the case of Malaysia:

(i) the income tax; and

(ii) the petroleum income tax;

(hereinafter referred to as "Malaysian tax");

(b) in the case of the United Kingdom:

(i) the income tax;

(ii) the corporation tax; and

(iii) the capital gains tax;

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

(2) This Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes referred to in paragraph (1). The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

ARTICLE 3

General definitions

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

(a) 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;

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

(c) the term "national" means:

(i) in relation to the United Kingdom, any British citizen, or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided he has the right of abode in the United Kingdom; and any legal person, partnership, association or other entity deriving its status as such from the law in force in the United Kingdom;

(ii) in relation to Malaysia:

(aa) any individual possessing the citizenship of Malaysia;

(bb) any legal person, partnership, association or other entity deriving its status as such from the law in force in Malaysia;

(d) the terms "a Contracting State" and "the other Contracting State" mean the United Kingdom or Malaysia, as the context requires;

(e) the term "person" comprises an individual, a company and any other body of persons which is treated as a person for tax purposes, and does not include a partnership;

(f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(g) 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;

(h) 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;

(i) 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;

(j) the term "tax" means Malaysian tax or United Kingdom tax, as the context requires.

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

ARTICLE 4

Residence

(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 United Kingdom a person who is resident in the United Kingdom for the purposes of United Kingdom tax.

(2) Where by reason of the provisions of paragraph (1) of this Article an individual is a resident of both Contracting States, then his status shall be determined 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 (centre of vital interests);

(b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has no permanent home available to him in either 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 settle 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 5

Permanent establishment

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

(2) The term "permanent establishment" includes especially:

(a) a place of management;

(b) branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources 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 six months.

(3) Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fared place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e) of this paragraph, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

(4) An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it carries on supervisory activities in that other State for more than six months in connection with a construction, installation or assembly project which is being undertaken in that other State.

(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; or

(b) he maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise.

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

(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 unmovable 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 and aircraft shall not be regarded as immovable property.

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

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

ARTICLE 7

Business profits

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

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

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

(4) 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.

(5) Where the 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) Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

(2) For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include:

(a) income from the rental on a bareboat basis of ships or aircraft; and

(b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise;

where such rental or such use, maintenance or rental, as the case may be, is in the course of a business consisting principally of the operation of ships or aircraft in international traffic.

(3) 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

(1) Where:

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or

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

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

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

(3) Paragraph (1) shall not apply where a Contracting State would be prevented from adjusting the income or profits of a person in the circumstances referred to in that paragraph by reason of the application of time limits provided in its national laws.

(4) The provisions of paragraphs (2) and (3) shall not apply in the case of fraudulent or wilful evasion.

ARTICLE 10

Dividends

(1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

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

(a) 5 per cent. of the gross amount of the dividends if the beneficial owner is a company which controls, directly or indirectly, at least 10 per cent. of the voting power in the company paying the dividends;

(b) 10 per cent. of the gross amount of the dividends in all other cases.

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

(3) The term “dividends” as used in this Article means income from shares, or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident and also includes any other item which, under the laws of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15 of this Agreement, as the case may be, shall apply.

(5) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the

company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor 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 profits or income arising in that other State.

(6) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 11

Interest

(1) Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

(3) The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures. The term interest shall not include any item which is treated as a dividend under the provisions of Article 10 of this Agreement.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 15 of this Agreement, as the case may be, shall apply.

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

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

(7) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

(8) Notwithstanding the provisions of paragraph (2) of this Article, interest arising in a Contracting State shall be exempt from tax in that State if:

(a) it is derived and beneficially owned by the Government of the other Contracting State, a statutory body thereof, or a political subdivision or a local authority thereof, or the central bank of that other State, or by any agency or instrumentality of, or any financial institution wholly owned by, that Government; or

(b) it is paid in respect of a loan made, guaranteed or insured, or any other debt-claim or credit guaranteed or insured by the Government of the other Contracting State, a statutory body thereof, or a political subdivision or a local authority of, or the central bank of that other State, or any agency or instrumentality of, or any financial institution wholly owned by, that Government.

(9) For the purposes of paragraph (8) of this Article, the terms "central bank", "agency", "instrumentality" and "financial institution wholly owned by that Government" mean:

(a) in the case of the United Kingdom:

(i) the Bank of England;

(ii) the United Kingdom Export Credits Guarantee Department;

(iii) the Commonwealth Development Corporation; and

(iv) such other agencies or instrumentalities of, and such other financial institutions wholly owned by, the Government of the United Kingdom as may be agreed from time to time between the competent authorities of the Contracting States;

(b) in the case of Malaysia:

(i) the Bank Negara Malaysia;

(ii) the Export-Import Bank of Malaysia; and

(iii) such other agencies or instrumentalities of, and such other financial institutions wholly owned by, the Government of Malaysia as may be agreed from time to time between the competent authorities of the Contracting States.

ARTICLE 12

Royalties

(1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

(3) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information (know-how) concerning industrial, commercial or scientific experience.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15 of this Agreement, as the case may be, shall apply.

(5) Royalties shall be deemed to arise in a Contracting State where the payer is that State itself, a statutory body thereof, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fared base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

(6) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws 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 it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 13

Technical fees

(1) Technical fees derived from one of the Contracting States by a resident of the other Contracting State who is the beneficial owner thereof and is subject to tax in that other State in respect thereof may be taxed in the first-mentioned Contracting State at a rate not exceeding 8 per cent. of the gross amount of the technical fees.

(2) The term “technical fees” as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.

(3) The provisions of paragraph (1) of this Article shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the technical fees are effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

(4) Technical fees shall be deemed to arise in a Contracting State when the payer is that State itself, a statutory body thereof, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the technical fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by such permanent establishment or fixed base, then such technical fees shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

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

ARTICLE 14

Capital gains

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

(2) Gains derived by a resident of a Contracting State from the alienation of:

(a) shares, other than shares quoted on an approved Stock Exchange, deriving their value or the greater part of their value directly or indirectly from immovable property situated in the other Contracting State, or

(b) an interest in a partnership or trust the assets of which consist principally of immovable property situated in the other Contracting State, or of shares referred to in sub-paragraph (a) above,

may be taxed in that other State.

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

(4) Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic by an enterprise of that Contracting State or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State.

(5) Gains from the alienation of any property other than that referred to in paragraphs (1), (2), (3) and (4) of this Article shall be taxable only in the Contracting State of which the alienator is a resident provided that those gains are subject to tax in that Contracting State.

(6) The provisions of paragraph (5) of this Article shall not affect the right of a Contracting State to levy according to its 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 and has been a resident of the first-mentioned Contracting State at any time during the five years immediately preceding the alienation of the property.

ARTICLE 15

Independent personal services

(1) Subject to the provisions of Article 13, income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances:

(a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case so much of the income as is attributable to that fixed base may be taxed in that other State; or

(b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 120 days in any period of 12 months; in that case so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 16

Dependent personal services

(1) Subject to the provisions of Articles 17, 19, 20, 21 and 22 of this Agreement, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

(2) Notwithstanding the provisions of paragraph (1) of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; and

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

(c) the remuneration is not borne by a permanent establishment or fixed base which the employer has in the other State.

(3) Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

ARTICLE 17

Directors' fees

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

ARTICLE 18

Artistes and sportsmen

(1) Notwithstanding the provisions of Articles 15 and 16 of this Agreement, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

(2) Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16 of this Agreement, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

(3) 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, or a local authority, or a statutory body thereof. In such a case, income is taxable only in the Contracting State of which the artiste or sportsman is a resident.

ARTICLE 19

Pensions and annuities

(1) Subject to the provisions of paragraph (2) of Article 20 of this Agreement, pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State and any annuity paid to such a resident shall be taxable only in that State.

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

ARTICLE 20

Government service

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

(b) Notwithstanding the provisions of sub-paragraph (a) of this paragraph, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual 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 rendering the services.

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

(b) Notwithstanding the provisions of sub-paragraph (a) of this paragraph, such pension shall be taxable only in the other Contracting State if the individual is a resident of and a national of that State.

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

ARTICLE 21

Teachers and researchers

(1) Subject to paragraph (2) of this Article, an individual who, at the invitation of a public university or college, or an institution which exists primarily for research purposes or a similar public institution, visits a Contracting State for a period not exceeding two years solely for the purpose of teaching or engaging in research or both at such public institution, and who immediately before that visit was a resident of the other Contracting State, shall be exempt from tax in the first-mentioned State on any remuneration for such teaching or research for a period not exceeding two years from the date he first visits that State for such purpose.

(2) Where, under the provisions of this Agreement taken together with the law in force in the State where the individual has been a resident, a teacher or researcher referred to in paragraph (1) of this Article is exempt from tax in that State on his remuneration, or is entitled to a deduction equal to that remuneration in computing his liability to tax in that State, such remuneration shall be taxable only in the other State.

(3) The provisions of this Article shall apply to income from teaching or research only if that teaching or research is undertaken by the individual in the public interest and not primarily for the benefit of some other private person or persons.

ARTICLE 22

Students and trainees

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

(a) as a student at a recognised university, college, school or other similar recognised educational institution in that other State;

(b) as a business or technical apprentice; or

(c) as a recipient of a grant, allowance or award for the primary purpose of study, research or training from the Government of either State or from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the Government of either State,

shall be exempt from tax in that other State on:

(i) all remittances from abroad for the purposes of his maintenance, education, study, research or training;

(ii) the amount of that grant, allowance or award; and

(iii) any remuneration not exceeding RM 8,000 or the equivalent in pounds sterling per annum in respect of services in that other State provided the services are performed in connection with his study, research or training or are necessary for the purposes of his maintenance.

ARTICLE 23

Other income

(1) Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that Contracting State except that if such income is derived from sources in the other Contracting State, it may also be taxed in that other State.

(2) The provisions of paragraph (1) of this Article shall not apply to income, other than income from immovable property as defined in paragraph (2) of Article 6 of this Agreement, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15 of this Agreement, as the case may be, shall apply.

ARTICLE 24

Elimination of double taxation

(1) 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 (which shall not (a) affect the general principle hereof):

(a) subject to sub-paragraph (b) of this paragraph, Malaysian tax payable under the laws of Malaysia and in accordance with this Agreement, whether directly or by deduction, on profits, income or chargeable gains from sources within Malaysia (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall

be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable 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 (b) paying the dividend, the credit shall take into account (in addition to any Malaysian tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph) the Malaysian tax payable by the company in respect of the profits out of which such dividend is paid.

(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, the United Kingdom tax payable under the laws of the United Kingdom and in accordance with this Agreement by a resident of Malaysia 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 by a company which is a resident of the United Kingdom to a company which is a resident of Malaysia and which owns not less than 10 per cent. of the voting shares of the company paying the dividend, the credit shall take into account United Kingdom 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.

(3) For the purposes of paragraphs (1) and (2) of this Article, profits, income and capital gains owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Agreement shall be deemed to arise from sources in that other Contracting State.

(4) For the purposes of paragraph (1) of this Article, the term "Malaysian tax payable" shall be deemed to include any amount which would have been payable as Malaysian tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under:

(a) Section 133A and Schedule 7A of the Income Tax Act 1967 and Sections 22, 23, 29, 29A to 29H, 31E, 32, 33 and 41B of the Promotion of Investments Act 1986 of Malaysia and Section 45 of that Act to the extent that it relates to Sections 21, 22 and 26 of the Investment Incentives Act 1968 as well as Section 34 of that 1968 Act to the extent that it relates to Sections 19 and 20 of the Pioneer Industries (Relief from Income Tax) Ordinance 1958, so far as the Sections were in force on or before, and have not been modified since, the date of signature of this Agreement or have been modified only in minor respects so as not to affect their general character; or

(b) any other provisions which may subsequently be made granting an exemption or reduction of tax 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.

(5) Relief from United Kingdom tax by virtue of paragraph (4) of this Article shall not be given:

(a) where the profits, income or chargeable gains in respect of which tax would have been payable but for the exemption or reduction of tax granted under the provisions referred to in that paragraph arise or accrue after 31st December 2005; or

(b) in respect of income or profits from any source if that income or those profits arise in a period beginning more than ten years after the exemption or reduction referred to in that paragraph was first granted in respect of that source, whether that period began before or after the entry into force of this Agreement.

(6) The period of relief provided for in sub-paragraph (a) of paragraph (5) of this Article may be extended by agreement between the Contracting States.

ARTICLE 25

Limitation of relief

(1) Where under any provision of this Agreement any income is relieved from tax in a Contracting State and, under the law in force in the other Contracting State a person, in respect of that income, is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the relief to be allowed under this Agreement in the first-mentioned Contracting State shall apply only to so much of the income as is taxed in the other Contracting State.

(2) The provisions of this Agreement shall not apply to persons entitled to any special tax benefit under:

(a) a law of either one of the Contracting States which has been identified in an Exchange of Notes between the Contracting States; or

(b) any substantially similar law subsequently enacted.

ARTICLE 26

Non-discrimination

(1) Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected.

(2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation , levied on enterprises of that other State carrying on the same activities.

(3) Except where the provisions of paragraph (1) of Article 9, or paragraph (6) or (7) of Article 11, or paragraph (6) or (7) of Article 12, or paragraph (5) of Article 13 of this Agreement apply, interest, royalties, technical fees and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State, provided that in such cases those conditions which are applicable to both residents and non-residents under the domestic law of the first-mentioned State are fulfilled.

(4) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

(5) 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 United Kingdom not resident in Malaysia those personal allowance, 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.

(6) The provisions of this Article shall apply to the taxes which are the subject of this Agreement.

ARTICLE 27

Mutual agreement procedure

(1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, notwithstanding the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph (1) of Article 26 of this Agreement, to that Contracting State of which he is a national.

(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 a satisfactory 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 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.

(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 28

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 to 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 a Contracting State the obligation:

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

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

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

ARTICLE 29

Members of diplomatic or permanent missions and consular posts

(1) Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic or permanent missions or consular posts under the general rules of international law or under the provisions of special agreements.

(2) Notwithstanding the provisions of paragraph (1) of Article 4 of this Agreement, an individual who is a member of a diplomatic or permanent mission or consular post of a Contracting State or of any third State which is situated in the other Contracting State or who is an official of an international organisation, and any member of the family of such an individual, shall not be deemed to be a resident of the other State for the purposes of this Agreement if he is subject to tax on income in that other State only if he derives income from sources therein.

ARTICLE 30

Entry into force

(1) Each of the Contracting States shall notify to the other through diplomatic channels the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications and shall thereupon have effect:

(a) in the United Kingdom:

(i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the Agreement enters into force;

(ii) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the Agreement enters into force;

(b) in Malaysia:

(i) in respect of taxes withheld at source, to income derived on or after 1st January in the calendar year following the year in which this Agreement enters into force;

(ii) in respect of other taxes on income, to taxes chargeable for any year of assessment beginning on or after 1st January of the second calendar year following the year in which this Agreement enters into force and subsequent years of assessment.

(2) Subject to the provisions of paragraph (3) of this Article, the Agreement between the Government of Malaysia and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at London on 30th March 1973 as amended by the Protocol signed at London on 21st July 1987 (hereinafter referred to as the 1973 Agreement) shall terminate and cease to be effective from the date upon which this Agreement has effect in respect of the taxes to which this Agreement applies in accordance with the provisions of paragraph (1) of this Article.

(3) Where any provision of the 1973 Agreement would have afforded any greater relief from tax than is due under this Agreement, any such provision as aforesaid shall continue to have effect:

(a) in the United Kingdom, for any year of assessment or financial year, and

(b) in Malaysia, for any year of assessment,

beginning, in either case, before the entry into force of this Agreement.

ARTICLE 31

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 30th June in any calendar year after the period of five years from the date on which this Agreement enters into force. In such an event the Agreement shall cease to have effect:

(a) in the United Kingdom:

(i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the notice is given;

(ii) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the notice is given;

(b) in Malaysia:

(i) in respect of taxes withheld at source, to income derived on or after 1st January in the calendar year following the year in which the notice is given;

(ii) in respect of other taxes on income, to taxes chargeable for any year of assessment beginning on or after 1st January of the second calendar year following the year in which the notice is given.

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

Done in duplicate at Kuala Lumpur this 10th day of December 1996 in the English and Bahasa Malaysia languages, both texts being equally authoritative. In the event of there being a dispute in the interpretation and the application of this Agreement, the English text shall prevail.

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

David Moss

For the Government of Malaysia:

Clifford Herbert

PART II

EXCHANGE OF NOTES

Excellency

Kuala Lumpur

10th December 1996

I have the honour to refer to 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 which has been signed today and to propose on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland that:

(1) *with reference to Article 7:*

(a) if the information available to the competent authority is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, it is understood that nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person by the exercise of a discretion or the making of an estimate by the competent authority, provided that the law shall be applied, so far as the information available to the competent authority permits, in accordance with the principle of this Article.

(b) insofar as it has been customary in a Contracting State to determine according to its law the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph (2) of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary, provided that:

(i) the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article; and

(ii) that the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

(2) *With reference to paragraph (2) of Article 25:*

the provisions of this Agreement shall not apply to persons carrying on offshore business activity under the Labuan Offshore Business Activity Tax Act 1990 (as amended);

"Offshore business activity" means an offshore business activity as defined under Section 2(1) of the Labuan Offshore Business Activity Tax Act 1990 (as amended).

If the foregoing proposals are acceptable to the Government of Malaysia, I have the honour to suggest that the present Note and Your Excellency's reply to that effect should be regarded as constituting an agreement between the two Governments in this matter, which shall enter into force at the same time as the entry into force of this Agreement.

I avail myself of this opportunity to extend to your Excellency the assurance of my highest consideration.

David Moss

High Commissioner

Excellency

Kuala Lumpur

10th December 1996

I have the honour to acknowledge receipt of Your Excellency's Note of today which read as follows:

"I have the honour to refer to 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 which has been signed today and to propose on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland that:

(1) *with reference to Article 7, it is understood that:*

(a) if the information available to the competent authority is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, it is understood that nothing in this Article affects the application of any law of that State relating to the determination of the tax liability of a person by the exercise of a discretion or the making of an estimate by the competent authority, provided that the law shall be applied, so far as the information available to the competent authority permits, in accordance with the principle of the Article: and

(b) insofar as it has been customary in a Contracting State to determine according to its law the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph (2) of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary, provided that:

(i) the method of apportionment adopted shall, however, be such that the result be in accordance with the principles contained in this Article; and

(ii) that the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

(2) *With reference to paragraph (2) of Article 25:*

the provisions of this Agreement shall not apply to persons carrying on offshore business activity under the Labuan Offshore Business Activity Tax Act 1990 (as amended);

"Offshore business activity" means an offshore business activity as defined under Section 2(1) of the Labuan Offshore Business Activity Tax Act 1990 (as amended)."

The foregoing proposals being acceptable to the Government of Malaysia, I have the honour to confirm that Your Excellency's Note and this reply shall be regarded as constituting an agreement

between the two Governments in this matter, which shall enter into force at the same time as entry into force of the Agreement.

I take this opportunity to renew to your Excellency the assurances of my highest consideration.

Clifford Herbert

Secretary General to the Treasury Malaysia

EXPLANATORY NOTE

(This note is not part of the Order)

The Agreement with Malaysia (which replaces the Agreement set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Malaysia) Order 1973 (S.I.1973/1330) as amended by the Protocol set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Malaysia) Order 1987 (S.I. 1987/2056)) is set out in Part I of the Schedule to this Order.

The Agreement provides for business profits not arising through a permanent establishment to be taxed only in the country of the taxpayer's residence. Profits attributable to a permanent establishment may be taxed in the country in which the permanent establishment is situated (Articles 5 and 7).

Income from immovable property and gains derived from the alienation of such property may be taxed in the country in which the property is situated (Articles 6 and 14).

International transport profits are generally to be taxed only in the country of residence of the operator (Article 8).

The Agreement includes rules for determining taxable profits when a company in one country is related to a company in the other country (Article 9).

The rate of tax imposed in the country of source on dividends derived by a resident of the other country shall not, in general, exceed 5 per cent. of the gross amount if the recipient is a company controlling at least 10 per cent. of the voting power in the company paying the dividends; and 10 per cent. of the gross amount of the dividends in all other cases (Article 10).

The rate of tax imposed in the country of source on interest derived by a resident of the other country is, in general, not to exceed 10 per cent. of the gross amount flowing to the other country. Certain other interest (e.g. interest payable to the Government of the other country) is exempt from tax in the source state (Article 11).

The rate of tax imposed in the source country on royalties and technical fees is, in general, limited to 8 per cent. of the gross amount of the royalties or technical fees (Articles 12 and 13).

Gains arising from the disposal of movable property are normally to be taxed only in the country of the taxpayer's residence. Gains arising from the disposal of assets of a permanent establishment or fixed base which the taxpayer has in the other country may be taxed in that other country (Article 14).

The earnings of temporary business visitors and some other individuals are, subject to certain conditions, only to be taxed in the country of the taxpayer's residence (Articles 15 and 16). Fees received by a resident of one country in his capacity as a director of a company resident in the other country may be taxed in the latter country (Article 17). Income derived from the activities of artistes and sportsmen may be taxed in the country in which those activities are performed (Article 18). Occupational pensions (other than those paid in respect of Government service) and annuities are to

be taxed only in the recipient's country of residence (Article 19). Government service remuneration and pensions are normally taxable only by the paying Government (Article 20). The remuneration of teachers and researchers and payments made to students and trainees are, subject to certain conditions, to be exempt from tax in the country visited (Articles 21 and 22). Other income not specified in the Agreement may be taxable in either country (Article 23).

Where income continues to be taxable in both countries credit will be given in the taxpayer's country of residence for tax imposed by the other country. The credit to be given in the United Kingdom for tax imposed in Malaysia includes, subject to time limits, credit for tax spared under certain provisions of Malaysian law. In the case of dividends, the United Kingdom will give credit for the underlying tax paid in Malaysia where the shareholder is a United Kingdom company which controls at least 10 per cent. of the voting power in the company paying the dividends (Article 24).

There are provisions safeguarding nationals and enterprises of one country against discriminatory taxation in the other country (Article 26) and for consultation (Article 27) and exchanges of information (Article 28) between the taxation authorities of the two countries.

The Exchange of Notes set out in Part II of the Schedule (in which there are minor differences of wording between the Note sent by the United Kingdom and its reproduction in the Malaysian Note) contains agreements between the United Kingdom and Malaysia in relation to Articles 7 and 25 of the Agreement.

The Agreement will enter into force on the date of the later of the notifications by each country of the completion of its legislative procedures. The Agreement is to take effect in the United Kingdom on or after 1st April in respect of corporation tax and on or after 6th April for income tax and capital gains tax in the calendar year next following that in which it enters into force. The date of entry into force will in due course be published in the *London, Edinburgh* and *Belfast Gazettes.*