

Tax Treaty Malaysia - Malaysia

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**AGREEMENT BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF INDONESIA
AND
THE GOVERNMENT OF MALAYSIA**

**FOR
THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT
TO TAXES ON INCOME**

**Article 1
PERSONAL SCOPE**

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

**Article 2
TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed by a Contracting State, irrespective of the manner in which they are levied.
2. The taxes, which are the subject of this Agreement are:
 - (a) in Indonesia, the income tax (pajak penghasilan); (hereinafter referred to as "Indonesian tax").
 - (b) In Malaysia:
 - (i) the income tax and excess profit tax;
 - (ii) the supplementary income tax, that is, development and
 - (iii) the petroleum income tax; (hereinafter referred to as "Malaysian tax").
3. This Agreement shall also apply to any identical or substantially similar taxes on income which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of important changes which have been made in their respective taxation laws.

**Article 3
GENERAL DEFINITIONS**

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

- (a) the term "Indonesia" comprises the territory of the Republic of Indonesia as defined in its laws, and parts of the Continental Shelf and adjacent seas, over which the Republic of Indonesia has sovereignty, sovereign rights or other rights in accordance with international law;
- (b) 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 exploration and exploitation of natural resources, whether living or non-living, of the seabed and subsoil and the superjacent waters, may be exercised;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Malaysia or Indonesia as the context requires;
- (d) the term "tax" means Malaysian tax or Indonesian tax, as the context requires;

- (e) the term "person" includes an individual, a company and any other body of persons which is treated as an entity for tax purposes;
- (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 "national" means:
 - (i) any individual possessing the citizenship or nationality of a Contracting State;
 - (ii) any legal person, partnership, association and any other entity deriving its status as such from the laws in force in a Contracting State;

- (i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (j) the term "competent authority" means:
 - (i) in the case of Malaysia, the Minister of Finance or his authorized representative;
 - (ii) in the case of Indonesia, the Minister of Finance or his authorized representative.

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

Article 4 RESIDENT

- 1. For the purposes of this Agreement, the term "resident of a Contracting State" means:
 - (a) in the case of Malaysia, a person who is resident in Malaysia for the purposes of Malaysian tax; and

(b)in the case of Indonesia, a person who is resident in Indonesia for the purposes of Indonesian tax.

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

(a)he shall be deemed to be a resident of the State in which he has a permanent home available to him. If he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);

(b)if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

(c)if he has an habitual abode in both States or in neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

Article 5 PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of the enterprise is wholly or partly carried on.
2. The term "permanent establishment" shall include especially:
 - (a) a place of management;
 - (b) a branch;

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

(i) the furnishing of services, including consultancy services, by an enterprise through an employee or other person (other than an agent of independent status within the meaning of paragraph 6) where the activities of that nature continue (for the same or a connected project) within the other Contracting State for a period or periods aggregating more than three months within any twelve-month period.

3. The term "permanent establishment" shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage or display 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 or display;

(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 carrying on, for the enterprise, any other activity 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:

(a) it carries on supervisory activities in that other State for more than 6 months in connection with a construction, installation or assembly project which is being undertaken in that other State; or

(b) substantial equipment is in that other State being used or installed by, for or under contract with, the enterprise.

5. A person (other than a broker, general commission agent or any other agent of an independent status to whom paragraph 6 applies) acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the first-mentioned State, if:

(a) he has, and habitually exercises in the first-mentioned State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise;

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

or
(c)he manufactures or processes in the first-mentioned State for the enterprise goods or merchandise belonging to the enterprise.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he shall not be considered an agent of an independent status within the meaning of this paragraph.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6 INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other State.
2. For the purposes of this Agreement, the term "immovable property" shall be defined in accordance with the laws of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil or gas wells, quarries and other places of extracting of natural resources including timber or other forest produce. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

Article 7 BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only on so much thereof as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses including executive and general administrative expenses, which would be deductible if the permanent establishment were an independent enterprise, insofar as they are reasonably allocable to the permanent establishment, whether incurred in the State in which the permanent establishment is situated or elsewhere.
4. If the information available to the competent authority is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person by the exercise of a discretion or the making of an estimate by the competent authority, provided that the law shall be applied, so far as the information available to the competent authority permits, in accordance with the principle of this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purpose of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8 SHIPPING AND AIR TRANSPORT

1. Profits derived from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. Notwithstanding the provisions of paragraph 1, profits derived by an enterprise of a Contracting State from the operation of ships in international traffic may be taxed in the other Contracting State, but the tax imposed in that other State shall be reduced by an amount equal to 50% thereof.

3. Notwithstanding the provisions of paragraphs 1 and 2 and Article 7, profits derived by an enterprise of a Contracting State from a voyage of ships or aircraft where the principal purpose of the voyage is to transport passengers or goods between places in the other Contracting State shall be taxed in that other State.
4. Paragraphs 1 and 2 shall also apply to the share of the profits from the operation of ships or aircraft derived by a resident of a Contracting State through participation in a pool, a joint business or an international operating agency.

Article 9 ASSOCIATED ENTERPRISES

Where:

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

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

Article 10 DIVIDENDS

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1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. Dividends paid by a company which is a resident of Indonesia to a resident of Malaysia may be taxed in Indonesia in accordance with the laws of Indonesia but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15% of the gross amount of the dividends.
3. Dividends paid by a company which is a resident of Malaysia to a resident of Indonesia who is the beneficial owner thereof shall be exempt from any tax in Malaysia which is chargeable on dividends in addition to the tax chargeable in respect of the income of the company. Nothing in this paragraph shall affect the provisions of the Malaysian law under which the tax in respect of a dividend paid by a company which is a resident of Malaysia from which Malaysian tax has been, or has been deemed to be, deducted may be adjusted by reference to the rate of tax appropriate to the Malaysian year of assessment immediately following that in which the dividend was paid.
4. The 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.
5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.
6. Where a company which is a resident of a Contracting State derives income or profits from the other Contracting State, that other State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of income or profits arising in that other State.

Article 11 INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 15% of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2, interest to which a resident of Indonesia is beneficially entitled 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 in section 2(1) of the Income Tax Act 1967 of Malaysia.
4. Notwithstanding the provisions of paragraphs 2 and 3, the Government of a Contracting State shall be exempt from tax in the other Contracting State in respect of interest derived by the Government from that other State.
5. For purposes of paragraph 4, the term "Government":

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

- (i) the local authorities;
- (ii) the statutory bodies;
- (iii) Bank Indonesia (the Central Bank of Indonesia); and
- (iv) such institutions, the capital of which is wholly owned by the Government of the Republic of Indonesia or the local authorities or the statutory bodies thereof, as may be agreed upon from time to time between the competent authorities of the Contracting States.

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

- (i) the Governments of the States;
- (ii) the local authorities;
- (iii) the statutory bodies;
- (iv) Bank Negara Malaysia; and

(v) such institutions, the capital of which is wholly owned by the Government of Malaysia or the Governments of the States or the local authorities or the statutory bodies thereof, as may be agreed upon from time to time between the competent authorities of the Contracting States;

6. The term "interest" as used in this Article means income from 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 and debentures.
7. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.
8. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or statutory body thereof, or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

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

Article 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, the tax so charged shall not exceed 15% of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments of any kind received as consideration for:
 - (i) the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or any copyright of scientific work, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience;
 - (ii) the use of, or the right to use, cinematograph films, or tapes for radio or television broadcasting, any copyright of literary or artistic work.

4. The provisions of paragraphs 1 and 2 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 and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or a statutory body thereof, or a resident of that State. Where, however, the person paying such royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would 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 a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.
7. Subject to paragraph 5 of Article 22, royalties derived by a resident of Indonesia which are subjected to film hire duty under the Cinematograph Film-Hire Duty Act in Malaysia shall not be liable to Malaysian tax to which this Agreement applies.

Article 13

GAINS FROM THE ALIENATION OF PROPERTY

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6, may be taxed in the Contracting State in which such property is situated.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment, which an enterprise of a Contracting State has in the other Contracting State or of movable property available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) may be taxed in the other State. However, gains from the alienation of ships or aircraft operated by an enterprise of a Contracting State in international traffic and movable property pertaining to the operation of such ships or aircraft shall be taxable only in the State of which the enterprise is a resident.
3. Gains from the alienation of shares of a company, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State. Gains from the alienation of an interest in a partnership or a trust, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State.
4. Gains from the alienation of any property or assets, other than those mentioned in paragraphs 1, 2 and 3 of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

PERSONAL SERVICES

1. Subject to the provisions of Articles 15, 16, 17, 18, 19 and 20, salaries, wages and similar remuneration or income derived by a resident of a Contracting State in respect of professional services or other activities of a similar character,

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

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

(a) the recipient is present in that other State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned;

(b) the services or activities are exercised or performed for or on behalf of a person who is a resident of the first-mentioned State; and

(c) the remuneration or income is not borne by a permanent establishment which the person paying the remuneration has in the other State.

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

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

Article 15 DIRECTORS' FEES

1. Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State, may be taxed in that other State.
2. The remuneration which a person to whom paragraph 1 applies derives from the company in respect of the discharge of day-to-day functions of a managerial or technical nature may be taxed in accordance with the provisions of Article 14 (Personal services).

Article 16 ARTISTES AND ATHLETES

1. Notwithstanding the provisions of Article 14, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.
3. The provisions of paragraphs 1 and 2 shall not apply to remuneration or profits derived from activities exercised in a Contracting State if the visit to that State is directly or indirectly supported wholly or substantially from the public funds of the other Contracting State, a political subpision, a local authority or statutory body thereof.

Article 17 PENSIONS AND ANNUITIES

1. Subject to the provisions of paragraph 2 of Article 18, any pensions or other similar remuneration for past employment or any annuity arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.
2. The term "annuity" includes a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 18 GOVERNMENT SERVICE

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

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

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

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

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

Article 19 STUDENTS AND TRAINEES

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

- (a) as a student, at a recognized university, college, school or other similar recognized educational institution in that other State;
- (b) as a business or technical apprentice; or

(c) as 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 organization or under a technical assistance programme entered into by the Government of either State,

shall be exempt from tax in that other State on:

- (a) all remittances from abroad for the purposes of his maintenance, education, study, research or training;
- (b) the amount of such grant, allowance or award; and

(c) any remuneration not exceeding United States Dollars two thousand two hundred 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 20 TEACHERS AND RESEARCHERS

1. An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State, and who, at the invitation of any university, college, school or other similar educational institution, visits that other State for a period not exceeding two years solely for the purpose of teaching or research or both at such educational institution shall be exempt from tax in that other State on any remuneration for such teaching or research.
2. This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

Article 21 INCOME NOT EXPRESSLY MENTIONED

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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.

Article 22 ELIMINATION OF DOUBLE TAXATION

1. Subject to the laws of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, Indonesian tax payable under the laws of Indonesia and in accordance with this Agreement by a resident of Malaysia in respect of income derived from Indonesia shall be allowed as a credit against Malaysian tax payable in respect of that income. The credit shall not, however, exceed that part of the Malaysian tax, as computed before the credit is given, which is appropriate to such item of income.
2. For the purposes of paragraph 1, the term "Indonesian tax payable" shall be deemed to include the amount of Indonesian tax which would have been paid if the Indonesian tax had not been exempted or reduced in accordance with this Agreement and:

the special
incentive
laws
designed to
promote
economic
development
in Indonesia
(a) so far as
they are in
force on the
date of
signature of
this
Agreement;
or

(b) any other provisions which may subsequently be introduced in Indonesia in modification of, or in addition to, the existing special incentive laws so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character.

3. Subject to the laws of Indonesia regarding the allowance as a credit against Indonesian tax of tax payable in any country other than Indonesia, Malaysian tax payable under the laws of Malaysia and in accordance with this Agreement by a resident of Indonesia in respect of income derived from Malaysia shall be allowed as a credit against the Indonesian tax payable in respect of that income. The credit shall not, however, exceed that part of the Indonesian tax, as computed before the credit is given, which is appropriate to such item of income.
4. For the purposes of paragraph 3, the term "Malaysian tax payable" shall be deemed to include Malaysian tax which would, under the laws of Malaysia and in accordance with this Agreement, have been payable on any income derived from sources in Malaysia had the income not been taxed at a reduced rate or exempted from Malaysian tax in accordance with:

- (a) the special incentive laws for the promotion of economic development of Malaysia so far as they were in force on, 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; and
- (b) any other provisions which may subsequently be introduced in Malaysia in modification of, or in addition to, the investment incentives laws so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character.

5. For the purposes of paragraph 3, royalties derived by a resident of Indonesia from film rentals, which are subjected to duty under the Cinematograph Film-Hire Act in Malaysia, that duty shall be deemed to be Malaysian tax.

Article 23 NON-DISCRIMINATION

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.
3. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.
4. Nothing in this Article shall be construed as obliging:
 - (a) a Contracting State to grant to individuals who are resident of the other Contracting State any personal allowances, reliefs and reductions for tax purposes on account of civil status or family responsibilities which it grants to its own residents;

(b)Malaysia to grant to nationals of Indonesia not resident in Malaysia those personal allowances, reliefs and reductions for tax purposes which are by law available on the date of signature of this Agreement only to nationals of Malaysia who are not resident in Malaysia.

5. Nothing in this Article shall be construed so as to prevent either Contracting State from limiting to its nationals the enjoyment of tax incentives designed to promote economic development in that State.
6. In this Article, the term "taxation" means taxes to which the Agreement applies.

Article 24 MUTUAL AGREEMENT PROCEDURE

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the taxation laws of those States, present his case to the competent authority of the State of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 25 EXCHANGE OF INFORMATION

Tax Treaty Malaysia - Malaysia

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 or detection of evasion or avoidance of taxes covered by this Agreement. Any information so exchanged shall be treated as secret and shall be disclosed only to any persons or authorities (including a Court or reviewing authority) concerned with the assessment, collection, enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Agreement.
2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other State;
 - (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other State;
 - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret, trade process, or information the disclosure of which would be contrary to public policy.

Article 26 DIPLOMATIC AND CONSULAR OFFICER'S

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

Article 27 ENTRY INTO FORCE

Tax Treaty Malaysia - Malaysia

1. This Agreement shall be ratified by the Governments of the Contracting States and the instruments of ratification shall be exchanged at ... as soon as possible.
2. This Agreement shall enter into force upon the exchange of the instruments of ratification and shall have effect for the year of assessment or taxation year beginning on the first day of January 1987 and subsequent years of assessment or taxation years.

Article 28 TERMINATION

This Agreement shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Agreement through diplomatic channels, by giving to the other Contracting State written notice of termination at least six months before the end of the calendar year after the year 1991. In such event, the Agreement shall cease to have effect for the year of assessment or taxation year beginning on or after the first day of January of the calendar year next following that in which the notice is given.

In witness whereof the undersigned, duly authorized thereto, by their respective Governments, have signed this Agreement.

Done in duplicate at Kuala Lumpur this 12th day of September 1991, in Bahasa Malaysia, Bahasa Indonesia and English language, the three texts being equally authentic. In the event of there being a dispute in the interpretation and the application of this Agreement, the English text shall prevail.

For the Government of
the Republic Indonesia
sgd
J.B. Sumarlin
Minister of Finance

For the Government of
Malaysia
sgd
Anwar Ibrahim
Minister of Finance

PROTOCOL

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

2. In connection with Article 3 "General definitions", it is understood that the territorial definitions provided in paragraph 1(a) and paragraph 1(b) shall not include any part of territory or maritime areas over which the two Contracting States have claims to be settled.

3. In respect of paragraph 2(h) of Article 5 "Permanent establishment", it is understood that a time limit of 3 months shall apply to an assembly or installation project performed by a person other than the main contractor.
4.
 - (a) In connection with paragraph 1 of Article 7 "Business profits", nothing in this Article shall prevent either Contracting State from imposing tax on profits derived from:
 - (i) sales in that State of goods or merchandise of the same or similar kind as those sold through a permanent establishment in that Contracting State; or
 - (ii) other business activities carried on in that State of the same or similar kind as those effected through a permanent establishment in that Contracting State, provided that those sales or other business activities are evidently not conducted through that permanent establishment merely for the purpose of reducing the tax of the permanent establishment.

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- (b) In connection with Article 7 "Business profits", nothing in this Agreement shall affect the operation of any law of a Contracting State relating to the taxation of income or profits from any insurance business provided that if the relevant law in force in either Contracting State at the date of signature of this Agreement is amended (otherwise than in minor respects so as not to affect its general character) the States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.
- (c) In connection with Article 7 "Business profits", nothing in this Article shall prevent either Contracting State from imposing, apart from the corporate income tax, a branch profits tax on the after tax profits of the permanent establishment, provided that the tax so imposed shall not exceed 12.5% of such amount.
5. In connection with Article 10 "Dividends", nothing in this Article shall affect the provisions contained in any production sharing contracts relating to the exploitation and production of oil and natural gas which have been negotiated with the Government of Indonesia or the relevant state oil company of Indonesia, provided that a company which is resident in Malaysia deriving income from a production sharing contract shall not be less favourably treated with respect to tax than that levied on a company of a third state deriving income from a similar production sharing contract.
6. In connection with Articles 11, 12, 16 and 18 the term "statutory body" means any body corporate irrespective of the name by which it is known, which is incorporated pursuant to the provisions of written law and is a public authority or an instrumentality or an agency of:
- the
Government
of Malaysia
or any of
the States of
the
Federation
but does not
include a
 - (a) local
authority
and a body
corporate
that is
incorporated
under the
Companies
Act 1965;

(b)the
Government
of the
Republic of
Indonesia
but does not
include a
local
authority
and a body
corporate
that is
incorporated
under Law
Number 9
of year
1969.
Government
Regulation
Number 12
of year
1969.

In witness whereof the undersigned, duly authorized thereto, by their respective Government, have signed this Protocol.

Done in duplicate at Kuala Lumpur this 12th day of September 1991, in Bahasa Malaysia, Bahasa Indonesia and English language, the three texts being equally authentic. In the event of there being a dispute in the interpretation and the application of this Agreement, the English text shall prevail.

**PROTOCOL AMENDING THE AGREEMENT BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF INDONESIA AND
THE GOVERNMENT OF MALAYSIA
FOR THE AVOIDANCE OF DOUBLE TAXATION AND
THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME AND ITS PROTOCOL
SIGNED AT KUALA LUMPUR ON 12 SEPTEMBER 1991**

THE GOVERNMENT OF THE REPUBLIC OF INDONESIA AND THE GOVERNMENT OF MALAYSIA.

DESIRING to conclude a Protocol to amend the Agreement between the Government of the Republic of Indonesia and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and its Protocol signed at Kuala Lumpur on 12 September 1991 (hereinafter referred to as "the Agreement" and "the Protocol" respectively),

HAVE AGREED as follows:

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Article 1

Paragraph 2 of Article 10 of the Agreement is amended by substituting for the words "15 per cent" the words "10 per cent".

Article 2

Paragraph 2 of Article 11 of the Agreement is amended by substituting for the words "15 per cent" the words "10 per cent".

Article 3

Paragraph 2 of Article 12 of the Agreement is amended by substituting for the words "15 per cent" the words "10 per cent".

Article 4

Paragraph 5 of the Protocol is substituted by the following new paragraph :

"In connection with Article 10 "pidens" nothing in this Article shall affect the provisions contained in any production sharing contracts relating to oil and gas sector concluded by the Government of Indonesia, its instrumentality, its relevant state oil and gas company or any other entity thereof with a person who is a resident of Malaysia".

Article 5

For the purposes of this Protocol, it is understood that:

- 1) the benefits of the Agreement shall not be available in respect of the carrying on of any offshore business activity under the Labuan Offshore Business Activity Tax Act 1990; and
- 2) the term "offshore business activity" means an offshore business activity as defined under section 2 (1) of the Labuan Offshore Business Activity Tax Act 1990 in force at the date of signature of this Protocol and includes any substantially similar activity dealt with in any amendment to that Act thereafter.

Article 6

This Protocol shall be an integral part of the Agreement between the Government of the Republic of Indonesia and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and its Protocol signed at Kuala Lumpur on the 12th day of September, 1991.

Article 7

This Protocol shall be subject to ratification and instruments of ratification shall be exchanged as soon as possible. It shall enter into force on the date exchange of the instruments of ratification. The provisions of this Protocol shall for the first time have effect for amounts paid or credited on or after the first day of the second month next following the date on which the Protocol enters into force.

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

DONE in duplicate at Bukittinggi, Indonesia, this twelfth day of January in the year of two thousand and six, each in Bahasa Indonesia, Bahasa Malaysia and in English, the three texts being equally authentic. In the event of there being a pergence in the interpretation and the application of this Protocol, the English text shall prevail.

For the Government of
the Republic of Indonesia
sgd.
DR. N. HASSAN WIRAJUDA
Minister for Foreign Affairs
of the Republic of Indonesia

For the Government of
Malaysia
sgd.
DATUK SERI SYED HAMID ALBAR
Minister for Foreign Affairs of
Malaysia

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