

L.N. 281 of 2002

**INCOME TAX ACT
(CAP. 123)**

**Double Taxation Relief (Taxes on Income)
(Malaysia) Order, 2002**

IN exercise of the powers conferred by article 76 of the Income Tax Act, the Minister of Finance has made the following order:-

1. The title of this order is the Double Taxation Relief (Taxes on Income) (Malaysia) Order, 2002. Citation.

2. It is hereby declared:-

Arrangements to
have effect.

(a) that the arrangements specified in the Agreement set out in the Schedule to this Order have been made with Malaysia with a view to affording relief from double taxation in relation to the following taxes imposed by the laws of Malaysia:

(i) the income tax;

(ii) the supplementary income tax, that is, the development tax; and

(iii) the petroleum income tax;

(b) that it is expedient that those arrangements should have effect;

(c) that the Agreement has entered into force on the 1st September, 2000.

SCHEDULE

**AGREEMENT
BETWEEN MALTA AND MALAYSIA
FOR THE AVOIDANCE OF DOUBLE TAXATION**

Malta and Malaysia, desiring to conclude an Agreement for the Avoidance of Double Taxation, have agreed as follows:

Article 1

PERSONAL SCOPE

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

Article 2

TAXES COVERED

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

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

(a) in Malaysia:

(i) the income tax;

(ii) the supplementary income tax, that is, the development tax;
and

(iii) the petroleum income tax;

(hereinafter referred to as 'Malaysian tax').

(b) in Malta,

the income tax;

(hereinafter referred to as 'Malta tax').

(3) Notwithstanding the other provisions of this Article this Agreement shall not apply to tax paid or payable in Malta at the rate provided for in subsection (13) of section 56 of the Income Tax Act (Cap. 123).

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

Article 3

GENERAL DEFINITIONS

(1) In this Agreement, unless the context otherwise requires:

(a) the term 'Malaysia' means the 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 and 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;

(b) the term 'Malta', when used in a geographical sense, means the Island of Malta, the Island of Gozo and the other islands of the Maltese archipelago, including the territorial waters thereof, and any area outside the territorial sea of Malta which, in accordance with international law, has been or may hereafter be designated, under the law of Malta concerning the Continental Shelf, as an area within which the rights of Malta with respect to the sea-bed and sub-soil and their natural resources may be exercised;

(c) the terms 'a Contracting State' and 'the other Contracting State' mean Malaysia or Malta as the context requires;

(d) the term 'person' includes an individual, a company and any other body of persons which is treated as a person for tax purposes;

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

(f) the terms 'enterprise of a Contracting State' and 'enterprise of the other Contracting State' mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(g) the term 'tax' means Malaysian tax or Malta tax, as the context requires;

(h) the term 'national' means:

(i) any individual possessing the citizenship of a Contracting State;

(ii) any legal person, partnership, association and any other entity deriving its status as such from the laws in force in a Contracting State;

(i) the term 'international traffic' means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(j) the term 'competent authority' means:

(i) in the case of Malaysia, the Minister of Finance or his authorised representative; and

(ii) in the case of Malta, the Minister responsible for finance or his authorised representative.

(2) In 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 State concerning the taxes to which this 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 Malta, a person who is resident in Malta for the purposes of Malta tax.

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

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

(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident solely of the State of which he is a national;

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(3) Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident solely of the 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' 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 (including an offshore drilling site), 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 12 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 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 12 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; 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; 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 as agent of an independent status if the transactions between the agent and the enterprise were not made under arm's length conditions.

(7) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

INCOME FROM IMMOVABLE PROPERTY

(1) Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other State.

(2) For the purposes of this Agreement, the term 'immovable property' shall be defined in accordance with the laws of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil or gas wells (including an offshore drilling site), quarries and other places of extraction of natural resources including timber or other forest produce. Ships, boats and aircraft shall not be regarded as immovable property.

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

(4) The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of 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 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 purposes 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 by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

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

(3) Notwithstanding the other provisions of this Article, profits from the operation of a ship in international traffic derived by a company which is a resident of Malta having more than 25 per cent of its capital owned, directly or indirectly, by persons not residents of Malta, may be taxed in Malaysia unless the company proves that the profits derived from the operation of such ship are subject to Malta tax without regard to any relief therefrom as provided for in section 86 of the Merchant Shipping Act (Cap. 234) or in any identical or similar provision.

Article 9

ASSOCIATED ENTERPRISES

Where

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

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

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

Article 10

DIVIDENDS

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

(2) Dividends paid by a company which is a resident of Malaysia to a resident of Malta 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 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.

(3) (a) Dividends paid by a company which is a resident of Malta to a resident of Malaysia who is the beneficial owner thereof may be subjected to Malta tax on the gross amount of such dividends, but the tax so charged shall not exceed that chargeable on the profits out of which the dividends are paid.

(b) Where such dividends are paid out of profits of a company which are subject to tax at a reduced rate of tax under special provisions designed to promote investments necessary for the economic development of Malta, the rate of Malta tax on the dividends shall not exceed such reduced rate.

(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 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 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph 2, interest to which a resident of Malta 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 (as amended).

(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 the purposes of paragraph 4, the term 'Government':

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

(i) the government of the States;

(ii) the local authorities;

(iii) the statutory bodies;

(iv) the Bank Negara Malaysia;

(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;

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

(i) the Central Bank of Malta;

(ii) the Malta Development Corporation;

(iii) the statutory bodies;

(iv) such institutions, the capital of which is wholly owned by the Government of Malta, 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 or 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 a 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 payment 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 per cent of the gross amount of the royalties.

(3) The term 'royalties' as used in this Article means payments of any kind to the extent to which they are paid as consideration for:

(a) the use of, or the right to use, any

(i) copyright, patent, design or model, plan, secret formula or process, trade mark, or other like property or right;

(ii) industrial, commercial or scientific equipment; or

(iii) cinematograph film or tape for radio or television broadcasting;

(b) the supply of scientific, technical, industrial or commercial knowledge or information;

(c) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph (a) (i), any such equipment as is mentioned in subparagraph (a) (ii), or any such knowledge or information as is mentioned in subparagraph (b).

(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 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, 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 or credited, having regard to the use, right or information for which they are paid or credited, 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 royalties paid or credited shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13

TECHNICAL FEES

(1) Technical fees arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other State.

(2) However, such technical fees 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 a beneficial owner of the technical fees, the tax so charged shall not exceed 10 per cent of the gross amount of the technical fees.

(3) 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.

(4) The provisions of paragraph 1 and 2 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, and the technical fees are effectively connected with such permanent establishment or such services. In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

(5) Technical fees shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a statutory body thereof, 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 in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by that permanent establishment, then such technical fees shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

(6) Where, by reason of a special relationship between the payer and the recipient or between both of them and some other person, the amount of the 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

ALIENATION OF PROPERTY

(1) Income or 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) Income or 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 income or gains from the alienation of such a permanent establishment (alone or together with the whole enterprise)

may be taxed in that other State. However, income or 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) Income or 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. Income or 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) Income or 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 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 independent activities of a similar character shall be taxable only in that State. However, if such income is derived from the other Contracting State it may be taxed in that other State if:

(a) his stay in that other State is for a period or periods amounting to or exceeding in the aggregate 183 days during any calendar year; or

(b) the remuneration for his services in that other State is either derived from residents of that State or borne by a permanent establishment which the person paying the remuneration has in that State and in either case it exceeds the equivalent in the currency of that State of five thousand U.S. dollars (US \$ 5,000) during the calendar year.

(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, 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, 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 the calendar 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 which the employer has in the other State.

(3) 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 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, or other comparable body however described, of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 18

ARTISTES AND ATHLETES

(1) Notwithstanding the provisions of Articles 15 and 16, 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, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

(3) The provisions of paragraphs 1 and 2 shall not apply to remuneration or profits derived from activities exercised in a Contracting State if the visit to that

State is directly or indirectly supported wholly or substantially from the public funds of the other Contracting State, a political subdivision, a local authority or a statutory body thereof.

Article 19

PENSIONS AND ANNUITIES

(1) Subject to the provisions of paragraph 2 of Article 20, any pensions and 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) Pensions and other payments made under the social security legislation of a Contracting State shall be taxable only in that State.

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

Article 20

GOVERNMENT SERVICE

(1) (a) 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) However, such 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 performing the services.

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

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

Article 21

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 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:

- (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 the equivalent in the currency of that other State of two thousand U.S. dollars (US \$ 2,000) 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 22

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 or both.

(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 23

INCOME NOT EXPRESSLY MENTIONED

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Agreement 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 24

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, Malta tax payable under the laws of Malta and in accordance with this Agreement by a resident of Malaysia in respect of income derived from Malta 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 'Malta tax payable' shall be deemed to include the amount of Malta tax which would, under the laws of Malta and in accordance with this Agreement, have been payable on any income derived from sources in Malta had the income not been taxed at a reduced rate or exempted from Malta tax in accordance with:

(a) the Aids to Industries Ordinance, 1959 and Industrial Development Act, 1988 in 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; or

(b) any other provisions which may subsequently be introduced in Malta 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 Malta regarding the allowance as a credit against Malta tax of tax payable in any country other than Malta, Malaysian tax payable under the laws of Malaysia and in accordance with this Agreement by a resident of Malta in

respect of income derived from Malaysia shall be allowed as a credit against the Malta tax payable in respect of that income. The credit shall not, however, exceed that part of the Malta 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 Income Tax Act, 1967 and the Promotion of Investment Act, 1986 in 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; or

(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; and

(c) interest to which paragraph 3 of Article 11 applies had that interest not been exempted from Malaysian tax in accordance with that paragraph.

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

Article 25

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, family responsibilities or any other personal circumstances which it grants to its own residents;

(b) Malaysia to grant to nationals of Malta 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) In this Article, the term 'taxation' means taxes to which this Agreement applies.

Article 26

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 25, 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 this Agreement.

(2) The competent authority shall endeavour, if the objection appears to be justified and 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 this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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

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

Article 27

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 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 this Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

(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 28

DIPLOMATIC AND CONSULAR OFFICIALS

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 29

ENTRY INTO FORCE

(1) The Governments of the Contracting States shall notify each other that the constitutional requirements for the entry into force of this Agreement have been complied with.

(2) The Agreement shall enter into force thirty days after the date of the latter of the notifications referred to in paragraph 1 of this Article and its provisions shall have effect in respect of taxes for any year of assessment beginning on or after January 1st in the second calendar year following the year in which this Agreement enters into force.

Article 30

TERMINATION

This Agreement shall remain in effect indefinitely, but either Contracting State may terminate the Agreement, through diplomatic channels, by giving to the other Contracting State written notice of termination on or before June 30th in any calendar year beginning after the expiration of a period of five years from the date of its entry into force. In such an event the Agreement shall cease to have effect in respect of taxes for the year of assessment beginning on January 1st in the second calendar year next following the year in which the notice is given and for subsequent years of assessment.

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

DONE in duplicate at Kingston, Jamaica this 3rd day of October 1995, each in Bahasa Malaysia and the English language, both texts being equally authentic

For the Government of Malaysia
Wong see Wah
Deputy Minister of Finance

For the Government of Malta
John Dalli
Minister of Finance

PROTOCOL

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

(2) In connection with Article 7 'Business Profits':

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

(3) In connection with Article 10 'Dividends':

Under the Malta law in force, income tax paid by a company, as is referable to that part of its profits which is distributed by way of dividends, is assimilated with the personal income tax of the shareholder in receipt of such a dividend. In the shareholder's hands the dividend is charged to tax gross and the relevant amount of tax, so assimilated, is set off against the shareholder's tax liability on his income from all sources liable to tax.

(4) In connection with paragraph 4 of Article 13 'Technical Fees' it is understood that where paragraph 1 (a) or (b) of Article 15 is applicable, the provisions of Article 15 shall apply.

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

DONE in duplicate at Kingston, Jamaica this 3rd day of October 1995, each in English and Bahasa Malaysia language, both texts being equally authentic.

For the Government of Malaysia
Wong see Wah
Deputy Minister of Finance

For the Government of Malta
John Dalli
Minister of Finance