



# **Double Taxation Avoidance Agreement between Malaysia and Hungary**

Effective January 1, 1993

## **DEZAN SHIRA & ASSOCIATES**

Corporate Establishment, Tax, Accounting & Payroll Throughout Asia

This document was downloaded from ASEAN Briefing ([www.aseanbriefing.com](http://www.aseanbriefing.com)) and was compiled by the tax experts at Dezan Shira & Associates ([www.dezshira.com](http://www.dezshira.com)).

Dezan Shira & Associates is a specialist foreign direct investment practice, providing corporate establishment, business advisory, tax advisory and compliance, accounting, payroll, due diligence and financial review services to multinationals investing in emerging Asia.

P.U. (A) 425/1989  
Signed: 22 May 1989  
Effective Date: 1 January 1993

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

The Government of Malaysia and the Government of the Hungarian People's Republic desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, and to further develop and facilitate their economic relationship, have agreed as follows:

Article 1

**PERSONAL SCOPE**

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

Article 2

**TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed by a Contracting State, irrespective of the manner in which they are levied.
2. The taxes which are the subject of this Agreement are:
  - (a) in Malaysia:
    - (i) the income tax and excess profit tax;
    - (ii) the supplementary income tax, that is, development tax; and
    - (iii) the petroleum income tax;(hereinafter referred to as "Malaysian Tax");
  - (b) in the Hungarian People's Republic:
    - (i) the general income tax;
    - (ii) the profit taxes;

- (iii) the special corporation tax;
  - (iv) the town and community contribution;
- (hereinafter referred to as "Hungarian tax").

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

### Article 3

#### **GENERAL DEFINITIONS**

1. In this Agreement, unless the context otherwise requires:
  - (a) the term "Malaysia" means the Federation of Malaysia and includes any area beyond and 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 as an area within which the rights of Malaysia with respect to the exploitation and exploration of natural resources, whether living or non-living, may be exercised.
  - (b) the term "Hungarian People's Republic" when used in a geographical sense means the territory of the Hungarian People's Republic;
  - (c) the terms "a Contracting State" and "the other Contracting State" mean Malaysia or the Hungarian People's Republic 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 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 Hungarian tax, as the context requires;
  - (h) the term "national" means:

- (i) any individual possessing the nationality or 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 which has its place of effective management in 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 the Hungarian People's Republic, the Minister of Finance or his authorised 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 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 any person who, under the tax laws of that State, is a resident thereof by reason of his domicile, residence, place of management or any other criterion of a similar nature.

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

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him. If he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has 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, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where, by reason of 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 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, a quarry or any other place of extraction of natural resources including timber or other forest produce;
- (g) a farm or plantation;
- (h) a building site or construction, installation or assembly project which exists for more than six months.

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

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

- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

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

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

- (a) he has, and habitually exercises in the first-mentioned State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise;
- (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 if the transactions between the agent and the enterprise were made under conditions which differ from those which would be made between independent enterprises.

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

#### Article 6

### **INCOME FROM IMMOVABLE PROPERTY**

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

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

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

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of 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 reasonably allocable expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether 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 making an estimate, 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 from the operation of 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. Income of an enterprise having its place of effective management in one of the Contracting States derived from the other Contracting State from the operation of ships in international traffic may be taxed in that other Contracting State, but the tax chargeable in that other State on such income shall be reduced by an amount equal to fifty per cent of such tax.



3. 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**

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

2. Dividends paid by a company which is a resident of the Hungarian People's Republic to a resident of Malaysia may be taxed in the Hungarian People's Republic according to the laws of the Hungarian People's Republic, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

3. Dividends paid by a company which is a resident of Malaysia to a resident of the Hungarian People's Republic 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 projected to the same taxation treatment as

income from shares by the laws of the State of which the company making the distribution 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 profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such 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 also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the interest, 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 the Hungarian People's Republic 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 paragraph 2 interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State where it is paid:

- (a) to the Government of that other State;
- (b) to the Central Bank of that other State; or

- (c) in respect of a loan provided, guaranteed or insured by the Government of that other State which may be agreed upon between the competent authorities of the Contracting States.

5. 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.

6. 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.

7. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority 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.

8. 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 per cent of the gross amount of the royalties.

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

- (a) 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;
- (b) the use of, or the right to use, cinematograph films, 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 State itself, a political subdivision, a local authority 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, 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.

#### 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 that other State. However, gains from the alienation of ships or aircraft operated in international traffic by an enterprise having its place of effective management in a Contracting State and movable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.

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

#### Article 14

### **INDEPENDENT PERSONAL SERVICES**

1. 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, in the following circumstances, such income may be taxed in the other Contracting State but only so much of his income may be taxed in that other State as is derived from his activities performed in that State:

- (a) if his stay in the other State is for a period or periods amounting to or exceeding in the aggregate 183 days in the calendar year concerned; or
- (b) if the remuneration for his services in the other State is either derived from residents of that State or borne by a permanent establishment which a person not resident in that State has in that State and which, in either case exceeds US 4,000 dollars in the calendar year concerned, notwithstanding that his stay in that State is for a period or periods amounting to less than 183 days during that 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 15

### **DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21 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 Contracting 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 derived in respect of an employment exercised aboard a ship or aircraft, operated in international traffic, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

#### Article 16

#### **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 any other similar organ of a company which is a resident of the other Contracting State, may be taxed in that other State.

#### Article 17

#### **ARTISTES AND ATHLETES**

1. Notwithstanding the provisions of Articles 14 and 15 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, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article income mentioned in this Article shall be exempt from tax in the Contracting State in which the activity of the entertainer or athlete is exercised provided that this activity is supported in a considerable part out of public funds of this State or of the other State or the activity is exercised under a cultural agreement or arrangement between the Contracting States.

#### Article 18

### **PENSIONS AND ANNUITIES**

1. Subject to the provisions of paragraph 2 of Article 19, 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. The term "annuity" means 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 19

### **GOVERNMENT SERVICE**

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

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

(i) is a national of 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, a political subdivision or a local authority thereof to any individual in respect of services rendered to that State, political subdivision or a local authority thereof shall be taxable only in that State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20

**STUDENTS AND TRAINEES**

Payments which a student or an apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 21

**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 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 which is subject to tax in the first-mentioned Contracting State.

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 22

**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 23

**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, Hungarian tax payable under the laws of the Hungarian People's Republic and in accordance with this Agreement by a resident of Malaysia in respect of income derived from the Hungarian People's Republic 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. In the Hungarian People's Republic:
  - (i) Where a resident of the Hungarian People's Republic derives income which, in accordance with the provisions of this Agreement may be taxed in Malaysia, the Hungarian People's Republic shall, subject to the provisions of subparagraphs (ii) and (iii), exempt such income from tax.
  - (ii) Where a resident of the Hungarian People's Republic derives items of income which, in accordance with the provisions of Articles 10, 11 and 12 may be taxed in Malaysia the Hungarian People's Republic shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Malaysia. Such deduction shall not, as computed before the deduction is given which is attributable to such items of income derived from Malaysia.
  - (iii) Where in accordance with any provision of the Agreement income derived by a resident of the Hungarian People's Republic is exempt from tax in the Hungarian People's Republic, the Hungarian People's Republic may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.
3. For purposes of paragraph 2, taxes which have been relieved or reduced in Malaysia by virtue of special incentive laws for the promotion of the economic development of Malaysia or any other provisions which may subsequently be introduced in Malaysia in modification of, or in addition to, those laws or by virtue of the provisions of this Agreement shall be deemed to have been paid and shall wherever applicable be allowed as a credit in the Hungarian People's Republic in an amount equal to the tax which would have been paid if no such relief or reduction had been made.

#### Article 24

#### **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 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) a Contracting State to grant to nationals of the other Contracting State not resident in the first-mentioned State those personal allowances, reliefs and reductions for tax purposes which are by law available on the date of signature of this Agreement only to nationals of the first-mentioned State who are not resident in that State.

5. In this Article, the term "taxation" means taxes to which this Agreement applies.

#### Article 25

#### **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 24, 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. 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 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 purposes of reaching an agreement in the preceding paragraphs.

Article 26

**EXCHANGE OF INFORMATION**

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

Article 27

**DIPLOMATIC AND CONSULAR OFFICERS**

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

Article 28

**ENTRY INTO FORCE**

1. The Governments of the Contracting States shall notify to each other that the requirements according to their laws for entry into force of this Agreement have been complied with.

2. This Agreement shall enter into force after sixty days after the date of the latter of the notifications referred to in paragraph 1 and its provisions shall apply

for the year of assessment beginning on the first day of January in the calendar year next following the year in which the Agreement enters into force and subsequent years of assessment.

Article 29  
**TERMINATION**

This Agreement shall remain in force until terminated by the Government of one of the Contracting States. The Government of either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year following after the period of five years from the date on which the Agreement enters into force. In such event the Agreement shall cease to have effect for the year of assessment beginning on the first day of January in the calendar year next following the year in which the notice is given and subsequent years of assessment.

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

DONE in duplicate at Budapest this 22nd day of May 1989, each in Bahasa Malaysia, Hungarian and the 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**

At the signing today of the Agreement between the Government of Malaysia and the Government of the Hungarian People's Republic for the avoidance of double taxation with respect to taxes on income the undersigned have agreed upon the following provisions which shall form an integral part of the Agreement.

1. Concerning Article 5, it is understood that the term "place of business" includes also a place of production.
2. Concerning Article 8, operation in international traffic of ships or aircraft, includes auxiliary activities of the enterprise, for example transport by bus between a town and the airport in so far as these activities are directly connected with international transport.
3. Concerning Article 10, if after the date of signature of this Agreement the existing system of taxation in Malaysia applicable to the income and distributions of companies is altered by the introduction of a tax on the income or profits of a company (for which no credit or only partial credit is given to its shareholders)

and of a further tax on dividends paid by the company, the Malaysian tax on dividends, being dividends paid by a company which is resident in Malaysia for the purposes of Malaysian tax, and to which resident of Hungary is beneficially entitled, shall not exceed 10 per cent of the gross amount of the dividends.

4. Concerning Article 11, in the case of the Hungarian People's Republic paragraph 4 (c) of this Article also includes loans provided, guaranteed or insured by the National Bank of Hungary (Central Bank).

5. Concerning Article 14, the competent authorities may by mutual agreement vary the amount of remuneration stated in paragraph 1 (b).

6. Concerning Article 23, the Hungarian People's Republic recognizes that in the case of dividends received by a resident of the Hungarian People's Republic from a company resident in Malaysia, there is a tax imposed on them. Presently this is imposed at the rate of 40 per cent which is equivalent to the rate of income tax imposed on the company paying the dividends. The Hungarian People's Republic also understands that the tax withheld on the dividends may be varied to coincide with the rate of Income Tax imposed on companies. However, should the rate imposed on non-residents diverge from the Income Tax rate of companies by more than 10 per cent, the Hungarian People's Republic reserves the right to renegotiate this Article and any resolution would be done through exchange of letters.

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

DONE in duplicate at Budapest this 22nd day of May 1989, each in Bahasa Malaysia. Hungarian and the English language, the three texts being equally authentic. In the event of there being a dispute in the interpretation and the application of this Protocol, the English text shall prevail.