ASEAN BRIEFING

Double Taxation Avoidance Agreement between Malaysia and India

Completed on May 14, 2001

DEZAN SHIRA & ASSOCIATES

Corporate Establishment, Tax, Accounting & Payroll Throughout Asia

MALAYSIA

27. Agreement for Avoidance of Double Taxation and Prevention of Fiscal Evasion with Malaysia

Whereas the annexed Agreement between the Government of the Republic of India and the Government of Malaysia for the avoidance of double taxation and the prevention of fiscal evasion with respect to Taxes on income has come into force on the 14th August, 2003, on the notification by both the Contracting States to each other, under Article 28 of the said Agreement, of the completion of the procedures required by their respective laws for bringing into force of the said Agreement.

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India.

Notification: *No. GSR 667(E), dated 12-10-2004.*

ANNEXURE

AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE REPUBLIC OF INDIA 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 Republic of India Desiring to conclude an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income and with a view to promoting economic co-operation between the two countries, 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 or its political sub-divisions or local authorities, 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

(*ii*) the petroleum income-tax;

(hereinafter referred to as “Malaysian Tax”);

(*b*) in India—

the income-tax including any surcharge thereon;

(hereinafter referred to as “Indian tax”).

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

ARTICLE 3 : **GENERAL DEFINITIONS** - *1.* 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 "India" means the territory of India and includes the territorial sea and airspace above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdictions, according to the Indian law and in accordance with international law and the U.N. Convention on the Law of the Sea;

(*c*) the terms "a Contracting State" and "the other Contracting State" mean Malaysia or India as the context requires;

(*d*) the term "company" means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective Contracting States;

(*e*) 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 India, the Central Government in the Ministry of Finance (Department of Revenue) of their authorized representative;

(*f*) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" means 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 "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;

(*h*) the term "national" means—

(*i*) any individual possessing the nationality or citizenship of a Contracting State; and

(*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 "person" includes an individual, a company, and any other body of persons;

(*j*) the term "tax" means Malaysian tax or Indian tax, as the context requires, but shall not include any amount which is payable in respect of a default or omission in relation to the taxes to which this Agreement applies or which represents a penalty or fine imposed relating to those taxes.

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 law 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 any person who, under the tax laws of that State, is liable to tax therein 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. If the State in which its place of effective management is situated cannot be determined, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 sales outlet;

(*i*) a warehouse;

(*j*) a building site or construction, installation or assembly project which exists for more than nine 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 nine months in connection with a construction, installation or assembly project which is being undertaken in that other State.

5. Notwithstanding the provisions of paragraphs 1 and 2, a person other than a broker, general commission agent or any other agent of an independent status to whom paragraph 7 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 such a person :

(*a*) 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*) has no such authority, but habitually 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*) manufactures or processes in the first-mentioned State for the enterprise goods or merchandise belonging to the enterprise.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. 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, such a person shall not be considered an agent of an independent status if the transactions between the agent and the enterprise were not made under arm's length conditions.

8. 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 (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. 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 natural resources including timber or other forest produce. Ships, boats and aircraft shall not be regarded as immovable property.

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

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of 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 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 in accordance with the provisions of and subject to the limitations of the tax laws of that State.

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

5. 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.

6. 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 by that enterprise of ships or aircraft in international traffic shall be taxable only in that State.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall mean profits derived by an enterprise described in paragraph 1 from the transportation by sea or air respectively of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of ships or aircraft including :

(*a*) the sale of tickets for such transportation on behalf of other enterprises; and

(*b*) the rental of ships or aircraft incidental to any activity directly connected with such transportation.

3. Profits of an enterprise of a Contracting State described in paragraph 1 from the use, maintenance, or rental of containers (including trailers, barges and related equipment for the transport of containers) used in connection with the operation of ships or aircraft in international traffic shall be taxable only in that State.

4. The provisions of paragraphs 1 and 3 shall also apply to profits from participation in a pool, a joint business, or an international operating agency.

5. For the purposes of this Article, interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of ships or aircraft, and the provisions of Article 11 shall not apply in relation to such interest.

6. Gains derived by an enterprise of a Contracting State described in paragraph 1 from the alienation of ships, aircraft or containers owned and operated by the enterprise, the income from which is taxable only in that State, shall be taxed only in that State.

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. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

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

3. The term “dividends” as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment in that other State, or fixed base 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 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State provided it is derived and beneficially owned by :

(*a*) in the case of Malaysia :

(*i*) the Government of Malaysia;

(*ii*) the Government of the State;

(*iii*) the Bank Negara Malaysia;

(*iv*) the local authorities;

(*v*) the statutory bodies; and

(*vi*) the Export-Import Bank of Malaysia Berhad (EXIM Bank);

(*b*) in the case of India :

(*i*) the Government;

(*ii*) the political sub-divisions;

(*iii*) the statutory bodies;

(*iv*) the local authorities;

(*v*) the Export-Import Bank of India (EXIM Bank);

(*vi*) the Reserve Bank of India;

(*vii*) the Industrial Finance Corporation of India;

(*viii*)the Industrial Development Bank of India;

(*ix*) the National Housing Bank;

(*x*) the Small Industries Development Bank of India; and

(*xi*) the Industrial Credit and Investment Corporation of India (ICICI);

(*c*) any other institutions as may be agreed from time to time between the competent authorities of the Contracting States.

4. 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, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purposes of this Article.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, 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 or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. 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 10 per cent of the gross amount of the royalties.

3. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of a literary, artistic or scientific work including cinematograph films or recordings on any means of reproduction for use in connection with television or radio broadcasting, any patent, trade mark, design or model, plan, know-how, computer software programme, secret formula or process, or any industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

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, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, 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 or a fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, 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 : **FEES FOR TECHNICAL SERVICES** - *1.* Fees for technical services 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, fees for technical services 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 fees for technical services, the tax so charged shall not exceed 10 per cent of the gross amount of the fees for technical services.

3. The term “fees for technical services” means payment of any kind in consideration for the rendering of any managerial, technical or consultancy services including the provision of services by technical or other personnel but does not include payments for services mentioned in Article 14 and Article 15 of this Agreement.

4. The provisions of paragraph 1 of this Article shall not apply if the beneficial owner of the fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the fees for technical services are effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the fees for technical services 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 only apply 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 : **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 also be taxed in the other Contracting State :

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

(*b*) if his stay in the other State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State; or

(*c*) if the remuneration for his services in the other Contracting State is either derived from a resident of that State or borne by a permanent establishment or fixed base which a person not resident in that State has in that State and which, in either case exceeds in value an amount equivalent to two thousand U.S. dollars in the fiscal year concerned.

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

ARTICLE 15 : **DEPENDENT PERSONAL SERVICES** - *1.* Subject to the provisions of Articles 16, 17, 19 and 20, 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 any twelve month period commencing or ending in the fiscal year concerned; and

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

(*c*) the remuneration is not borne by a resident or permanent establishment or fixed base which the employer has in the other State or by a person carrying on independent personal services in the other Contracting State.

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

ARTICLE 16 : **DIRECTORS’ FEES** - Director’s fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State, may be taxed in that other State.

ARTICLE 17 : **ARTISTES AND SPORTSMEN** - *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 a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the contracting State in which the activities of the entertainer or sportsman are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to remuneration or profits derived from activities exercised in a Contracting State if the visit to that State is directly or indirectly supported wholly or substantially from the public funds of the other Contracting State, a political sub-division, a local authority or a statutory body thereof.

ARTICLE 18 : **NON-GOVERNMENT PENSIONS AND ANNUITIES** - *1.* Subject to the provisions of paragraph 2 of Article 19, any pension 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” 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 19 : **GOVERNMENT SERVICE** - *1.* (*a*) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority or a statutory body thereof to an individual in respect of services rendered to that State or political sub-division 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 other State and the recipient is a resident of that other State who :

(*i*) is a national of that other State; or

(*ii*) did not become a resident of that other 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 sub-division or a local authority or a statutory body thereof to an individual in respect of services rendered to that State, political sub-division, local authority or statutory body thereof shall be taxable only in that State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pension in respect of services rendered in connection with any trade or business carried on by a Contracting State, a political sub-division or a local authority or a statutory body thereof.

ARTICLE 20 : **STUDENTS AND TRAINEES** - *1.* An individual who is or was a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in the other State solely :

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

(*b*) as a business or technical apprentice; or

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

shall be exempt from tax in that other State on—

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

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

(*iii*) any remuneration not exceeding an amount equivalent to two thousand U.S. Dollars per annum in respect of services in that other State provided the services are performed in connection with his study, research or training or are necessary for the purposes of his maintenance.

2. The benefits in respect of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken. However, in no event shall any individual have the benefits or paragraph (*iii*) of this Article for more than seven consecutive years from the date he first arrived for such purpose in that other Contracting State.

ARTICLE 21 : **TEACHERS AND RESEARCH SCHOLARS** - *1.* An individual who is or was 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.

3. For the purposes of this Article and Article 20, an individual shall be deemed to be a resident of a Contracting State if he is resident in that Contracting State in the immediately preceding fiscal year before he visits the other Contracting State.

ARTICLE 22 : **OTHER INCOME** - 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.* The laws in force in either of the Contracting States will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Agreement.

2. In the case of Malaysia, double taxation shall be eliminated as follows:

Subject to the laws of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, tax paid in India under the taxation laws of India by a resident of Malaysia in respect of income derived from India shall be allowed as a credit against tax payable in Malaysia in respect of that income. Where such income is a dividend paid by a company which is a resident of India to a company which is a resident of Malaysia and which owns not less than 10 per cent of the voting shares of the company paying the dividend, the credit shall take into account tax paid in India by that company in respect of its income out of which the dividend is paid. The credit shall not, however, exceed that part of the Malaysian tax, as computed before the credit is given, which is attributable to such item of income.

3. For the purposes of paragraph 2, the term "tax paid in India" shall be deemed to include the tax which would, under the laws of India and in accordance with this Agreement, have been payable on any income derived from sources in India had the income not been taxed at a reduced rate or exempted from Indian tax in accordance with the provisions of this Agreement and the special incentives under the Indian laws for the promotion of economic development of India which were in force at the date of signature of this Agreement or any other provisions which may subsequently be introduced in India in modification of, or in addition to, those laws so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character.

4. In the case of India, double taxation shall be eliminated as follows:

Where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Malaysia, India shall allow as a deduction from the tax on the income of that resident an amount equal to the amount of tax paid in Malaysia whether directly or by deduction at source. Such amount shall not, however, exceed that part of the tax (as computed before the deduction is given) which is attributable to the income which may be taxed in Malaysia.

5. For the purposes of paragraph 4, the term "tax paid in Malaysia" shall be deemed to include the 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 the provisions of this Agreement and the special incentives under the Malaysian laws for the promotion of economic development of Malaysia which were in force at the date of signature of this Agreement or any other provisions which may subsequently be introduced in Malaysia in modification of, or in addition to, those laws so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character.

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 in the same circumstances. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents. Further, this provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which an enterprise of the other Contracting State has in the first-mentioned State at a rate higher than that imposed on the profits of a similar enterprise of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Agreement.

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 the first-mentioned State are or may be subjected.

4. Nothing in this Article shall be construed so as to prevent either Contracting State from limiting to its nationals the enjoyment of tax incentives designed to promote economic development in that State.

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 this 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 notwithstanding any time limits in the domestic laws 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.

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 States shall exchange such information including documents as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by 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, an administrative body or reviewing authority) involved in 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, but 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 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 Contracting States shall notify each other in writing, through diplomatic channels, of the completion of the procedures required by the respective laws for the entry into force of this Agreement.

2. This Agreement shall enter into force thirty days after the receipt of the latter of the notifications referred to in paragraph 1 of this Article.

3. The provisions of this Agreement shall have effect :

(*a*) in Malaysia :

(*i*) in respect of Malaysian tax, other than petroleum income-tax, to tax chargeable for any year of assessment beginning on or after the first day of January in the calendar year following the year in which this Agreement enters into force;

(*ii*) in respect of petroleum income-tax, to tax chargeable for any year of assessment beginning on or after the first day of January of the second calendar year following the year in which this Agreement enters into force; and

(*b*) in India;

in respect of income in any fiscal year beginning on or after the first day of April next following the calendar year in which the Agreement enters into force.

4. The Agreement between the Government of Malaysia and the Government of India for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to Taxes on Income signed at New Delhi, India on the 25th day of October, 1976 shall cease to have effect when the provisions of this Agreement become effective in accordance with the provisions of paragraph 3.

ARTICLE 29 : **TERMINATION** - This Agreement shall remain in force indefinitely but either Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State through diplomatic channels, written notice of termination and, in such event, this Agreement shall ceases to have effect :

(*a*) in Malaysia :

(*i*) in respect of Malaysian tax, other than petroleum income-tax, to tax chargeable for any year of assessment beginning on or after the first day of January in the calendar year following the year in which the notice is given;

(*ii*) in respect of petroleum income-tax, to tax chargeable for any year of assessment beginning on or after the first day of January of the second calendar year following the year in which the notice is given; and

(*b*) in India :

in respect of income arising in any fiscal year on or after the 1st day of April next following the date on which the notice is given.

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

Done in duplicate at Putrajaya this 14th day of May, 2001, each in the Malay, Hindi and English language, all 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 time of signing the Agreement between the Government of Malaysia and the Government of the Republic of India for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed that the following provisions shall form an integral part of the Agreement :

It is understood that :

1. For the purposes of the Agreement, the term "fiscal year" wherever it appears means :

(*i*) in the case of Malaysia, the meaning as assigned by section 20 of the Income-tax Act, 1967;

(*ii*) in the case of India, the "previous year" as defined under section 3 of the Income-tax Act, 1961.

2. With reference to paragraph 1(*j*) of article 3, the tax shall not include any amount which is payable by way of a penalty or fine for any default or omission in relation to taxes to which this Agreement applies or which represents any other penalty or fine imposed relating to those taxes.

3. With reference to paragraph 7 of article 5, the term "arm's length conditions" means the conditions which would have been made or imposed between two enterprises in their commercial or financial relations which would not have differed from those which would have been made or imposed between independent enterprises.

4. With reference to paragraph 1 of article 6, this paragraph should not be construed as preventing the country of residence to also tax the income under this article.

5. With reference to sub-paragraphs 3(*a*)(*i*) and (*ii*) of article 28 and sub-paragraphs (*a*)(*i*) and (*ii*) of article 29, the term "year of assessment" has the meaning assigned to under section 2 of the Income-tax Act, 1967.

Done in duplicate at Putrajaya this 14th day of May, 2001, each in the Malay, Hindi and English language, all texts being equally authentic. In the event of there being a dispute in the interpretation and the application of this Agreement, the English text shall prevail.

For the Government of Malaysia

For the Government of the Republic of India.