



Double Taxation Avoidance Agreement between Malaysia and Italy

Effective January 1, 1977

DEZAN SHIRA & ASSOCIATES

Corporate Establishment, Tax, Accounting & Payroll Throughout Asia

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AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE REPUBLIC OF ITALY 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 Italy desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

Article 1

PERSONAL SCOPE

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

Article 2

TAXES COVERED

1. The taxes which are the subject of this Agreement are:

(a) in the case of Italy:

- the personal income tax (l'imposta sul reddito delle persone fisiche);
- the corporate income tax (l'imposta sul reddito delle persone giuridiche); even if they are collected by withholding taxes at the source;

(hereinafter referred to as "Italian tax").

(b) in the case of Malaysia:

- income tax and excess profit tax;
- supplementary income taxes, that is, tin profits tax, development tax and timber profits tax; and
- petroleum income tax;

(hereinafter referred to as "Malaysian tax").

2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or

in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant 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 adjacent to the territorial waters of Malaysia which has been or may hereafter be designated under the laws of Malaysia concerning the Continental Shelf as an area within which the rights of Malaysia with respect to the sea bed and sub-soil and their natural resources may be exercised;
- (b) the term "Italy" means the Republic of Italy and includes the areas beyond the territorial sea of Italy and in particular the sea bed and sub-soil adjacent to the territories of the peninsula and of the Italian islands and situated beyond the territorial sea up to the limits prescribed by the Italian laws to permit the exploration and exploitation of natural resources of the said areas;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Italy or Malaysia as the context requires;
- (d) the term "person" shall have the meaning assigned to it in the taxation laws of the respective Contracting States;
- (e) the term "company" means any body corporate or any entity which is treated as a body corporate in the taxation laws of the respective Contracting States;
- (f) the terms "tax" means Malaysian tax or Italian tax, as the context requires;
- (g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise 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;

- (i) the term "national" means
 - (1) any individual possessing the nationality or citizenship of a Contracting State;
 - (2) any legal person, partnership, association and other entity deriving its status as such from the law in force in a Contracting State;
- (j) the term "competent authority" means
 - (1) in the case of Italy, the Ministry of Finance;
 - (2) in the case of Malaysia, the Minister of Finance or his authorised representative.

2. As regards the application of the Agreement by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the Agreement.

Article 4

FISCAL DOMICILE

1. For the purposes of this Agreement, the term "resident of a Contracting State" means:

- (a) in the case of Italy, a person who is resident in Italy for the purposes of Italian tax; or
- (b) in the case of Malaysia, a person who is resident in Malaysia for the purposes of Malaysian tax.

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

- (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interest);
- (b) if the Contracting State in which he has his centre of vital interest cannot be determined or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
- (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

Article 5

PERMANENT ESTABLISHMENT

1. For the purpose of this Agreement. the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially :

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

3. The term "permanent establishment" shall not be deemed 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 fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

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 acting in a Contracting State on behalf of an enterprise of the other Contracting State -- other than an agent of an independent status to whom paragraph 6 applies -- 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 on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for that enterprise;
- (b) he has no such authority, but maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

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

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

Article 6

INCOME FROM IMMOVABLE PROPERTY

1. Income from immovable property may be taxed in the Contracting State in which such property is situated.

2. The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property 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. The term shall also include 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 extraction of natural resources or of 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 apply also to the income from the immovable property of an enterprise and to income from immovable property used for the performance of professional services.

Article 7

BUSINESS INCOME

1. The income 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 income of the enterprise may be taxed in that other State but only so much of that income 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 income 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 the determination of 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.

4. No income 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 income 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 income includes any items of income which is dealt with separately in another Article of this Agreement, the provisions of that other Article shall not be affected by the provisions of this Article.

Article 8

SHIPPING AND AIR TRANSPORT

1. Income of an enterprise from the operation of ship or aircraft in international traffic shall be taxable only in the place of effective management of the enterprise is situated.

2. The provisions of paragraph 1 shall also apply to income derived from the participation in a pool, a joint business or in 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 income or profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of these conditions, have not so accrued, may be included in the income or 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 Italy to a resident of Malaysia may be taxed in Italy, and according to the law of Italy, 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 Italy who is the beneficial owner and is subject to Italian tax in respect 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:

Provided that 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 resident in 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. If after the date of signature of the Agreement the system of taxation in Malaysia applicable to the income and distributions of companies is altered by the introduction of corporation tax (for which no credit is given to the shareholders) and a further dividend tax, then the Malaysian tax chargeable on dividends paid to a resident of Italy shall not exceed 10 per cent of the gross amount of the dividends.

5. Nothing in the foregoing paragraphs of this Article shall affect the taxation of the company in respect of the profits out of which the dividends are paid.

6. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits or income, as well as income from other corporate rights assimilated to income from shares by the taxation law of the Contracting State of which the company making the distribution is a resident.

7. The provisions of paragraphs 1, 2, 3 and 4 of this Article shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, in which the company paying the dividends is resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the dividends are taxable in that other State according to its own law.

8. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State shall not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of the other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment

situated in that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of 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 be taxed in the Contracting State in which it arises, and according to the law 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 of this Article, interest paid to a resident of Italy shall be exempt from Malaysian tax if the loan or other indebtedness in respect of which the interest is paid is an approved loan or a long-term loan.

4. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if the interest is paid to the Government of the other Contracting State or local authority or any agency or instrumentality (including a financial institution) in respect of loans made in application of an agreement concluded between the Government of the Contracting States.

5. The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

6. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient of the interest, being a resident of a Contracting State, carries on in the other Contracting State in which the interest arises a trade or business 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 interest is taxable in that other State according to its own law.

7. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political or an administrative sub-division, a local authority or statutory body thereof or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is

borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

8. Where, owing to a special relationship between the payer and the recipient 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that 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 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 be taxed in the Contracting State in which they arise, and according to the law 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. Notwithstanding the provisions of paragraph 2, approved industrial royalties derived from Malaysia by a resident of Italy who is the beneficial owner thereof shall be exempt from Malaysian tax.

4. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience. The term, however, does not include any royalty or other amount paid in respect of motion picture films or of tapes for radio or television broadcasting.

5. The provisions of paragraphs 1, 2 and 3 of this Article shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the royalties are taxable in that other State according to its own law.

6. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political or an administrative subdivision, a local authority or statutory body thereof or a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the

liability 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.

7. Where, owing to a special relationship between the payer and the recipient 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that 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 13

CAPITAL GAINS

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 including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) may be taxed in the other State. However, gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

Article 14

PERSONAL SERVICES

1. Subject to the provisions of Article 15, 17, 18, 19 and 20, salaries, wages and other similar remuneration or income in respect of personal (including professional) services derived by an individual who is a resident of a Contracting State, shall be taxable only in that State unless the services are performed in the other Contracting State. If the services are so performed, such remuneration or income as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration or income derived by an individual who is a resident of a Contracting State in respect of

personal (including professional) services performed in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in a calendar year, and
- (b) the remuneration or income is paid by, or on behalf of, a person who is not a resident of the other State, and
- (c) the remuneration or income is not borne by a permanent establishment which that person has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic, shall be taxed only in the Contracting State in which the place of effective management of the enterprise is situated.

Article 15

DIRECTORS' FEES

Notwithstanding the provisions of Article 14, directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 16

ARTISTES AND ATHLETES

1. Notwithstanding the provisions of Article 14, income derived by entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

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

3. The provisions of paragraphs 1 and 2 shall not apply to remuneration of 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 or an administrative subdivision, a local authority or statutory body thereof.

Article 17

PENSIONS

Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 18

GOVERNMENTAL FUNCTIONS

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political or an administrative subdivision or a local authority thereof to any individual in respect of services rendered to that State or sub-division or 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 State and the recipient is a resident of that other State who:

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

2. Any pension paid by, or out of funds created by, a Contracting State or a political or an administrative subdivision or a local authority thereof to any individual in respect of services rendered to that State or sub-division or local authority thereof shall be taxable only in that State unless the individual is a national of, and a resident of the other Contracting State.

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

Article 19

PROFESSORS AND TEACHERS

An individual who, at the invitation of a university, college, school or other similar recognised educational institution in a Contracting State, visits that State for a period not exceeding two years solely for the purpose of teaching or conducting research or both at such educational institution and who is, or was immediately before that visit, a resident of the other Contracting State on any remuneration for such teaching or research in respect of which he is subject to tax in the other State.

Article 20

STUDENTS AND BUSINESS APPRENTICES

An individual who is a resident in a Contracting State and is temporarily present in the other Contracting State solely:

- (a) as a student at a university, college, or school in the other State,
- (b) as a business or technical apprentice, or
- (c) as the recipient of a grant, allowance or award for the primary purpose of study or research from a religious, charitable, scientific or educational organization shall not be taxed in the other Contracting State in respect of remittances from abroad for the purposes of his maintenance, education or training or in respect of a scholarship grant. The same shall apply to any amount representing remuneration for services rendered in that other State, provided that such services are in connection with his studies or practical training or are necessary for the purpose of his maintenance for a period of time which is reasonably required to conclude his training or studies in that other State.

Article 21

OTHER INCOME

Item of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Agreement may be taxed in both Contracting State.

Article 22

METHOD FOR ELIMINATION OF DOUBLE TAXATION

1. It is agreed that double taxation shall be avoided in accordance with the following paragraphs of this Article.

2. If a resident of Italy owns items of income which are taxable in Malaysia, Italy, in determining its income taxes specified in Article 2 of this Agreement, may include in the basis upon which such taxes are imposed the said items of income, unless specific provisions of this Agreement otherwise provide.

In such a case, Italy shall deduct from the taxes so calculated the Malaysian tax on income, but in an amount not exceeding that proportion of the aforesaid Italian tax which such items of income bear to the entire income. On the contrary, no deduction shall be granted if the item of income is subjected in Italy to a final withholding tax by request of the recipient of the said income in accordance with the Italian law.

3. In the case of Malaysia, subject to the provisions of the law of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, the amount of Italian tax payable under the law of Italy and in accordance with the provisions of this Agreement, by a resident of Malaysia in respect of income from sources within Italy shall be allowed as a credit against Malaysian tax payable in respect of such income, but in an amount not exceeding that proportion of Malaysian tax which such income bears to the entire income chargeable to Malaysian tax.

4. For the purposes of paragraphs 2 and 3 of this Article, where tax in relation to dividends, interest or royalties arising in a Contracting State is exempted or reduced for a limited period in accordance with the laws of that Contracting State, such tax which has been exempted or reduced shall be deemed to have been paid at an amount not exceeding:

- (a) 10 per cent of the gross amount of the dividends referred to in Article 10:
- (b) 15 per cent of the gross amount of the interest referred to in Article 11;
and
- (c) 15 per cent of the gross amount of the royalties referred to in Article 12.

Article 23

LIMITATION OF RELIEF

Where this Agreement provides (with or without other conditions) that income from sources in a Contracting State shall be exempt from tax, or taxed at a reduced rate in that State and under the laws in force in the other Contracting State the said income is subject to tax by reference to the amount thereof which is remitted to or received in that other State and not by reference to the full amount thereof, then the exemption or reduction of tax to be allowed under this Agreement in the first-mentioned State shall apply to so much of the income as is remitted to or received in that other State.

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. Except where the provisions of Article 9, paragraph 8 of Article 11, or paragraph 7 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same condition as if they had been paid to a resident of the first-mentioned State.

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

5. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident.

6. In this Article the term "taxation" means taxes which are the subject of this Agreement.

Article 25

MUTUAL AGREEMENT PROCEDURE

1. Where a resident of a Contracting State considers that the actions of one or both 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 Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting States of which he is a national.

2. The competent authority shall endeavour, if the objections appear 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 not in accordance with the Agreement.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement.

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

Article 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall, upon request, exchange such information as is necessary for carrying out the provisions of this Agreement or for the prevention of fraud or fiscal evasion in relation to the taxes which are the subject of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those, including a court or administrative body, concerned with the assessment, collection, enforcement or prosecution in respect of those taxes or the determination of appeals in relations thereto.

2. In no case shall the provisions of paragraph 1 of this Article be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws 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 (ordre public).

Article 27

DIPLOMATIC AND CONSULAR OFFICIALS

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

Article 28

REFUNDS

1. Taxes withheld at the source in a Contracting State shall be refunded by request of the taxpayer if the right to collect the said taxes is affected by the provisions of this Agreement.

2. Claims for refund, which shall be presented within the time limit fixed by the law of the Contracting State which is obliged to make the refund, shall be accompanied by an official certificate of the Contracting State of which the taxpayer is a resident certifying the existence of the conditions required to be entitled to the application of the allowances provided for by this Agreement.

3. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this Article, in accordance with the provisions of the Article 25 of this Agreement.

Article 29

ENTRY INTO FORCE

1. Each of the Contracting States shall notify to the other the completion of the procedure required by its laws for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the latter of these notifications and shall thereupon have effect:

(a) in Italy:

in respect of income assessable for the taxable period commencing on or after the 1st January 1977 and subsequent taxable periods;

(b) in Malaysia:

in respect of income for the year 1977 or accounting year ending not later than the 31st December 1977 and assessable for the year of assessment commencing on the 1st January 1978 and subsequent years of assessment.

2. Claims for refund or credits arising in accordance with this Agreement in respect of any tax payable before the entry into force of this Agreement by residents of either of the Contracting States shall be lodged within two years from the date of entry into force of this Agreement or from the date the tax was charged whichever is later. Nothing herein contained shall reduce any longer time limit available to such resident for this purpose under the law of the Contracting State of which he is a resident.

Article 30

TERMINATION

This Agreement shall remain in force indefinitely but either of the Contracting States may terminate the Agreement, through diplomatic channels, by giving to the other Contracting State, notice of termination not later than the 30th June of any calendar year from the third year from the year in which the Agreement entered into force. In such event, the Agreement shall cease to have effect:

(a) in Italy:

in respect of income assessable for the taxable periods commencing on or after the 1st January in the calendar year following that in which the notice of termination is given;

b) in Malaysia:

in respect of income assessable for the year of assessment commencing on the 1st January in the second calendar year following that in which the notice of termination is given and subsequent years of assessment.

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

Done in duplicate at Kuala Lumpur this 28th day of January 1984 each in the Italian, Bahasa Malaysia and English languages the three texts being equally authoritative and in case there is any divergence of interpretation, the English text shall prevail.

On behalf of the Government of
Malaysia

On behalf of the Government of
the Republic of Italy

PROTOCOL

At the time of signing the Agreement between the Government of Malaysia and the Government of the Republic of Italy 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:

- (a) with reference to Article 2, paragraph 1(a), the expression "withholding taxes at the source" means the final withholding taxes;
- (b) with reference to Article 7, paragraph 3, the expression "expenses which are incurred for the purposes of the permanent establishment" means the expenses directly connected with the activity of the permanent establishment;
- (c) with reference to Article 8, an enterprise of a Contracting State deriving income from the operation of ships or aircraft in international traffic shall not be subject to any local income tax imposed in the other Contracting State;

- (d) with reference to Article 10, in accordance with the law of Malaysia dividends paid by a company which is resident of Malaysia shall include dividends paid by a company which is a resident of Singapore which for purpose of those dividends has declared itself to be a resident of Malaysia, but shall not include dividends paid by a company which is a resident of Malaysia which for the purpose of those dividends has declared itself to be a resident of Singapore;
- (e) with reference to Article 11, paragraph 3, the expression "approved loan" or "long-term loan" shall have the meaning that it has under Section 2(1) of the Income Tax Act 1967 of Malaysia (as amended);
- (f) with reference to Article 12, paragraph 3, the term "approved industrial royalties" means royalties as defined in paragraph 4 which are approved and certified by the competent authority of Malaysia as payable for the purpose of promoting industrial development in Malaysia and which are payable by an enterprise which is wholly or mainly engaged in activities falling within one of the following classes:
 - (a) manufacturing, assembling or processing;
 - (b) construction, civil engineering or shipbuilding; or
 - (c) electricity, hydraulic power, gas or water supply;
- (g) with reference to Article 20, the expression "services rendered" in the case of a student means any part-time employment;
- (h) with reference to Article 22, paragraph 4, interest which is exempted from tax by Malaysia in respect of an approved loan or a long-term loan in accordance with Article 11, paragraph 3, shall be regarded as exempted for a limited period during the period of such loan;
- (i) with reference to Article 24, nothing contained therein shall be construed as obliging 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 only to nationals of the first-mentioned State or to such other persons specified therein who are not resident in that State;
- (j) with reference to Article 24, paragraph 3, nothing contained therein shall be construed as preventing Malaysia from not giving any deduction in respect of any interest, royalties and other disbursements incurred by an enterprise if the appropriate tax has not been withheld according to the taxation laws of Malaysia;

- (k) with reference to Article 25, paragraph 1, the expression "notwithstanding the remedies provided by the taxation laws" means that the mutual agreement procedure is not an alternative to the proceedings of either Contracting State which shall have been initiated within the time limit of the respective national laws;
- (l) the provisions of paragraph 3 of Article 28 shall not prevent the competent authorities of the Contracting States from carrying out, by mutual agreement, other procedures for the deductions of taxes provided for in this Agreement.

Done in duplicate at Kuala Lumpur this 28th day of January 1984 each in the Italian, Bahasa Malaysia and English languages the three texts being equally authoritative and in case there is any divergence of interpretation, the English text shall prevail.

EXCHANGE OF NOTES

Excellency,

I have the honour to refer to the Agreement signed today between Malaysia and Italy for the avoidance of double taxation and to propose on behalf of the Government of the Republic of Italy that:

- (a) the film-hire duty imposed by Malaysia under the Cinematograph Film-Hire Duty Act 1965 (which in this context is deemed to be a tax on cinematograph film royalties) shall not exceed 15% of the gross amount of the film rental;
- (b) if the Government of Malaysia in any Agreement concluded with other OECD countries limits the rate of tax on cinematograph films or tapes for television or broadcasting to a rate less than fifteen per cent of the gross amount of the film rental, the two Governments shall consult each other with a view to modifying the rate of tax in order to extend the same treatment on a reciprocal basis. The Government of Malaysia shall inform the Government of Italy about any new Agreement with OECD countries which has a rate or tax which is less than fifteen per cent on such royalties, as soon as possible.

I have further the honour to propose that the present Note and Your Excellency's reply confirming the acceptance by the Government of Malaysia of the above proposal shall be regarded as constituting an Agreement that shall form an integral part of the Agreement for the avoidance of double taxation.

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

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of this date which reads as follows: "I have the honour to refer to the Agreement signed today between Malaysia and Italy for the avoidance of double taxation and to propose on behalf of the Government of the Republic of Italy that:

- (a) the film-hire duty imposed by Malaysia under the Cinematograph Film-Hire Duty Act 1965 (which in this context is deemed to be a tax on cinematograph film royalties) shall not exceed 15% of the gross amount of the film rental;
- (b) if the Government of Malaysia in any Agreement concluded with other OECD countries limits the rate of tax on cinematograph films or tapes for television or broadcasting to a rate less than fifteen per cent of the gross amount of the film rental, the two Governments shall consult each other with a view to modifying the rate of tax in order to extend the same treatment on a reciprocal basis. The Government of Malaysia shall inform the Government of Italy about any new Agreement with OECD countries which has a rate of tax which is less than fifteen per cent on such royalties, as soon as possible.

I have further the honour to propose that the present Note and Your Excellency's reply confirming the acceptance by the Government of Malaysia of the above proposal shall be regarded as constituting an Agreement that shall form an integral part of the Agreement for the avoidance of double taxation.

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

I have further the honour to confirm that the Government of Malaysia accepts the proposal contained in Your Excellency's Note, and agrees that the same and the present reply shall be regarded as constituting an Agreement between the two Governments.

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