



Double Taxation Avoidance Agreement between Malaysia and Kuwait

Effective January 1, 1988

DEZAN SHIRA & ASSOCIATES

Corporate Establishment, Tax, Accounting & Payroll Throughout Asia

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

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

P.U. (A) 210/2006
Signed: 5 February 2003
Effective Date: 1 January 1988

AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE STATE OF KUWAIT FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND FOR THE FOSTERING OF ECONOMIC RELATIONS

THE GOVERNMENT OF MALAYSIA
AND
THE GOVERNMENT OF THE STATE OF KUWAIT

Desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and for the fostering of economic relations, have agreed as follows:

Article 1

PERSONAL SCOPE

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

Article 2

TAXES COVERED

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

- (i) the corporate income tax;
- (ii) the 5% of the net profits of shareholding companies payable to the Kuwait Foundation for the Advancement of Science (KFAS); and
- (iii) the Zakat;

(hereinafter referred to as "Kuwait tax").

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

Article 3

GENERAL DEFINITIONS

1. In this Agreement, unless the context otherwise requires:
 - (a) the term "Malaysia" means the 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 "Kuwait" means the State of Kuwait and includes any area beyond the territorial sea which in accordance with international law has been or may be designated under the laws of Kuwait as an area in which Kuwait may exercise sovereign rights or jurisdiction;
 - (c) the terms "a Contracting State" and "the other Contracting State" mean Malaysia or Kuwait as the context requires;
 - (d) the term "person" includes an individual, a company and any other body of persons which is treated as a person for tax purposes;
 - (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

- (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term "tax" means Malaysian tax or Kuwaiti tax, as the context requires;
- (h) the term "national" means:
 - (i) in respect of Malaysia, any individual possessing the nationality or citizenship of Malaysia and any legal person, partnership, association and any other entity deriving its status as such from the laws in force in Malaysia;
 - (ii) in respect of Kuwait, any individual possessing the nationality of Kuwait and any legal person, partnership and association deriving its status as such from the laws in force in Kuwait;
- (i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (j) the term "competent authority" means:
 - (i) in the case of Malaysia, the Minister of Finance or his authorized representative; and
 - (ii) in the case of Kuwait, the Minister of Finance or his authorized representative.

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

Article 4 **RESIDENT**

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

- (b) in the case of Kuwait, an individual who has his domicile in Kuwait and is a national of Kuwait and a company which is incorporated in Kuwait or has its place of effective management in Kuwait.
2. For the purposes of paragraph 1 above:
- (a) Malaysia and its political subdivisions shall be deemed to be a resident of Malaysia,
 - (b) Kuwait shall be deemed to be a resident of Kuwait,
 - (c) government institutions shall be deemed, according to affiliation, to be a resident of Malaysia or of Kuwait. Any institution shall be deemed to be a government institution which has been created by the Government of one of the Contracting States or, in the case of Malaysia, of its political subdivisions, for the fulfillment of public functions and which is recognized as such by mutual agreement of the competent authorities of the Contracting States.
3. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him;
 - (b) 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);
 - (c) 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;
 - (d) 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.
4. Where, by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5

PERMANENT ESTABLISHMENT

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

2. The term "permanent establishment" includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources including timber or other forest produce;
- (g) a farm or plantation;
- (h) a building or construction site which exists for more than 12 months;
- (i) an installation or assembly project which exists for more than 6 months.

3. 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 6 months in connection with a construction, installation or assembly project which is being undertaken in that other State.

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

- (a) he has, and habitually exercises in the first-mentioned State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
- (b) he maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise; or
- (c) he manufactures or processes in the first-mentioned State for the enterprise goods or merchandise belonging to the enterprise.

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

However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he shall not be considered an agent of an independent status if the transactions between the agent and the enterprise were not made under arm's length conditions.

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

Article 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other State.
2. For the purposes of this Agreement, the term "immovable property" shall be defined in accordance with the laws of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil or gas wells, quarries and other places of extracting of natural resources including timber or other forest produce. Ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall apply also to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

Article 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much thereof as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses including executive and general administrative

expenses, which would be deductible if the permanent establishment were an independent enterprise, whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

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

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

SHIPPING AND AIR TRANSPORT

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

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

Article 9

ASSOCIATED ENTERPRISES

Where-

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

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

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

Article 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. Dividends paid by a company which is a resident of Malaysia to a resident of Kuwait who is the beneficial owner thereof shall be exempt from any tax in Malaysia which is chargeable on dividends in addition to the tax chargeable in respect of the income of the company. Nothing in this paragraph shall affect the provisions of the Malaysian law under which the tax in respect of a dividend paid by a company which is a resident of Malaysia from which Malaysian tax has been, or has been deemed to be, deducted may be adjusted by reference to the rate of tax appropriate to the Malaysian year of assessment immediately following that in which the dividend was paid.
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, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.
5. Where a company which is a resident of a Contracting State derives income or profits from the other Contracting State, that other State may not impose any tax on the dividends paid by the company to persons who are not

residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of income or profits arising in such other State.

Article 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

2. However, such interest may be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest to which a resident of Kuwait is beneficially entitled shall be exempt from Malaysian tax if the loan or other indebtedness in respect of which the interest is paid is an approved loan as defined in section 2(1) of the Income Tax Act, 1967 of Malaysia.

4. Notwithstanding the provisions of paragraphs 2 and 3, the Government of a Contracting State shall be exempt from tax in the other Contracting State in respect of interest derived by the Government from that other State.

5. For the purposes of paragraph 4, the term "Government":

- (a) in the case of Malaysia means the Government of Malaysia and shall include:
 - (i) the government of the states;
 - (ii) the local authorities;
 - (iii) the statutory bodies;
 - (iv) the Bank Negara Malaysia; and
 - (v) such institutions, the capital of which is wholly owned by the Government of Malaysia or the governments of the states, or the local authorities or the statutory body thereof, as may be agreed upon from time to time between the competent authorities of the Contracting States;

- (b) in the case of Kuwait means the Government of Kuwait and shall include:
 - (i) government institutions of Kuwait;
 - (ii) companies which are wholly owned directly or indirectly or controlled by the Government of Kuwait or a government institution thereof or by a combination of both; and
 - (iii) any other entities as may be agreed from time to time between the competent authorities of the Contracting States.

6. If a Government of a Contracting State participates in a loan indirectly through an agent or otherwise, the exemption referred to in paragraph 4 shall apply proportionally to the participation of that Government in such loan. The participation shall be evidenced by a certificate to this effect by the competent authority of the Contracting State.

7. 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.

8. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

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

10. 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 to the last-mentioned amount. In such 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 Contracting State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed:
 - (a) 10 per cent of the gross amount of the royalties where the royalties are as defined in sub-paragraph (a) of paragraph 3;
 - (b) 15 per cent of the gross amount of the royalties where the royalties are as defined in sub-paragraph (b) of paragraph 3.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for:
 - (a) the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or any copyright of scientific work, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience;
 - (b) the use of, or the right to use, cinematograph films, or tapes for radio or television broadcasting, any copyright of literary or artistic work.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is that State or a statutory body thereof, or a resident of that Contracting State; where, however, the person paying such royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred, and

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

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such 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

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 or of movable property available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) may be taxed in that other State.

However, gains from the alienation of ships or aircraft operated by an enterprise of a Contracting State in international traffic and movable property pertaining to the operation of such ships or aircraft shall be taxable only in the State of which the enterprise is a resident.

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

Article 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall

be taxable only in that State. However, in the following circumstances such income may be taxed in the other Contracting State:

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

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

Article 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19 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 the calendar year concerned; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a resident or a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard 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 16

DIRECTORS' FEES

Directors' fees and other 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 ATHLETES

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

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

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

Article 18

PENSIONS AND ANNUITIES

1. Subject to the provisions of paragraph 2 of Article 19, any pensions and other similar remuneration for past employment or any annuity arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

2. The term "annuity" 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 subdivision, a local authority or a statutory body thereof to any individual in respect of services rendered to that State or political subdivision, local authority or statutory body thereof shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other 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, a political subdivision, a local authority or a statutory body thereof to any individual in respect of services rendered to that State, political subdivision, 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 or pensions in respect of services rendered in connection with any trade or business carried on by a Contracting State, a political subdivision, a local authority or a statutory body thereof.

Article 20

STUDENTS AND TRAINEES

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

- (a) as a student at a recognised university, college, school or other similar recognised educational institution in that other State;
- (b) as a business or technical apprentice; or
- (c) as a recipient of a grant, allowance or award for the primary purpose of study, research or training from the 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 US 2,500 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.

Article 21

TEACHERS AND RESEARCHERS

1. An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State, and who, at the invitation of any university, college, school, or other similar educational institution, visits that other State for a period not exceeding two years solely for the purpose of teaching or research or both at such educational institution shall be exempt from tax in that other State on any remuneration for such teaching or research which is subject to tax in the first-mentioned Contracting State.

2. This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

Article 22

INCOME NOT EXPRESSLY MENTIONED

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that Contracting State except that if such income is derived from sources in the other Contracting State, it may also be taxed in that other State.

Article 23

ELIMINATION OF DOUBLE TAXATION

1. The laws in force in either of the Contracting States shall continue to govern the taxation in the respective Contracting States except where provisions to the contrary are made in this Agreement.

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

3. Subject to the laws of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, Kuwait tax payable under the laws of Kuwait and in accordance with this Agreement by a resident of Malaysia in respect of income derived from Kuwait shall be allowed as a credit against Malaysian tax payable in respect of that income.

4. In the case of Kuwait:

If a resident of Kuwait owns items of income which are taxable in Malaysia, Kuwait may tax these items of income and may give relief for the Malaysian taxes suffered in accordance with the provisions of its domestic law.

In such a case, Kuwait may deduct from the taxes so calculated the income tax paid in Malaysia but in an amount not exceeding that proportion of the aforementioned Kuwait tax which such items of income bear to the entire income.

5. For the purposes of paragraph 4, taxes which have been exempted or reduced in Malaysia by virtue of special incentive laws for the promotion of the economic development of Malaysia or any other the Islamic Republic of Iran or any other provisions which may subsequently be introduced in Malaysia in modification of, or in addition to, those laws or by virtue of the provisions of this Agreement shall be deemed to have been paid and shall wherever applicable be allowed as a credit in Kuwait in an amount equal to the tax which would have been paid if no such exemption or reduction had been made.

6. For the purpose of paragraph 4, where royalties derived by a resident of Kuwait are, as film rentals, subject to cinematograph film-hire duty in Malaysia, that duty shall be deemed to be Malaysian tax.

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.

Provided that nothing in this Article shall be interpreted as imposing a legal obligation on either Contracting State to extend to the residents of the other,

the benefit of any treatment, preference or privilege which may be accorded to any other state or its residents by virtue of the formation of a customs union, economic union, a free trade area or any regional or sub-regional arrangement relating wholly or mainly to taxation or movement of capital to which such State may be a party.

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 other State carrying on the same activities.

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

4. Nothing in this Article shall be construed as obliging:

- (a) a Contracting State to grant to individuals who are residents of the other Contracting State any personal allowances, reliefs and reductions for tax purposes on account of civil status or family responsibilities which it grants to its own residents;
- (b) Malaysia to grant to nationals of Kuwait who are not residents in Malaysia those personal allowances, reliefs and reductions for tax purposes which are by law available on the date of signature of this Agreement only to nationals of Malaysia who are not residents in Malaysia.

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

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

Article 25

MUTUAL AGREEMENT PROCEDURE

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the taxation laws of those States, present his case to the competent authority

of the State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws of the Contracting State.

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

4. The competent authorities of the Contracting States may communicate with each other 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 as is necessary for carrying out the provisions of this Agreement. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts or reviewing authority) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

- (a) to carry out administrative measures at variance with the laws and administrative practices of that or of the other Contracting State;
- (b) to supply information which is 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

MISCELLANEOUS

1. The competent authorities of the Contracting States shall mutually agree on arrangements concerning the manner in which the limitations and exemptions contained in the foregoing Articles are to be implemented.
2. This Agreement shall not affect the right of residents of a Contracting State to benefit from tax and investment incentives, exemptions and allowances provided for by the other Contracting State in accordance with its domestic laws, regulations and administrative practices.

Article 28

DIPLOMATIC AND CONSULAR ACTIVITIES

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 29

ENTRY INTO FORCE

1. This Agreement shall be subject to ratification in accordance with the constitutional requirements of the two Contracting States and the instruments of ratification shall be exchanged at
2. This Agreement shall enter into force upon the exchange of the instruments of ratification and shall have effect in both Contracting States:
 - (a) in respect of all taxes withheld at source, to amounts in respect of taxes which are paid or credited on or after the first day of January 1988;
 - (b) in respect of other taxes:
 - (i) in Kuwait, to taxes chargeable for any tax period beginning on or after the first day of January 1989; and

- (ii) in Malaysia, for the year of assessment beginning on the first day of January 1989, and subsequent years of assessment.

Article 30

DURATION AND TERMINATION

This Agreement shall remain in force for a period of five years and shall continue in force for similar period or periods unless either Contracting State notifies the other in writing, six months before the expiry of the initial or any subsequent period, of its intention to terminate the Agreement. In such event, the Agreement shall cease to have effect in both Contracting States:

- (a) in respect of taxes withheld at source, to amounts paid or credited on or after the first day of January in the year following that in which the notice is given;
- (b) in respect of other taxes:
 - (i) in Kuwait, for taxes chargeable for any tax period beginning on or after the first day of January in the year next following that in which the notice is given; and
 - (ii) in Malaysia, for the year of assessment on the first day of January in the year next following that in which the notice is given.

In WITNESS THEREOF the undersigned, being duly authorised thereto by their respective Governments have signed this Agreement.

Done at Kuwait in duplicate on this 4th day of Thulhija 1423 H, corresponding to 5th day of February 2003, in the Malaysian, Arabic and English languages, all texts being equally authentic. In case of divergency, the English text shall prevail.

FOR THE GOVERNMENT
OF MALAYSIA

FOR THE GOVERNMENT OF
THE STATE OF KUWAIT

PROTOCOL

The Government of Malaysia and the Government of the State of Kuwait on signing at Kuwait on Wednesday this 4 Thulhija 1423 H, corresponding to 5th day of February 2003, the Agreement of the avoidance of double taxation and

the prevention of fiscal evasion with respect to taxes on income and for the fostering of economic relations have agreed upon the following provisions which shall form an integral part of the said Agreement.

1. With respect to Article 2

For the purposes of paragraph 2(b)(iii) of this Article in respect of taxes covered under the Agreement for Kuwait, it is understood that Malaysia will regard Zakat as tax only when it is paid by an individual who is a resident of Malaysia.

2. With respect to Article 4

It is agreed that government institutions of Kuwait within the meaning of paragraph 2(c) of this Article are the following corporate entities created under public law which are wholly owned and controlled by Kuwait:

- public corporations,
- authorities,
- government agencies,
- foundations,
- development funds.

Subject to the provisions of paragraph 2, sub-paragraph (c) of this Article further institutions can be recognized as government institutions.

3. With respect to Article 5

For the purposes of paragraph 4 of this Article it is understood that where supervisory activities referred [to] in that paragraph are carried out by the enterprise itself in connection with the building site or construction project undertaken by that enterprise the period applicable will be 12 months instead of 6 months.

4. With respect to Article 10

- (1) In the case of unit trusts it is understood that the taxation of a unit trust would depend on whether the trust is an exempt trust or not. Therefore, taxation on the unit holder would depend on the tax-exempt status of the trust. If the trust is exempted, dividends distributed to unit holders are presently exempt up to \$5,000 per year. Anything in excess of this amount would be subject to tax

based on the unit-holder's marginal rate. In the case of a non-exempt trust, the tax treatment of dividends distributed to the unit-holders is similar to that of companies.

- (2) It is also understood that Malaysia proposes not to regard as income gains arising from the sale of shares by unit trusts.

5. With respect to Article 11

- (1) For the purposes of paragraph 3 of this Article an approved loan is defined in section 2(1) of the Income Tax Act 1967 of Malaysia means:
 - (a) any loan or credit made to the Government, state government (including any loan or credit made to a person other than the Government or state government where the loan or credit is guaranteed by the Government or state government), local authority or statutory body; or
 - (b) any loan or credit other than a loan or credit of the kind specified in sub-paragraph (i), made to a person where the amount of such loans or credit exceeds two hundred and fifty million ringgit, by a person not resident in Malaysia; provided that:
 - (i) the loan or credit has been approved by the Minister of Finance; and
 - (ii) the loan or credit agreement was executed in Malaysia or where the loan or credit agreement with the prior approval of the Minister was executed outside Malaysia.
- (2) For the purposes of paragraph 5(b)(ii) of this Article, where 51 per cent or more of the share capital of a company is beneficially owned by the Government and/or by government of Kuwait, that company shall be regarded as a controlled company.

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

Done at Kuwait in duplicate on this 4th day of Thulhija 1423 H, corresponding to 5th day of February 2003, in the Malaysian, Arabic and English languages, all texts being equally authentic. In case of divergency, the English text shall prevail.

FOR THE GOVERNMENT
OF MALAYSIA

FOR THE GOVERNMENT OF
THE STATE OF KUWAIT

Made 10 May 2006