



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

Effective January 1, 2002

## **DEZAN SHIRA & ASSOCIATES**

Corporate Establishment, Tax, Accounting & Payroll Throughout Asia

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Year of Assessment 2003 (Income Tax and Petroleum Income Tax)

**AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND  
THE GOVERNMENT OF THE SUDAN 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 SUDAN**

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**

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

Article 2

**TAXES COVERED**

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

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

(a) in Malaysia:

(i) the income tax;

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

(iii) the petroleum income tax  
(hereinafter referred to as "Malaysian tax");

(b) in the Sudan:

(i) the income tax;

(hereinafter referred to as "the Sudanese 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 as 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 "the Sudan" means the Republic of Sudan, including any area outside the territorial sea of the Republic of the Sudan which in accordance with international law has been or may hereafter be designated, under the laws of the Republic of the Sudan concerning the Continental Shelf, as an area within which the rights of the Republic of the Sudan with respect to the sea-bed and subsoil and their natural resources may be exercised;
  - (c) the terms "a Contracting State" and "the other Contracting State" mean Malaysia or the Sudan 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 Sudanese tax, as the context requires;
- (h) the term "national" means:
  - (i) any individual possessing the nationality or citizenship of a Contracting State;
  - (ii) any legal person, partnership, association and any other entity deriving its status as such from the laws in force in a Contracting State;
- (i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (j) the term "competent authority" means:
  - (i) in the case of Malaysia, the Minister of Finance or his authorised representative; and
  - (ii) in the case of the Sudan, the Minister of Finance or his authorised representative;

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

#### Article 4 **RESIDENT**

1. For the purposes of this Agreement, the term "resident of a Contracting State" means:
  - (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 the Sudan, a person who is resident in the Sudan for the purposes of Sudanese tax.
2. Where, by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him. If he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
  - (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
  - (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
  - (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where, by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

#### Article 5

#### **PERMANENT ESTABLISHMENT**

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" shall include especially:
  - (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop;

- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources including timber or other forest produce;
  - (g) a farm or plantation;
  - (h) a building site or construction, installation or assembly, project which exists for more than 6 months.
3. The term "permanent establishment" shall be deemed not to include:
- (a) the use of facilities solely for the purpose of storage or display 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 or display;
  - (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.
4. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the Contracting State if it carries on supervisory activities in that other State for more than twelve months in connection with a construction, installation or assembly project which is being undertaken in that other State.
5. A person (other than a broker, general commission agent or any other agent of an independent status to whom paragraph 6 applies) acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the first-mentioned State, if:
- (a) he has, and habitually exercises in the first-mentioned State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise;
  - (b) he maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise; or

- (c) he manufactures or processes in the first-mentioned State for the enterprise goods or merchandise belonging to the enterprise.

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

However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he shall not be considered an agent of an independent status if the transactions between the agent and the enterprise were 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 also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

## Article 7

### **BUSINESS PROFITS**

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only on so much thereof as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses including executive and general administrative expenses, which would be deductible if the permanent establishment were an independent enterprise, insofar as they are reasonably allocable to the permanent establishment, whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. If the information available to the competent authority is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person by the exercise of discretion or the making of an estimate by the competent authority, provided that the law shall be applied, so far as the information available to the competent authority permits, in accordance with the principle of this Article.

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

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

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



## Article 8

### **SHIPPING AND AIR TRANSPORT**

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

## Article 9

### **ASSOCIATED ENTERPRISES**

Where:

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

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

## Article 10

### **DIVIDENDS**

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. Dividends paid by a company which is a resident of the Sudan to a resident of Malaysia may be taxed in the Sudan in accordance with the laws of the Sudan but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

3. Dividends paid by a company which is a resident of Malaysia to a resident of the Sudan who is the beneficial owner thereof shall be exempt from any tax in Malaysia which is chargeable on dividends in addition to the tax chargeable in respect of the income of the company. Nothing in this paragraph shall affect the provisions of the Malaysian law under which the tax in respect of a dividend paid by a company which is a resident of Malaysia from which Malaysian tax has been, or has been deemed to be, deducted may be adjusted by reference to the rate of tax appropriate to the Malaysian year of assessment immediately following that in which the dividend was paid.

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

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

6. Where a company which is a resident of a Contracting State derives income or profits from the other Contracting State, that other State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of income or profits arising in 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 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 the Sudan is beneficially entitled shall be exempted 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 governments 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 the Sudan means the Government of the Sudan and shall include:

- (i) the governments of the States;
- (ii) the local authorities;
- (iii) the statutory bodies;
- (iv) the Central Bank of the Sudan;
- (v) such institutions, the capital of which is wholly owned by the Government of the Sudan 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.

6. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a

right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures

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

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

9. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## Article 12

### **ROYALTIES**

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

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

- (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 itself, a political subdivision, a local authority or a statutory body thereof, or a resident of that State. Where, however, the person paying such royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

#### Article 13

#### **TECHNICAL FEES**

1. Technical fees derived from one of the Contracting States by a resident of the other Contracting State who is the beneficial owner thereof and is subject to tax in that other State in respect thereof may be taxed in the first-mentioned Contracting State at a rate not exceeding 10 per cent of the gross amount of the technical fees.

2. The term "technical fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the

payments, in consideration for any services of a technical, managerial or consultancy nature.

3. The provisions of paragraph 1 of this Article shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise through a permanent establishment situated therein, or performs in that other State independent personal services, and the technical fees are effectively connected with such permanent establishment or such services. In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

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

5. 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 technical fees paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

#### Article 14

#### **GAINS FROM THE ALIENATION OF PROPERTY**

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6, may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) may be taxed in that other State. However, gains from the alienation of ships or aircraft operated 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 15

### **PERSONAL SERVICES**

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21 remuneration derived by an individual who is a resident of one of the States in respect of personal services, including professional services shall be taxable only in that State unless the services are performed in the other State. If the services are so performed, such remuneration as is derived in respect thereof may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by an individual who is a resident of one of the States in respect of personal services, including professional services performed in the other State shall be taxable only in the first mentioned State if:

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

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

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

Article 16

**DIRECTORS' FEES**

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors 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 Article 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 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 pension and other similar remuneration for past employment or any annuity arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in the 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 or a local authority or a statutory body thereof to any individual in respect of services rendered to that State or political subdivision or a local authority or statutory body thereof shall be taxable only in that State.  
  
(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the recipient is a resident of that other State who:
  - (i) is a national of that other State; or
  - (ii) did not become a resident of that other State solely for the purpose of performing the services.
  
2. Any pension paid by, or out of funds created by, a Contracting State, a political subdivision or 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 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 or a local authority or a statutory body thereof.

## Article 20

### **STUDENTS AND TRAINEES**

1. An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in the other State solely:
  - (a) as a student at a recognised university, college, school or other similar recognised educational institution in that other State;
  - (b) as a business or technical apprentice; or
  - (c) as a recipient of a grant, allowance or award for the primary purpose of study, research or training from the Government of either State or from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the Government of either State,

shall be exempt from tax in that other State on:

- (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 received 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 or other similar educational institution, visits that other State for a period not exceeding two years solely for the purpose of teaching or research or both at such educational institution shall be exempt from tax in that other State on any remuneration for such teaching or research which is subject to tax in the first-mentioned Contracting State.

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

Article 22

### **INCOME NOT EXPRESSLY MENTIONED**

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

Article 23

### **ELIMINATION OF DOUBLE TAXATION**

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

that income. Where such income is a dividend paid by a company which is a resident of the Sudan to a company which is a resident of Malaysia and which owns not less than 15 per cent of the voting shares of the company paying the dividend, the credit shall take into account the Sudanese tax payable by that company in respect of its income out of which the dividend is paid. The credit shall not, however, exceed that part of the Malaysian tax, as computed before the credit is given, which is appropriate to such item of income.

2. For the purposes of paragraph 1, the term "the Sudanese tax payable" shall be deemed to include taxes which have been relieved or reduced in the Sudan by virtue of special incentive laws for the promotion of the economic development of the Sudan or any other provisions which may subsequently be introduced in the Sudan 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 Malaysia in an amount equal to the tax which would have been paid if no such relief or reduction had been made.

3. Subject to the laws of the Sudan regarding the allowance as a credit against the Sudanese tax of tax payable in any country other than the Sudan, the Malaysian tax payable under the laws of Malaysia and in accordance with this Agreement by a resident of the Sudan in respect of income derived from Malaysia shall be allowed as a credit against the Sudanese tax payable in respect of that income. Where such income is a dividend paid by a company which is a resident of Malaysia to a company which is a resident of the Sudan and which owns not less than 15 per cent of the voting shares of the company paying the dividend, the credit shall take into account the Malaysian tax payable by that company in respect of its income out of which the dividend is paid. The credit shall not, however, exceed that part of the Sudanese tax, as computed before the credit is given, which is appropriate to such item of income.

4. For the purposes of paragraph 3, the term "the Malaysian tax payable" shall be deemed to include:

- (a) taxes which have been relieved or reduced in Malaysia by virtue of special incentive laws for the promotion of the economic development of Malaysia or any other provisions which may subsequently be introduced in Malaysia in modification of, or in addition to, those laws or by virtue of the provisions of this Agreement shall be deemed to have been paid and shall wherever applicable be allowed as a credit in the Sudan in an amount equal to the tax which would have been paid if no such relief or reduction had been made; and

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

5. For the purposes of paragraph 3, where royalties derived by a resident of the Sudan 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.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

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

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

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

5. 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.

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

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

#### Article 26

### **EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of the provisions of this Agreement or for the prevention or detection of evasion or avoidance of taxes covered by this Agreement. Any information so exchanged shall be treated as secret and shall be disclosed only to persons or authorities (including a court or reviewing authority) concerned with the assessment, collection, enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Agreement.

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

- (a) to carry out administrative measures at variance with the laws or administrative practice of that or of the other Contracting State;
- (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

Article 27

### **DIPLOMATIC AND CONSULAR OFFICERS**

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

Article 28

### **ENTRY INTO FORCE**

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

2. This Agreement shall enter into force thirty days after the date of the notifications referred to in paragraph 1 of this Article and its provisions shall have effect:

- (a) in respect of tax withheld or deducted at source on income paid to non-residents, on or after the 1st day of January in the calendar year in which the Agreement enters into force;
- (b) in all other cases, in respect of tax for the year of assessment beginning on the 1st day of January in the calendar year immediately following that in which the Agreement enters into force.

Article 29  
**TERMINATION**

This Agreement shall continue in effect unless either of the Contracting States delivers a written notification through diplomatic channels of its desire to terminate this Agreement; such a written notification may be given on or before the 30th of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force. In such event this Agreement shall cease to have effect:

- (a) in respect of tax withheld or deducted at source on income paid to non-residents, on or after the 1st day of January in the calendar year in which the notice of termination is given;
- (b) in all other cases, in respect of tax for the year of assessment beginning on the 1st day of January of the calendar year immediately following that in which the notice of termination is given.

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

DONE AT Kuala Lumpur this 7th October 1993 in duplicate each in Arabic language, Bahasa Malaysia and the English language, the three texts being equally authentic. In case there is any divergence of interpretation of the provisions of this Agreement the English text shall prevail.