



Double Taxation Avoidance Agreement between Malaysia and Switzerland

Effective January 1, 1974

DEZAN SHIRA & ASSOCIATES

Corporate Establishment, Tax, Accounting & Payroll Throughout Asia

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P.U. (A) 242 /1975
Signed: 30 December 1974
Effective Date: 1 January 1974

**AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE
SWISS FEDERAL COUNCIL FOR THE AVOIDANCE OF DOUBLE TAXATION
WITH RESPECT TO TAXES ON INCOME**

THE GOVERNMENT OF MALAYSIA
AND
THE SWISS FEDERAL COUNCIL

Desiring to conclude an Agreement for the Avoidance of Double Taxation 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. The taxes which are the subject of this Agreement are:

(a) in Malaysia:

- (i) the income tax;
- (ii) the supplementary income tax, that is, tin profits tax, development tax and timber profits tax; and
- (iii) the petroleum income tax.

(hereinafter referred to as "Malaysian tax");

(b) in Switzerland:

the Federal, cantonal and communal taxes on income (total income, earned income, income from capital, industrial and commercial profits, capital gains, and other items of income).

(hereinafter referred to as "Swiss tax").

2. This Agreement shall also apply to any other taxes of a substantially similar character to those referred to in the preceding paragraph of this Article imposed in addition to, or in place of, the existing taxes in either Contracting State after the date of signature of this Agreement.

3. The competent authorities of the Contracting States shall notify to each other any important changes which have been made in their respective taxation laws.

4. This Agreement shall not apply to Federal anticipatory tax withheld at the source on prizes in a lottery.

Article 3

GENERAL DEFINITIONS

1. In this Agreement, unless the context otherwise requires:

- (a) the term "Malaysia" means the Federation of Malaysia and includes any area adjacent to the territorial waters of Malaysia which, in accordance with international law has been or may hereafter be designated under the laws of Malaysia concerning the Continental Shelf as an area within which the rights of Malaysia with respect to the sea bed and sub-soil and their natural resources may be exercised;
- (b) the term "Switzerland" means the Swiss Confederation;
- (c) the terms "one of the Contracting States" and "the other Contracting State" mean Malaysia or Switzerland, as the context requires;
- (d) the term "tax" means Malaysian tax or Swiss tax, as the context requires;
- (e) the term "company" means any body corporate or any entity which is treated as a body corporate under the taxation laws of the respective Contracting States;
- (f) the term "person" shall have the meaning assigned to it in the taxation laws in force in the respective Contracting States;

- (g) the terms "Malaysian enterprise" and "Swiss enterprise" mean respectively an enterprise carried on by a resident of Malaysia and an enterprise carried on by a resident of Switzerland;
- (h) the terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean a Malaysian enterprise or a Swiss enterprise, as the context requires;
- (i) the term "income" includes profits;
- (j) the term "national" means all individuals who are citizens of one of the Contracting States and all legal persons, associations and other entities deriving their status as such from the law in force in one of the Contracting States;
- (k) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of one of the Contracting States, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (l) the term "competent authority" means, in the case of Malaysia, the Minister of Finance or his authorised representative, and in the case of Switzerland, the Director of the Federal Tax Administration or his authorised representative.

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

Article 4

FISCAL DOMICILE

1. For the purposes of this Agreement, the terms "resident of one of the Contracting States" and "resident of the other Contracting State" mean a resident of Malaysia or a resident of Switzerland, as the context requires; and the term "resident of Malaysia" means any person who is resident in Malaysia for the purposes of Malaysian tax; and the term "resident of Switzerland" means any person who is resident in Switzerland for the purposes of Swiss tax.

2. Where by reason of the provisions of paragraph 1 of this Article 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 Contracting State in which he has a permanent home available to him. If he has a permanent home

available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer;

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

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

Article 5

PERMANENT ESTABLISHMENT

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

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

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

- (h) A farm or plantation;
- (i) a place of extraction of timber or other forest produce.

3. The term "permanent establishment" shall not be deemed to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

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

5. Subject to the provisions of paragraph 6 of this Article, a person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the first-mentioned Contracting State if:

- (a) he has, and habitually exercises in that first-mentioned Contracting 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 Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise.

6. An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries

on business in that other Contracting State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

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

Article 6

INCOME FROM IMMOVABLE PROPERTY

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

2. The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property 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, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 of this Article 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 of this Article shall also apply 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 income of an enterprise of one of the Contracting States shall be taxable only in that Contracting State, unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the income of the enterprise may be taxed in that other Contracting State but only so much of that income as is attributable to that permanent establishment.

2. Where an enterprise of one of the Contracting States carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the income which it might be expected to make if it were a distinct

and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

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

4. Insofar as it has been customary in one of the Contracting States to determine the income to be attributed to a permanent establishment on the basis of an apportionment of the total income of the enterprise to its various parts, nothing in paragraph 2 of this Article shall preclude that Contracting State from determining the income 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 laid down in this Article.

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

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

7. Where income includes 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 derived by an enterprise of one of the Contracting States from the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 of this Article shall also apply to income derived from the participation in a pool, a joint business or in an international operating agency.

Article 9

ASSOCIATED ENTERPRISES

Where:

(a) an enterprise of one of the Contracting States 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 one of the Contracting States and of an enterprise of the other Contracting State,

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

Article 10

DIVIDENDS

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

2. Dividends paid by a company which is a resident of Malaysia to a resident of Switzerland 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.

3. If after the date of signature of the Agreement the system of taxation in Malaysia applicable to the income and distributions of companies is altered by the introduction of corporation tax (for which no credit is given to the shareholder) and further dividend tax, then Malaysian tax chargeable on dividends paid to a resident of Switzerland shall not exceed:

(a) 5 per cent of the gross amount of the dividends if the recipient is a company (excluding partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;

(b) in all other cases, 15 per cent of the gross amount of the dividends.

4. Dividends paid by a company which is a resident of Switzerland to a resident of Malaysia may be taxed in Switzerland, and according to the law of Switzerland, but the tax so charged shall not exceed:

(a) 5 per cent of the gross amount of the dividends if the recipient is a company (excluding partnership) which holds directly at least 25 percent of the capital of the company paying the dividends;

(b) in all other cases, 15 per cent of the gross amount of the dividends.

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

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

7. Where a company which is a resident of one of the Contracting States derives income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company to persons who are not residents of that other Contracting State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Contracting State.

8. Dividends paid by a company which is a resident of Malaysia shall include dividends paid by a company which is a resident of Singapore which for purpose of those dividends has declared itself to be a resident of Malaysia, but shall not include dividends paid by a company which is a resident of Malaysia which for the purpose of those dividends has declared itself to be a resident of Singapore.

Article 11

INTEREST

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

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

3. Notwithstanding the provisions of paragraph 2 of this Article, interest arising in Malaysia and paid to a resident of Switzerland shall be exempt from Malaysian tax if the loan or other indebtedness in respect of which the interest is paid is an approved loan. The term "approved loan" means any loan or other indebtedness approved by the competent authority of Malaysia.

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

5. Interest shall be deemed to arise in one of the Contracting States when the payer is that Contracting State itself, a political subdivision or a local or statutory authority thereof or a resident of that Contracting State. Where, however, the person paying the interest, whether he is a resident of one of the Contracting States or not, has in one of the Contracting States 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 Contracting State in which the permanent establishment is situated.

6. The provisions of paragraphs 1, 2 and 3 of this Article shall not apply if the recipient of the interest, being a resident of one of the Contracting States, has in the other Contracting State in which the interest arises a permanent establishment with which the debt-claim from which the interest arises is effectively connected. In such a case, the provisions of Article 7 shall apply.

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

Article 12 **ROYALTIES**

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

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

3. Notwithstanding the provisions of paragraph 2 of this Article, royalties arising in Malaysia and paid to a resident of Switzerland shall be exempt from Malaysian tax if the royalties are approved by the competent authority of Malaysia.

4. The term "royalties" as used in this Article means payments of any kind received as consideration for the use of, or the right to use any copyright of literary, artistic or scientific work, any patent, trade mark, design or model, plan, secret formula process or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

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

6. The provisions of paragraphs 1, 2 and 3 of this Article shall not apply if the recipient of the royalties, being a resident of one of the Contracting States, has in the other Contracting State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of Article 7 shall apply.

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

Article 13

CAPITAL GAINS

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

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of one of the Contracting States has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise), may be taxed in the other Contracting State. However, gains derived by a resident of one of the Contracting States from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that Contracting State.

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

Article 14

PERSONAL SERVICES

1. Subject to the provisions of paragraph 1 of Article 15 and Articles 16, 17, 18, 19 and 20, salaries, wages and other similar remuneration in respect of an employment as well as income in respect of professional services or other independent activities of a similar character, derived by a resident of one of the Contracting States shall be taxable only in that Contracting State, unless the employment, services or activities are exercised or performed in the other Contracting State. If the employment, services or activities are so exercised or performed, such remuneration or income as is derived therefrom may be taxed in that other Contracting State.

2. Notwithstanding the provisions of paragraph 1 of this Article, remuneration or income derived by a resident of one of the Contracting States in respect of an employment, services or activities exercised or performed in any calendar year in the other Contracting State shall be taxable only in the first-mentioned Contracting State if:

- (a) the recipient is present within that other Contracting State for a period or periods not exceeding in the aggregate 183 days during the calendar year concerned; and
- (b) the services or activities are exercised or performed for or on behalf of a person who is not a resident of that other Contracting State; and
- (c) the remuneration or income is not directly deductible from the income of a permanent establishment which the person has in that other Contracting State.

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

Article 15

DIRECTORS' FEES

1. Directors' fees and similar payments derived by a resident of one of the Contracting States 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 Contracting State.

2. However, the provisions of Article 14 shall apply to any remuneration derived by such member of the board of directors of such company in respect of services rendered to the company in any capacity other than as such director.

Article 16

ARTISTES AND ATHLETES

1. Notwithstanding the provisions of Article 14, income derived by entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, being resident of one of the Contracting States from their personal activities as such exercised in the other Contracting State may be taxed in that other Contracting State, unless the activities in that other Contracting State are supported wholly or substantially from public funds of the first-mentioned Contracting State, a political subdivision or a local authority thereof.

2. The provisions of paragraph 1 of this Article shall also apply, notwithstanding the provisions of Articles 7 and 14, to income in respect of personal activities of such an entertainer or athlete which accrues not to that entertainer or athlete but to another person.

Article 17

PENSIONS AND ANNUITIES

Any pension (other than a pension of the kind referred to in Article 18) and other similar remuneration paid to a resident of a Contracting State in consideration of past employment or any annuity paid to such a resident shall be taxable only in that Contracting State.

Article 18

GOVERNMENT REMUNERATION AND PENSION

1. Remuneration, other than a pension, paid by or out of funds created by one of the Contracting States, a political subdivision, a local authority or a statutory body

thereof to any individual who is a national of that Contracting State in respect of services rendered to that Contracting State, political subdivision, local authority or statutory body in the other Contracting State in the discharge of functions of a governmental nature shall be taxable only in the first-mentioned Contracting State.

2. The provisions of Article 14 shall, however, apply to remuneration 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.

3. Any pension paid by or out of funds created by one of the Contracting States, a political subdivision, a local authority or a statutory body thereof to any individual in respect of past services rendered to that Contracting State, political subdivision, local authority or statutory body in the discharge of functions of a governmental nature shall be taxable only in that Contracting State.

Article 19

PROFESSORS AND TEACHERS

An individual who is a resident of one of the Contracting States immediately before making a visit to the other Contracting State, and who at the invitation of that other Contracting State or a university, college, school or other similar recognised educational institution in that other Contracting State, visits that other Contracting 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 Contracting State on his remuneration for such teaching or research.

Article 20

STUDENTS

1. Payments which a student or business apprentice who is or was formerly a resident of one of the Contracting States and who is present in the other Contracting States solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that other Contracting State.

2. An individual who is or was formerly a resident of one of the Contracting States and who is present in the other Contracting State for the purpose of study, research or training or of acquiring technical, professional or business experience and who exercises in that other Contracting State an employment for a period or periods not exceeding in the aggregate twelve months shall be exempt from tax in that other Contracting State on remuneration in respect of this employment provided that such employment is directly related to his studies, research, training or acquiring of experience and that the remuneration from that

employment does not exceed 12,000 Swiss francs or the equivalent thereof in Malaysian currency at the official rate of exchange.

Article 21

METHODS FOR ELIMINATION OF DOUBLE TAXATION

1. Subject to the provisions of the law of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, the amount of Swiss tax payable under the law of Switzerland and in accordance with the provisions of this Agreement by a resident of Malaysia in respect of income from sources within Switzerland which has been subjected to tax in both Malaysia and Switzerland shall be allowed as a credit against Malaysian tax payable in respect of such income, but in an amount not exceeding that portion of Malaysian tax which such income bears to the entire income chargeable to Malaysian tax.

2. Where a resident of Switzerland derives income which, in accordance with the provisions of this Agreement, may be taxed in Malaysia, Switzerland shall, subject to the provisions of paragraphs 3, 4 and 5 of this Article, exempt such income from tax but may, in calculating tax on the remaining income of that resident, apply the rate of tax which would have been applicable if the exempted income had not been so exempted.

3. Where a resident of Switzerland derives dividends, interest or royalties which, in accordance with the provisions of Articles 10, 11 and 12, may be taxed in Malaysia, Switzerland shall allow, upon request, a relief to such resident. The relief may consist of:

- (a) a deduction from the tax on income of that resident of an amount equal to the tax levied in Malaysia in accordance with the provisions of Articles 10, 11 and 12; such deduction shall not, however, exceed that part of the Swiss income tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in Malaysia; or
- (b) a lump sum reduction of the Swiss tax; or
- (c) a partial exemption of such dividends, interest or royalties from Swiss tax, in any case consisting at least of the deduction of the tax levied in Malaysia from the gross amount of the dividends, interest or royalties.

Switzerland shall determine the applicable relief and regulate the procedure in accordance with the Swiss provisions relating to the carrying out of international conventions of the Swiss Confederation for the avoidance of double taxation.

4. Switzerland shall take into account for the relief provided for in paragraph 3 of this Article and amount equal to 10 per cent of the net amount of the dividends, as long as paragraph 2 of Article 10 applies.

5. Where a resident of Switzerland derives interest dealt with in paragraph 3 of Article 11 or royalties dealt with in paragraph 3 of Article 12 from Malaysia, Switzerland shall allow, upon request, a relief to such resident of an amount equal to 10 per cent of the gross amount of the interest or royalties. The provisions of paragraph 3 of this Article shall apply accordingly.

6. A company which is a resident of Switzerland and which derives dividends from a company which is a resident of Malaysia shall be entitled, for the purposes of Swiss tax with respect to such dividends, to the same relief which would be granted to it if the company paying the dividends were a resident of Switzerland.

Article 22

NON-DISCRIMINATION

1. The nationals of one of the Contracting States shall not be subject 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 Contracting State in the same circumstances and under the same conditions are or may be subjected.

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

3. Enterprises of one of the Contracting States, 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 Contracting 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 Contracting State are or may be subjected in the same circumstances and under the same conditions.

4. Nothing contained in this Article shall be construed as obliging one of the Contracting States to grant to individuals not resident in that Contracting State any of the personal allowances, reliefs and reductions for tax purposes which are by law available only to residents of that Contracting State.

5. Nothing contained in this Article shall be construed as obliging one of the Contracting States to grant to nationals of the other Contracting State not

resident in the first-mentioned Contracting State those personal allowances, reliefs and reductions for tax purposes which are by law available only to nationals of the first-mentioned Contracting State or to such other persons specified therein who are not resident in that Contracting State.

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

Article 23

MUTUAL AGREEMENT PROCEDURE

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

2. The competent authority of the first-mentioned Contracting State 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 that 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 this 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 this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purposes of giving effect to the provisions of this Agreement.

Article 24

DIPLOMATIC AND CONSULAR OFFICIALS

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

2. This Agreement shall not apply to International Organisations, to organs or officials thereof and to persons who are members of a diplomatic or consular mission of a third State, being present in one of the Contracting States and not treated in either Contracting State as residents in respect of taxes on income.

Article 25

ENTRY INTO FORCE

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

(a) in Malaysia:

as respects Malaysian tax for the year of assessment beginning on the first day of January 1974, and subsequent years of assessment;

(b) in Switzerland:

as respects Swiss tax for the taxable year beginning on the first day of January 1974, and subsequent taxable years.

Article 26

TERMINATION

1. This Agreement shall continue in effect indefinitely, but either of the Contracting States may, on or before 30th June in any calendar year give to the other Contracting State written notice of termination and in such event this Agreement shall cease to be effective:

(a) in Malaysia:

as respects Malaysian tax for the year of assessment next following that in which such notice is given and subsequent years of assessment;

(b) in Switzerland:

as respects Swiss tax for the taxable year next following that in which such notice is given and subsequent taxable years.

IN WITNESS whereof the undersigned, duly authorised thereto, have signed this Agreement.

DONE in duplicate at Kuala Lumpur, this thirtieth day of December of the year one thousand nine hundred and seventy four, in Bahasa Malaysia and German Language, both texts being equally authentic.