



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

Effective January 1, 1998

## **DEZAN SHIRA & ASSOCIATES**

Corporate Establishment, Tax, Accounting & Payroll Throughout Asia

This document was downloaded from ASEAN Briefing ([www.aseanbriefing.com](http://www.aseanbriefing.com)) and was compiled by the tax experts at Dezan Shira & Associates ([www.dezshira.com](http://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.A (A) 489/1996  
Signed: 27 September 1994  
Effective Date: 1 January 1998

**AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF  
TURKEY AND THE GOVERNMENT OF MALAYSIA FOR THE AVOIDANCE  
OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH  
RESPECT TO TAXES ON INCOME**

The Government of the Republic of Turkey and the Government of Malaysia,

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 on behalf of a Contracting State, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which the Agreement shall apply are in particular:
  - a) in Malaysia:
    - i) the income tax; and
    - ii) the petroleum income tax;(hereinafter referred to as "Malaysian tax")

- b) in Turkey:
  - i) the income tax (Gelir Vergisi);
  - ii) the corporation tax (Kurumlar Vergisi);
  - iii) the levy imposed on the income tax and the corporation tax (Fon Payı).

(hereinafter referred to as "Turkish tax")

4. The Agreement shall apply also to any identical or substantially similar taxes on income which are imposed after the date of signature of the 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. For the purposes of 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 in accordance with international law is an area over which Malaysia has sovereignty rights for the purposes of exploring and exploiting the natural resources, whether living or non-living;
  - b) the term "Turkey" means the territory of the Republic of Turkey, including any area in which the laws of Turkey are in force, as well as the continental shelf over which Turkey has in accordance with international law, sovereign rights to explore and exploit its natural resources;
  - c) the terms "a Contracting State" and "the other Contracting State" mean Malaysia or Turkey as the context requires;
  - d) the term "tax" means any tax covered by Article 2 of this Agreement;
  - e) the term "person" includes an individual, a company and any other body of persons which is treated as a person for tax purposes;
  - f) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

- g) in the case of Turkey, the term "Registered Office" means the legal head office registered under the Turkish Code of Commerce;
- h) the term "national" means:
  - i) in relation to Malaysia, any individual possessing the 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 relation to Turkey, any individual possessing Turkish nationality in accordance with the Turkish Nationality Code, and any legal person, partnership or association deriving its status as such from the law in force in Turkey;
- i) 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;
- j) the term "competent authority" means:
  - i) in Malaysia, the Minister of Finance or his authorized representative;  
and
  - ii) in Turkey, the Minister of Finance or his authorized representative;
- k) 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 situated in the other Contracting State.

2. As regards 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 any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, legal head office (Registered Office), place of management or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, than 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; 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 Contracting State in which its place of effective management is situated. However, where such person has its place of effective management in one of the States and its legal head office in the other Contracting State, then the competent authorities of the Contracting States shall consult to determine by mutual agreement whether the legal head office of such a person is to be considered as the actual place of effective management or not.

#### 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 site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than nine months.

3. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise any other activity of a preparatory or auxiliary character;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person

- other than an agent of an independent status to whom paragraph 5 applies
- is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are

limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

5. 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, provided that 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 will not be considered an agent of an independent status within the meaning of this paragraph.

6. 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. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in a question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, fishing places of every kind, 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 extraction 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 so much of them 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, in so far 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 a 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. 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 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. Notwithstanding the provisions of paragraph 1 of Article 7, income derived from the operation of ships or aircraft solely between places in a Contracting State may be taxed in that State.

3. The provisions of paragraphs 1 and 2 of this Article shall also apply to income derived by an enterprise of a Contracting State from the participation in a pool, a joint business or in an international operating agency.

#### Article 9

### **ASSOCIATED ENTERPRISES**

1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State -- and taxes accordingly -- profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are by the first-mentioned State claimed to be profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State may make an appropriate adjustment to the amount of the tax charged therein on those profits, where that other State considers the adjustment justified. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall, if necessary, consult each other.

#### Article 10

### **DIVIDENDS**

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that

State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed;

- a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company (excluding partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;
- b) 15 per cent of the gross amount of the dividends in all other cases.

3. Dividends paid by a company which is a resident of Malaysia to a resident of Turkey 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 the Article means income from shares, "jouissance" shares or "jouissance" rights, founders' 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 profits of a company of a Contracting State carrying on business in the other Contracting State through a permanent establishment situated therein may, after having been taxed under Article 7, be taxed on the remaining amount in the Contracting State in which the permanent establishment is situated and in accordance with paragraph 2 of this Article.

6. 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 case the provisions of Article 7 shall apply.

## Article 11 **INTEREST**

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest to which a resident of Turkey 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, interest arising in:

- a) Malaysia and paid to the Government of Turkey or local authorities; or to the Central Bank of Turkey (Turkiye Cumhuriyet Merkez Bankasi) or to the Turkish Eximbank shall be exempt from Malaysian tax;
- b) Turkey and paid to:
  - i) the Government of Malaysia;
  - ii) the Governments of the States;
  - iii) the local authorities; and
  - iv) the Bank Negara Malaysia, shall be exempt from Turkish tax.

5. 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.

6. 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, comes 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 case the provisions of Article 7 shall apply.

7. 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 Contracting State in which the permanent establishment is situated.

8. 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, 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 the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and recordings for radio and television, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, or for the use of, or the right to use industrial, commercial, or scientific equipment.

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 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 the 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 right or property giving rise to the royalties is effectively connected, 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 derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
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 belonging to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the enterprise is resident.
4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3 shall be taxable only in the Contracting State of which the alienator is a resident. However, the capital gains mentioned in the foregoing sentence and derived from the other Contracting State, shall be taxable in the other Contracting State if the time period does not exceed one year between acquisition and alienation.

#### 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, such income may also be taxed in the other Contracting State if such services or activities are performed in that other State and if:
  - a) he has a fixed base regularly available to him in that other State for the purpose of performing those services or activities; or

- b) he is present in that other State for the purpose of performing those services or activities for a period or periods amounting to or exceeding in the aggregate 163 days in the calendar year concerned.

In such circumstances, only so much of the income as is attributable to that fixed base or is derived from the services or activities performed during his presence in that other State, as the case may be, may be taxed in that other State.

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 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 permanent establishment which the employer has in the other State.

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

#### Article 16

### **DIRECTORS' FEES**

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 SPORTSMEN**

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.
3. The provisions of paragraphs 1 and 2 shall not apply to remuneration or profits derived from activities exercised in a Contracting State if the visit to that State is directly or indirectly financed wholly or substantially from the public funds of the other Contracting State, a political subdivision or 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 or 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. Pensions and annuities paid, and other periodical or occasional payments made by a Contracting State, or one of its political sub-divisions in respect of insuring personal accidents, may be taxed only in that State.
3. 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 an 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 State and the individual is a resident of that State who:

- i) is a national of that State, or
- ii) did not become a resident of that State solely for the purposes of rendering 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 an 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 and pensions in respect of services rendered in connection with any trade or a business carried on by a Contracting State, a political subdivision, a local authority or a statutory body thereof.

#### Article 20

### **TEACHERS AND STUDENTS**

1. Payments which a student or business apprentice who is a national of a Contracting State and who is present in the other Contracting State 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 State, provided that such payments arise from sources outside that other State.

2. Likewise, remuneration received by a teacher or by an instructor who is a national of a Contracting State and who is present in the other Contracting State and the primary purpose of teaching or engaging in scientific research for a period or periods not exceeding two years shall be exempt from tax in that other State on his remunerations from personal services for teaching or research, provided that such payments arise from sources outside that other State.

3. Remuneration which a student or a trainee who is a national of a Contracting State derives from an employment which he exercises in the other Contracting State for a period or periods not exceeding 183 days in a calendar year, in order to obtain practical experience related to his education or formation shall not be taxed in that other State.

#### Article 21

### **OTHER INCOME**

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that

Contracting State except that if such income is derived from sources in the other Contracting State, it may also be taxed in that other State.

## Article 22

### **ELIMINATION OF DOUBLE TAXATION**

1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective States except where express provisions to the contrary are made in this Agreement. Where income is subject to tax in both States, relief from double taxation shall be given in accordance with the following paragraphs.

2. In the case of Malaysia, subject to the provisions of the laws of Malaysia regarding the allowance as a credit against Malaysian tax, the amount of Turkish tax payable under the laws of Turkey and in accordance with the provisions of this Agreement, whether directly or by deduction, by a resident of Malaysia, in respect of income from sources within Turkey which has been subjected to tax both in Malaysia and Turkey, shall be allowed as a credit against the Malaysian tax payable in respect of such income but in an amount not exceeding that proportion of Malaysian tax which such income bears to the entire income chargeable to Malaysian tax.

3. In the case of Turkey, subject to the provisions of the laws of Turkey regarding the allowance as a credit against Turkish tax, the amount of Malaysian tax payable under the laws of Malaysia and in accordance with the provisions of this Agreement, whether directly or by deduction, by a resident of Turkey, in respect of income from sources within Malaysia which has been subjected to tax both in Turkey and Malaysia shall be allowed as a credit against the Turkish tax payable in respect of such income but in an amount not exceeding that proportion of Turkish tax which such income bears to the entire income chargeable to Turkish tax.

4. For the purposes of paragraphs 2 and 3, the term "tax payable in a Contracting State by a resident of the other Contracting State" shall be deemed to include any amount of the first-mentioned State's tax which would have been payable under that State's taxation law but for any reduction or exemption of that State's tax granted under the provisions concerning special incentive measures to promote economic development in the State which were in force on the date of signature of this Agreement or any other provisions which may subsequently be introduced in that State in modification of, or in addition to, those provisions so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character.

5. Notwithstanding the preceding sentence, the tax payable in the first-mentioned Contracting State shall be calculated:

- a) in the case of interest referred to in paragraphs 2 and 3 of Article 11, at a rate of 15 per cent;
- b) in the case of royalties referred to in paragraph 2 of Article 12, at a rate of 10 per cent.

However, if the tax rates under the first-mentioned State's taxation law applicable to interest and royalties derived by a persons who are not residents of that State are reduced below those mentioned in this paragraph, these lower rates shall apply for the purposes of this paragraph.

#### Article 23

#### **NON-DISCRIMINATION**

1. 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. Subject to the provisions of paragraph 5 of Article 10, 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 the first-mentioned State are or may be subjected.
4. These provisions shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

#### Article 24

#### **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 the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his

case comes under paragraph 1 of Article 23, to that of the Contracting State of which he is a national.

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 a satisfactory 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 purpose of reaching an agreement in the sense of preceding paragraphs.

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

#### Article 25

#### **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 or of the domestic laws of the Contracting States concerning taxes covered by this Agreement insofar as the taxation thereunder is not contrary to the 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 and administrative bodies) 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 the Agreement. Such persons or authorities shall use the information only for such purposes.

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 practice 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 26

**DIPLOMATIC AND CONSULAR OFFICERS**

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

Article 27

**ENTRY INTO FORCE**

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

- a) in Turkey, for taxes with respect to every taxable year beginning on or after the first day of January of the year following that of entry into force of the Agreement;
- b) in Malaysia:
  - i) in respect of taxes withheld at source, to income derived on or after the first day of January in the calendar year following the year in which this Agreement enters into force;
  - ii) in respect of other taxes on income, to taxes chargeable for any year of assessment beginning on or after the first day of January of the second calendar year following the year in which this Agreement enters into force and subsequent years of assessment.

Article 28

**TERMINATION**

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year. In such event, the Agreement shall cease to have effect:

- a) in Turkey, for taxes with respect to every taxable year beginning on or after the first day of January of the year following that in which the notice of termination is given;

b) in Malaysia:

- i) in respect of taxes withheld at source, to income derived on or after the first day of January in the calendar year following the year in which the notice is given;
- ii) in respect of other taxes on income, to taxes chargeable for any year of assessment beginning on or after the first day of January of the second calendar year following the year in which the notice is given.

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

Done in duplicate at Ankara this 27th day of September 1994, each in Turkish, Bahasa Malaysia and the English Languages, the three texts being equally authentic. In the event of there being a dispute in the interpretation and the application of this Agreement, the English text shall prevail.

## **PROTOCOL**

At the moment of signing the Agreement between the Government of the Republic of Turkey and the Government of Malaysia for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to Taxes on income, the undersigned have agreed upon the provisions which shall constitute an integral part of the Agreement.

1. Ad article 5, paragraph 2:  
Sub-paragraphs (f) and (g) shall not affect the taxation rights of Turkey on these incomes, according to its own law.
2. Ad article 6, paragraph 2:  
It is understood that the term "fishing places of every kind" does not include open sea fishing places.

3. Ad Article 7, paragraph 3:

In the application of paragraph 3 of Article 7, the executive and general administrative expenses incurred, whether in the State in which the permanent establishment is situated or elsewhere, shall be determined in any one of the following ways:

- a) an amount equal to the average of such expenses in the preceding three years or lesser number of years in the case of a newly set up permanent establishment, or

- b) the amount of expenses attributable to the permanent establishment on the basis of
  - i) accounts maintained by the enterprise, or
  - ii) the total amount of capital employed in the business of the enterprise and the permanent establishment, or
  - iii) the total amount of turnover of the enterprise and turnover of the permanent establishment, or
  - iv) the total amount of direct manufacturing cost of the enterprise and such cost of the permanent establishment.

4. Ad Article 10, paragraph 5:

The Turkish tax on undistributed profits shall remain at zero percent so long as no tax on undistributed profit is imposed by Malaysia.

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

Done in duplicate at Ankara this 27th day of September 1994, each in Turkish, Bahasa Malaysia and the English Languages, the three texts being equally authentic. In the event of there being a dispute in the interpretation and the application of this Agreement, the English text shall prevail.