Malaysia

Agreement between the government of the Kingdom of the Netherlands and the government Malaysia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

Done at The Hague, on 7 March 1988

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Protocol Amending the Agreement between the government of The Kingdom of The Netherlands and the government of Malaysia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, with Protocol, signed at The Hague on 7 March 1988

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Chapter I. Scope of the Agreement

Article 1. Personal scope

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

Article 2. Taxes covered

1. The existing taxes to which the Agreement shall apply are in particular:
   a. in the Netherlands:
      i. de inkomstenbelasting (income tax);
      ii. de loonbelasting (wages tax);
      iii. de vennootschapsbelasting (company tax) including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mijnwet 1810 (the Mining Act of 1810) with respect to concessions issued from 1967, or pursuant to the Mijnwet Continentaal Plat 1965 (the Netherlands Continental Shelf Mining Act of 1965);
      iv. de dividendbelasting (dividend tax)
      (hereinafter referred to as 'Netherlands tax');
   b. in Malaysia:
      i. income tax and excess profit tax;
      ii. supplementary income taxes, that is, tin profits tax, development tax and timber profits tax; and
      iii. petroleum income tax
      (hereinafter referred to as 'Malaysian tax').
2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed by either State after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authority of each State shall notify the competent authority of the other State of any significant changes which have been made in the laws of its State relating to the taxes to which this Agreement applies.

Chapter II. Definitions

Article 3. General definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
   a. the term ‘State’ means the Netherlands or Malaysia, as the context requires; the term ‘States’ means the Netherlands and Malaysia;
   b. the term ‘the Netherlands’ comprises the part of the Kingdom of the Netherlands that is situated in Europe and the part of the seabed and its subsoil under the North Sea, over which the Kingdom of the Netherlands has sovereign rights in accordance with international law;
   c. 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 exploration and exploitation of natural resources, whether living or non–living, of the seabed and subsoil and the superjacent waters, may be exercised;
   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 one of the States’ and ‘enterprise of the other State’ mean respectively an enterprise carried on by a resident of one of the States and an enterprise carried on by a resident of the other State;
   g. the term ‘international traffic’ means any transport by a ship or aircraft operated by an enterprise of one of the States, except when the ship or aircraft is operated solely between places in the other State;
   h. the term ‘national’ means:
      i. any individual possessing the citizenship or nationality of one of the States;
      ii. any legal person, partnership, association and any other entity deriving its status as such from the laws in force in one of the States;
   i. the term ‘competent authority’ means:
      i. in the Netherlands, the Minister of Finance or his authorised representative;
      ii. in Malaysia, the Minister of Finance or his authorised representative.

2. As regards the application of the Agreement by one of the States, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of the State concerning the taxes to which the Agreement applies.

Article 4. Resident

1. For the purposes of this Agreement, the term ‘resident of one of the States’ means:
   a. in the case of the Netherlands, a person who is resident in the Netherlands for the purposes of Netherlands tax; and
   b. in the case of Malaysia, a person who is resident in Malaysia for the purposes of Malaysian tax.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both States, then his status shall be determined as follows:
   a. he shall be deemed to be a resident of the State in which he has a permanent home available to him; 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 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 States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5. Permanent establishment

1. For the purposes of this Agreement, the term ‘permanent establishment’ means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term ‘permanent establishment’ includes especially:
   a. a place of management;
   b. a branch;
   c. an office;
   d. a factory;
   e. a workshop;
   f. a mine, an oil or gas well, a quarry or any other place of extraction of natural resources including timber or other forest produce;
   g. a farm or plantation;
   h. an installation or structure used for the exploration of natural resources.
3. The term ‘permanent establishment’ likewise encompasses 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 six months.
4. 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 advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise;
   f. the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from his combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting in one of the States on behalf of an enterprise of the other State, that enterprise shall be deemed to have a permanent establishment in the first–mentioned State in respect of any activity which that person undertakes for the enterprise if the person:
   a. has, and habitually exercises, in the first–mentioned State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 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; or
   b. has no such authority, but habitually 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.
6. An enterprise shall not be deemed to have a permanent establishment in one of the States merely because it carries on business in that 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 business, except where such an agent carries on business wholly or almost wholly for that enterprise itself or for that enterprise and other enterprises which are controlled by it or having a controlling interest in it.
7. The fact that a company which is a resident of one of the States controls or is controlled by a company which is a resident of the other 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. Limitation of relief

1[1]. Where this Agreement provides (with or without other conditions) that income shall be relieved wholly or partly from tax in one of the States and under the laws in force in the other State the said income is subject to tax by reference to the amount thereof which is remitted to or received in that other State and not by

[1] The 1996 Amending Protocol numbered the existing paragraph as paragraph ‘1’.

reference to the full amount thereof, then the relief to be allowed under this Agreement in the first–mentioned State shall apply only to so much of the income as is remitted to or received in that other State: Provided that where:

a. in accordance with the foregoing provisions of this Article, relief has not been allowed in the first instance in the first–mentioned State in respect of an amount of income; and
b. that amount of income has subsequently been remitted to or received in the other State and is thereby subject to tax in that other State, the first–mentioned State shall, subject to any laws thereof for the time being in force limiting the time and setting out the method for the making of a refund of tax, allow relief in respect of that amount of income in accordance with the appropriate provisions of this Agreement.

2[2]. The provisions of Chapter III of this Agreement shall not apply to persons entitled to any special tax benefit under:

a. a law of either one of the States which has been identified in an Exchange of Notes between the States; or
b. any substantially similar law subsequently enacted.

Chapter III. Taxation of income

Article 7. Income from immovable property

1. Income derived by a resident of one of the States from immovable property situated in the other 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 State in which the property is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil or gas wells, quarries and other places of extraction of natural resources or of timber or other forest produce. Ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall 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 8. Business income or profits

1. The income or profits of an enterprise of one of the States shall be taxable only in that State unless the enterprise carries on business in the other State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the income or 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 one of the States carries on business in the other State through a permanent establishment situated therein, there shall in each State be attributed to that permanent establishment the income or 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 income or 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 is inadequate to determine the income or profits to be attributed to the permanent establishment, nothing in this Article shall affect the application of any law of a State relating to the determination of the tax liability of a person by making an estimate, provided that the result shall be in accordance with the principles contained in this Article.

[2] The 1996 Amending Protocol inserted this paragraph.

5. No income or 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 income or 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 9. Shipping and air transport

1. Income or profits of an enterprise of one of the States from the operation of ships or aircraft in international traffic shall be taxable only in that State.
2. The provisions of paragraph 1 shall also apply to income or profits derived from the participation in a pool, a joint business or an international operating agency.

Article 10. Associated enterprises

Where
a. an enterprise of one of the States participates directly or indirectly in the management, control or capital of an enterprise of the other State, or
b. the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the States and an enterprise of the other State,

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

Article 11. Dividends

1. Dividends paid by a company which is a resident of one of the States to a resident of the other State may be taxed in that other State.
2. However, dividends paid by a company which is a resident of the Netherlands to a resident of Malaysia may also be taxed in the Netherlands and according to Netherlands law, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15% of the gross amount of the dividends. Where, however, the beneficial owner of the dividends is a company the capital of which is wholly or partly divided into shares and which holds directly or indirectly at least 25% of the capital of the company paying the dividends, the Netherlands shall not levy a tax on the dividends.
The competent authorities of the States shall by mutual agreement settle the mode of application of this paragraph.
3. Dividends paid by a company which is a resident of Malaysia to a resident of the Netherlands 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 or profits of the company: Provided that nothing in this paragraph shall affect the provisions of the Malaysian law under which the tax in respect of a dividend paid by a company 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 provisions of paragraphs 2 and 3 shall not affect the taxation of the company in respect of the income or profits out of which the dividends are paid.
5. The term ‘dividends’ as used in this Article means income from shares, ‘jouissance’ shares or ‘jouissance’ rights, mining shares, founders' shares or other rights, not being debt–claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident.
6. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the dividends, being a resident of one of the States, carries on business in the other 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 8 shall apply.
7. Where a company which is a resident of one of the States derives income or profits from the other State, that other State may not impose any tax on the dividends paid by the company, except insofar as such

dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed income or profits to a tax on the company's undistributed income or profits, even if the dividends paid or the undistributed income or profits consist wholly or partly of income or profits arising in such other State.

Article 12. Interest

1. Interest arising in one of the States and paid to a resident of the other State may be taxed in that other State.
2.[3] However, such interest may also be taxed in the 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% of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2, interest paid or credited to a resident of the Netherlands by a person licensed to carry on banking business in Malaysia, or on an approved loan or a long–term loan shall be exempt from Malaysian tax.
4. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraphs 2 and 3.
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, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
6. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of one of the States, carries on business in the other 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 8 shall apply.
7. Interest shall be deemed to arise in one of the States when the payer is that State itself, a political subdivision, a local authority or statutory body thereof, or a resident of that State.
Where, however, the person paying the interest, whether he is a resident of one of the States or not, has in one of the 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 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 State, due regard being had to the other provisions of this Agreement.
9. Notwithstanding the provisions of paragraph 2, the Government of one of the States shall be exempt from tax in the other State in respect of interest derived by the Government from that other State. For the purposes of this paragraph, the term ‘Government’:
   a. in the case of the Netherlands, means the Government of the Kingdom of the Netherlands and shall include:
      i. the local authorities;
      ii. the statutory bodies thereof;
      iii. the Nederlandse Bank (Central Bank);
      iv. the Nederlandse Financierings Maatschappij voor Ontwikkelingslanden N.V. (Netherlands finance company for developing countries) and the Nederlandse Investeringsbank voor Ontwikkelingslanden N.V. (Netherlands investment bank for developing countries);
      v. such institutions, the capital of which is wholly owned by the Government of the Kingdom of the Netherlands or the local authorities, as may be agreed from time to time between the competent authorities of the States;
   b. in the case of Malaysia, means the Government of Malaysia and shall include:
      i. the government of the States;
      ii. the local authorities;

[3] Before the 1996 Amending Protocol this percentage was '15%'

iii. the statutory bodies thereof;
iv. the Bank Negara Malaysia;
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, as may be agreed from time to time between the competent authorities of the States.

Article 13. Royalties

1. Royalties arising in one of the States and paid to a resident of the other State may be taxed in that other State.
2[4]. However, such royalties may also be taxed in the State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of such royalties the tax so charged shall not exceed 8 per cent of the gross amount of the royalties.
3. Notwithstanding the provisions of paragraph 2, approved industrial royalties as defined in paragraph 7 of this Article derived from Malaysia by a resident of the Netherlands shall be exempt from Malaysian tax.
4. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraphs 2 and 3.
5. Royalties derived by a resident of the Netherlands, being royalties that, as film rentals, are subject to the cinematograph film–hire duty in Malaysia, shall not be liable to Malaysian tax.
6. 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, copyright of any 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, or any copyright of literary or artistic work.
7. The term 'approved industrial royalties' means royalties as defined in subparagraph (a) of paragraph 6 which are approved and certified by the competent authority of Malaysia as payable for the purpose of promoting industrial development in Malaysia and which are payable by an enterprise which is wholly or mainly engaged in activities falling within one of the following classes:
   a. manufacturing, assembling or processing;
   b. construction, civil engineering or shipbuilding; or
   c. electricity, hydraulic power, gas or water supply.
8. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the royalties, being a resident of one of the States, carries on business in the other 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 8 shall apply.
9. Royalties shall be deemed to arise in one of the States when the payer is that State itself, a political subdivision, a local authority or statutory body thereof, or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of one of the States or not, has in one of the States 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.
10. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, 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 State, due regard being had to the other provisions of this Agreement.

Article 13A. Technical fees [5]

[4] The 1996 Amending protocol changed this paragraph. The original (1988) text read:

'2. However, such royalties may also be taxed in the 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:
a. 10% of the gross amount of the royalties where the royalties are as defined in subparagraph (a) of paragraph 6; and
b. 15% of the gross amount of the royalties where the royalties are as defined in subparagraph (b) of paragraph 6.'

1. Technical fees arising in one of the States and paid to a resident of the other State may be taxed in that other State.
2. However, such technical fees may also be taxed in the State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the technical fees, the tax so charged shall not exceed:
   a. 10 per cent of the gross amount of the technical fees for payments made on or after 1 January 1990 but before 1 January 1996; and
   b. 8 per cent of the gross amount of the technical fees for payments made on or after 1 January 1996.
3. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraph 2.
4. 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.
5. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the technical fees, being a resident of one of the States, carries on business in the other State in which the technical fees arise, through a permanent establishment situated therein, or performs in that other State professional services, and the technical fees are effectively connected with such permanent establishment or such professional services. In such case, the provisions of Article 8 or Article 15, as the case may be, shall apply.
6. Technical fees shall be deemed to arise in one of the States 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 one of the States or not, has in one of the States 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 State in which the permanent establishment is situated.
7. 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 laws of each State, due regard being had to the other provisions of this Agreement.

Article 14. Capital gains

1. Gains derived by a resident of one of the States from the alienation of immovable property referred to in Article 7 and situated in the other 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 one of the States has in the other State 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 State in which the place of effective management of the enterprise is situated.
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 State of which the alienator is a resident.
5. The provisions of paragraph 4 shall not affect the right of each of the States to levy according to its own law a tax on gains from the alienation of shares or 'jouissance' rights in a company, the capital of which is wholly or partly divided into shares and which is a resident of that State, derived by an individual who is a resident of the other State and has been a resident of the first–mentioned State in the course of the last five years preceding the alienation of the shares or 'jouissance' rights.

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, including professional, services shall be taxable only in

[5] The 1996 Amending Protocol added this article.

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, 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 or other remuneration derived by a resident of one of the States in his capacity as a member of the board of directors, a ‘bestuurder’ or a ‘commissaris’ of a company which is a resident of the other 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 one of the States 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 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 8 and 15, be taxed in the 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, salaries, wages and similar income derived from activities exercised in one of the States by an entertainer or an athlete if his visit to that State is substantially supported from the public funds of the other State or a political subdivision, a local authority or statutory body thereof.

Article 18. Pensions and annuities

1. Subject to the provisions of paragraphs 2 and 4 of Article 19, any pension or other similar remuneration for past employment or any annuity arising in a State and paid to a resident of the other State shall be taxable only in that other State.
2. The term ‘annuity’ means 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 one of the States or a political subdivision, a local authority or statutory body thereof to an individual in respect of services rendered to that State, subdivision, authority or body may be taxed only in that State.
   b. However, such remuneration shall be taxable only in the other 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 purpose of rendering the services.

2. Any pension paid by, or out of funds created by, one of the States or a political subdivision, a local authority or statutory body thereof to an individual in respect of services rendered to that State, subdivision, authority or body may be taxed 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 a business carried on by one of the States or a political subdivision, a local authority or statutory body thereof.
4. The provisions of paragraphs 1 and 2 shall likewise apply in respect of remuneration or pensions paid by, in the case of Malaysia, the Bank Negara Malaysia, the Malaysian Industrial Development Authority, the Tourist Development Corporation and other government–owned institutions performing the functions of a governmental nature, as may be agreed from time to time between the competent authorities of the States.

Article 20. Professors and teachers

1. An individual who, at the invitation of a university, college, school or other similar recognised educational institution in one of the States, visits that State for a period not exceeding two years solely for the purpose of teaching or conducting research or both at such educational institution and who is, or was immediately before that visit, a resident of the other State shall be exempt from tax in the first–mentioned State on any remuneration for such teaching or research in respect of which he is subject to tax in the other 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 21. Students and apprentices

1. An individual who is a resident of one of the States immediately before making a visit to the other State and is temporarily present in the other State solely as a student at a recognised university, college, school or other similar recognised educational institution in that other State or as a business or technical apprentice therein, for a period not exceeding 5 years from the date of his first arrival in that other State in connection with that visit, shall be exempt from tax in that other State on:
   a. all remittances from abroad for the purposes of his maintenance, education or training; and
   b. any remuneration not exceeding US$ 2,500 for personal services rendered in that other State with a view to supplementing the resources available to him for such purposes.
2. An individual who is a resident of one of the States immediately before making a visit to the other State and is temporarily present in the other State for the purposes of study, research or training solely as a recipient of a grant, allowance or award 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 for a period not exceeding 3 years from the date of his first arrival in that other State in connection with that visit shall be exempt from tax in that other State on:
   a. the amount of such grant, allowance or award;
   b. all remittances from abroad for the purposes of his maintenance, education or training; and
   c. any remuneration not exceeding US$ 2,500 in respect of services in that other State provided the services are performed in connection with his study, research or training or are incidental thereto.
3. An individual who is a resident of one of the States immediately before making a visit to the other State and is temporarily present in the other State solely as an employee of, or under contract with, the Government or an enterprise of the first–mentioned State solely for the purpose of acquiring technical, professional or business experience for a period not exceeding 12 months from the date of his first arrival in the other State in connection with that visit shall be exempt from tax in that other State on:
   a. all remittances from abroad for the purposes of his maintenance, education or training; and
   b. any remuneration not exceeding US$ 2,500 for personal services rendered in that other State provided such services are in connection with his studies or training or are incidental thereto.
4. For the purposes of this Article the term ‘Government’ shall have the same meaning as in paragraph 9 of Article 12.

Article 22. Other income

1[6]. Items of income of a resident of one of the States, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State except that if such income is derived from sources within the other State, it may also be taxed in that other State but the tax so charged shall not exceed 10 per cent of that income.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 7, if the recipient of such income, being a resident of one of the States, carries on business in the other State through a permanent establishment situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 8 shall apply.

Chapter IV. Elimination of double taxation

Article 23. Elimination of double taxation

1. The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed the items of income which, according to the provisions of this Agreement, may be taxed in Malaysia.
2[7]. However, where a resident of the Netherlands derives items of income which according to Article 7, Article 8, paragraph 6 of Article 11, paragraph 6 of Article 12, paragraph 8 of Article 13, paragraph 2 of Article 13A, paragraphs 1 and 2 of Article 14, paragraph 1 of Article 15, Article 16, Article 19 and paragraph 2 of Article 22 of this Agreement may be taxed in Malaysia and are included in the basis referred to in paragraph 1, the Netherlands shall exempt such items of income. For that purpose the said items of income shall be deemed to be included in the total amount of the items of income which are exempt from Netherlands tax under the provisions of Netherlands laws for the avoidance of double taxation.
3[8]. Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for dividends paid out of income mentioned in subparagraph (a) of paragraph 4 which are not exempted from Netherlands tax and for the items of income which according to paragraph 2 of Article 12, paragraph 2 of Article 13, paragraph 4 of Article 15, Article 17 and paragraph 1 of Article 22 of this Agreement may be taxed in Malaysia as well as for interest to which paragraph 3 of Article 12 and royalties to which paragraph 3 of Article 13 applies to the extent that these items are included in the basis referred to in paragraph 1. The amount of this deduction shall be equal to the Malaysian tax on these dividends or the other aforesaid items of income, but shall not exceed the amount of the reduction which would be allowed if the items of income so included were the sole items of income which are exempt from Netherlands tax under the provisions of Netherlands laws for the avoidance of double taxation.
4. For the purpose of paragraph 3, the term ‘Malaysian tax’ on the dividends or the other items of income mentioned in that paragraph shall be deemed to include Malaysian tax which would, under the laws of Malaysia and in accordance with this Agreement, have been payable on:

a. any income out of which the dividends are paid, had that income not been exempted from Malaysian tax in accordance with:
   i. sections 54A, 54B, 60A and 60B and Schedule 7A of the Income Tax Act, 1967 of Malaysia; or
   ii[9]. sections 22, 23, 29, 29A, 29B, 29C, 29D, 29E, 29F, 29G, 29H and 41B of the Promotion of Investments Act 1986 of Malaysia to the extent that they relate to sections 21, 22, 26, 30KA and 30Q of the Investment Incentives Act 1968 of Malaysia;

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[6] The 1996 Amending Protocol changed this paragraph. The original 1988 text read:

'1. Items of income of a resident of one of the States, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State except that if such income is derived from sources within the other State, it may also be taxed in that other State.'

[7] The 1996 Amending Protocol inserted the words 'paragraph 2 of Article 13A,'.

[8] Before the 1996 Amending Protocol instead of the words ‘, Article 17 and paragraph 1 of Article 22’, the words ‘and Article 17’ were read.

[9] The 1996 Amending Protocol deleted and substituted this sub–paragraph. The original (1988) text read:

‘ii. sections 21, 22, 26, 30KA and 30Q of the Investment Incentives Act, 1968 of Malaysia; so far as they were in force on the date of signature of this Agreement; and’

so far as they were in force on, and have not been modified since, the date of signature of the amending Protocol or have been modified only in minor respects so as not to effect their general character;

iii. any other provisions which may subsequently be introduced in Malaysia in modification of, or in addition to, the investment incentives laws so far as they are agreed by the competent authorities of the States to be of a substantially similar character; but to no more than 25% of the dividend paid out of that income;

b. interest to which paragraph 3 of Article 12 applies had that interest not been exempted from Malaysian tax in accordance with that paragraph but to no more than 10%[10] of the interest;

c. approved industrial royalties to which paragraph 3 of Article 13 applies had those royalties not been exempted from Malaysian tax in accordance with that paragraph but to no more than 8%[11] of the royalties.

5. In the case of Malaysia, subject to the provisions of the laws of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia (which shall not affect the general principle thereof), the Netherlands tax payable under the laws of the Netherlands and in accordance with the provisions of this Agreement, whether directly or by deduction, (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) by a resident of Malaysia in respect of income from sources within the Netherlands which has been subjected to tax both in the Netherlands and Malaysia 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 chargeble to Malaysian tax.

6. Notwithstanding the provisions of paragraph 5 and subject to the provisions of the laws of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in the Netherlands (which shall not affect the general principle hereof), in the case of a dividend paid by a company which is a resident of the Netherlands to a company which is a resident of Malaysia and which owns directly or indirectly at least 25% of the share capital in the first–mentioned company the credit shall be taken into account (in addition to any Netherlands tax on dividends) the Netherlands company tax payable in respect of its profits by the company paying the dividends.

Chapter V. Special provisions

Article 24. Non–discrimination

1. Nationals of one of the States shall not be subjected in the other State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirement 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 one of the States has in the other State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

3. Except where the provisions of Article 10, paragraph 8 of Article 12, paragraph 10 of Article 13, or paragraph 7 of Article 13A[12], apply, interest, royalties and other disbursements paid by an enterprise of one of the States to a resident of the other State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first–mentioned State. Provided that in such cases the conditions of the domestic law of the first–mentioned State are fulfilled.

4. Enterprises of one of the States, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other 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 in the same circumstances and under the same conditions.

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

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[10] Before the 1996 Amending Protocol this percentage was ’15%’.

[11] Before the 1996 Amending protocol this percentage was ‘10%’.

[12] Before the 1996 Amending Protocol instead of the words ‘, paragraph 10 of Article 13, or paragraph 7 of Article 13A’, the words ‘, or paragraph 10 of Article 13’ were read.

a. a State to grant to individuals who are resident of the other 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 the Netherlands 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.

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

Article 25. Mutual agreement procedure

1. Where a person considers that the actions of one or both of the 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 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 two 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 a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other State, with a view to the avoidance of taxation which is not in accordance with the Agreement.
3. The competent authorities of the 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 States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 26. Exchange of information

1. The competent authorities of the States shall exchange such information as is necessary for carrying out the provisions of this Agreement or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes to which this Agreement applies. Any information so exchanged shall be treated as secret and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment, collection, enforcement or prosecution in respect of, or the determination of appeals in relation to, those taxes to which this Agreement applies.
2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the States the obligation:
a. to carry out administrative measures at variance with the laws and administrative practice of that or of the other 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 State;
c. to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

Article 27. Diplomatic and consular officials

1. Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.
2. For the purposes of this Agreement an individual, who is a member of a diplomatic or consular mission of one of the States in the other State or in a third State and who is a national of the sending State, shall be deemed to be a resident of the sending State if he is subjected therein to the same obligations in respect of taxes on income as are residents of that State.
3. The Agreement shall not apply to international organisations, to organs or officials thereof and to individuals who are members of a diplomatic or consular mission of a third State, being present in one of the States and who are not subjected in either State to the same obligations in respect of taxes on income as are residents of that State.

Chapter VI. Final provisions

Article 28. Entry into force

This Agreement shall come into force on the thirtieth day after the date on which the Government of the Kingdom of the Netherlands and the Government of Malaysia exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give this Agreement the force of law in Malaysia and in the Netherlands, as the case may be, and thereupon this Agreement shall have effect:

a. in the case of the Netherlands: for taxable years and periods beginning on or after 1 January 1985;
b. in the case of Malaysia: for the year of assessment beginning on 1 January 1986, and subsequent years of assessment.

Article 29. Termination

This Agreement shall remain in force indefinitely but either State may, on or before 30 June in any calendar year after the year 1988 give to the other State, through diplomatic channels, written notice of termination. In such event the Agreement shall cease to have effect:

a. in the case of the Netherlands for taxable years and periods beginning after the end of the calendar year in which the notice of termination has been given;
b. in the case of Malaysia for years of assessment beginning on or after the first day of January in the second calendar year following that in which such notice has been given.

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

DONE at The Hague this seventh day of March 1988 in duplicate, in the Netherlands, Bahasa Malaysia and the English languages, the three texts being equally authentic. In case of any divergence of interpretation the English text shall prevail.

Protocol

I. Ad Article 11

Where, for the purposes of Article VII of the Agreement between the Government of Malaysia and the Government of the Republic of Singapore on the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed in Singapore on 26 December 1968:

a. a dividend was paid by a company:
    i. which was resident in both Malaysia and Singapore and the meeting at which the dividend was declared was held in Malaysia; or
    ii. which was resident in Singapore and at the time of payment of that dividend the company declared itself to be a resident of Malaysia, the dividend shall be deemed to have been paid by a company resident in Malaysia;
b. a dividend was paid by a company:
    i. which was resident in both Malaysia and Singapore and the meeting at which the dividend was declared was held in Singapore; or
    ii. which was resident in Malaysia and at the time of payment of that dividend the company declared itself to be a resident of Singapore, the dividend shall be deemed to have been paid by a company not resident of Malaysia.

II. Ad Article 12

The term ‘approved loan’ means any loan or other indebtedness approved by the competent authority of Malaysia as being made or incurred for the purpose of financing development projects or for the purchase of capital equipment for development projects in Malaysia. The term ‘long–term loan’ means any loan made or funds deposited as defined in Section 2 of the Income Tax Act, 1967 of Malaysia.

[13, 14] III. Ad Articles 11, 12, 13 and 13A

Where tax has been levied in excess of the amount of tax chargeable under the provisions of Articles 11, 12, 13 and 13A[15], applications for the restitution of the excess amount to tax have to be lodged with the competent authority of the State having levied the tax, within a period of three years after the expiration of the calendar year in which the tax has been levied.

IV. Ad Article 16

It is understood that ‘bestuurder’ or ‘commissaris’ of a Netherlands company means persons, who are nominated as such by the general meeting of shareholders or by any other competent body of such company and are charged with the general management of the company and the supervision thereof, respectively.

V. Ad Articles 19 and 23

It is understood that the provisions of paragraph 1 of Article 19 do not prevent the Netherlands from applying the provisions of paragraphs 1 and 2 of Article 23 of the Agreement.

[16] VI. Ad Article 23

1. Notwithstanding Article 23 of the Agreement, the provisions of paragraph 4 of Article 23 shall cease to have effect for taxable years beginning on or after 1 January of the year 2006. However, the competent authorities of the States may decide by mutual agreement to extend the period of application of paragraph 4 of Article 23 to taxable years beginning on or after 1 January of the year 2006.
2. The provisions of paragraph 4 of Article 23 shall not apply if the debt–claim in respect of which the interest is paid or the right or property giving rise to the royalties was agreed upon or assigned mainly for the purpose of taking advantage of the provisions of paragraph 4 of Article 23 of the Agreement.

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

DONE at The Hague this seventh day of March 1988 in duplicate, in the Netherlands, Bahasa Malaysia and the English languages, the three texts being equally authentic. In case of any divergence of interpretation the English text shall prevail.

Protocol to amend

[13] Before the 1996 Amending Protocol instead of the words ‘, 13 and 13A’, the words ‘and 13’ were read.

[14] Article VIII paragraph 2 of the 1996 Amending Protocol provides with regard to this Article ‘Notwithstanding Article III of the Protocol to the Agreement as amended by Article VIII, paragraph 1, of this Protocol, claims for refund of tax levied in excess of the amount chargeable under the provisions of Article 13A on or after the first day of January 1990, but before the date on which this Protocol enters into force, must be lodged with the competent authorities of the State having levied that tax within a period of three years after the date of the entry into force of this Protocol.’

[15] Before the 1996 Amending Protocol instead of the words ‘, 13 and 13A’, the words ‘or 13’ were read.

[16] The 1996 Amending protocol added this Article.

Article I

[Insertion of Article 6, paragraph 2; see Article 6]

Article II

[Change of Article 12, paragraph 2; see Article 12]

Article III

[Change of Article 13, paragraph 2; see Article 13]

Article IV

[Insertion of Article 13A; see Article 13A]

Article V

[Change of Article 22, paragraph 1; see Article 22]

Article VI

[Change of Article 23, paragraphs 3 and 4; see Article 23]

Article VII

[Change of Article 24, paragraph 3; see Article 24]

Article VIII

[Change of Article III of the Protocol; see Protocol, Article III]

Article IX

[Insertion of Article VI to the Protocol; see Article VI]

Article X

1. Each of the States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Protocol. This Protocol shall enter into force on the date of the latter of these notifications and, subject to the provisions of paragraphs 2 and 3 of this Article, shall thereupon have effect:
   a. in the case of the Netherlands:
      for taxable years or periods beginning on or after the first day of January in the calendar year following that in which this Protocol enters into force;
   b. in the case of Malaysia:
      i. in respect of taxes withheld at source, to income derived on or after 1 January in the calendar year following the year in which this Protocol enters into force;

ii. in respect of other taxes on income, to taxes chargeable for any year of assessment beginning on or after 1 January of the second calendar year following the year in which this Protocol enters into force.

2. Notwithstanding the preceding paragraph:
   a. Article IV, subparagraph (a) of paragraph 1 of Article VI and Articles VII and VIII of this Protocol shall be effective for taxable years, periods or calendar years beginning on or after the first day of January 1990;
   b. Subparagraph (a) of paragraph 2 of Article VI of this Protocol shall be effective for taxable years, periods or calendar years beginning on or after the first day of January 1986.

3. This Protocol shall cease to have effect at such time as the Agreement ceases to have effect in accordance with Article 29 of the Agreement.

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

DONE IN duplicate at The Hague this fourth day of December 1996, each in the Netherlands, the Bahasa Malaysia and the English languages, the three texts being equally authentic. In the case of any divergence of interpretation, the English text shall prevail.