

No. 11390

**JAPAN
and
MALAYSIA**

Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with exchanges of notes). Signed at Kuala Lumpur on 30 January 1970

Authentic text: English.

Registered by Japan on 4 November 1971.

**JAPON
et
MALAISIE**

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec échanges de notes). Signée à Kuala Lumpur le 30 janvier 1970

Texte authentique : anglais.

Enregistrée par le Japon le 4 novembre 1971.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF JAPAN
AND THE GOVERNMENT OF MALAYSIA FOR THE
AVOIDANCE OF DOUBLE TAXATION AND THE PRE-
VENTION OF FISCAL EVASION WITH RESPECT TO
TAXES ON INCOME

The Government of Japan 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 I

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

(a) in Malaysia:

- (i) the income tax;
- (ii) the supplementary income tax, that is, tin profits tax, development tax and timber profits tax; and
- (iii) the petroleum income tax
(hereinafter referred to as “Malaysian tax”);

(b) in Japan:

- (i) the income tax; and
- (ii) the corporation tax
(hereinafter referred to as “Japanese tax”).

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

Article II

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

(a) the term “Malaysia” means the Federation of Malaysia;

¹ Came into force on 23 December 1970 by the exchange of the instruments of ratification, which took place at Tokyo, in accordance with article XXII.

- (b) the term “Japan”, when used in a geographical sense, means all the territory in which the laws relating to Japanese tax are enforced;
- (c) the terms “one of the Contracting States” and “the other Contracting State” mean Japan or Malaysia, as the context requires;
- (d) the term “tax” means Japanese tax or Malaysian tax, as the context requires;
- (e) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the term “person” includes an individual, a company and a body of persons, but does not include a partnership, and in the case of Malaysia, also includes a Hindu joint family and a corporation sole;
- (g) the term “enterprise” means an industrial, mining, commercial, timber, plantation or agricultural enterprise or undertaking carried on by a resident of either Contracting State;
- (h) the terms “enterprise of one of the Contracting States” and “enterprise of the other Contracting State” mean an enterprise carried on by a resident of Japan or an enterprise carried on by a resident of Malaysia, as the context requires;
- (i) the term “income of an enterprise” does not include:
 - (i) payments made as consideration for the use of, or the right to use, copyrights of literary or artistic work, motion picture films or tapes for radio or television broadcasting, or for the operation of a mine, oil well, quarry or other places of extraction of natural resources or of timber or forest produce;
 - (ii) income in the form of royalties or sums mentioned in paragraph 3 of Article X, dividends, interest or rents;
 - (iii) fees or other remuneration derived from the management, control or supervision of the trade, business or other activity of another enterprise or concern;
 - (iv) remuneration for labour or personal services; and
 - (v) income derived from the operation of ships or aircraft;
- (j) the term “competent authority” means, in the case of Japan, the Minister of Finance or his authorised representative; and in the case of Malaysia, the Minister of Finance or his authorised representative.

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

Article III

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

(a) the term “resident of Malaysia” means

(i) an individual who is ordinarily resident in Malaysia, or

(ii) a person other than an individual who is resident in Malaysia

for the basis year for a year of assessment for the purposes of Malaysian tax;

(b) the term “resident of Japan” means an individual or a person other than an individual who is resident in Japan for the purposes of Japanese tax;

(c) the terms “resident of one of the Contracting States” and “resident of the other Contracting State” mean a resident of Japan or a resident of Malaysia, as the context requires.

2. Where by reason of the provisions of paragraph 1 of this Article an individual or a person other than an individual is a resident of both Contracting States, then the competent authorities shall determine by mutual agreement the Contracting State of which such individual or person shall be deemed to be a resident for the purposes of this Agreement.

Article IV

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

2. The term “permanent establishment” shall include especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a warehouse;

- (g) a mine, oil well, quarry or other place of extraction of natural resources;
- (h) a building site or construction, installation or assembly project which exists for more than six months;
- (i) a farm or plantation;
- (j) a place of extraction of timber or forest produce.

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

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

4. An enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State if:

- (a) it carries on supervisory activities in that other Contracting State for more than six months in connection with a construction, installation or assembly project which is being undertaken in that other Contracting State;
- (b) it carries on a business which consists of providing the services of public entertainers of the kind referred to in Article XIV in that other Contracting State.

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

- (a) he has, and habitually exercises in that first-mentioned Contracting State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or

- (b) he maintains in the first-mentioned Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise.

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

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

Article V

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

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

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

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

Article VI

Where —

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

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

Article VII

1. The income of an enterprise of one of the Contracting States derived from the other Contracting State from the operation of ships in international traffic may be taxed in that other Contracting State, but the tax chargeable in that other Contracting State on such income shall be reduced by an amount equal to fifty per cent thereof.

2. The income of an enterprise of one of the Contracting States derived from the other Contracting State from the operation of aircraft in international traffic shall be exempt from tax in that other Contracting State, unless the aircraft is operated wholly or mainly between places within that other Contracting State.

Article VIII

1. Dividends paid by a company which is a resident of one of the Contracting States shall be treated as derived from that Contracting State.

2. Dividends paid by a company which is a resident of Malaysia to a resident of Japan who is subject to Japanese tax in respect 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:

Provided that nothing in this paragraph shall affect the provisions of the Malaysian laws under which the tax in respect of a dividend paid by a company resident in Malaysia from which Malaysian tax has been, or has been deemed to be, deducted may be adjusted by reference to the rate of tax appropriate to the Malaysian year of assessment immediately following that in which the dividend was paid.

3. Dividends paid by a company which is a resident of Japan to a resident of Malaysia who is subject to Malaysian tax in respect thereof shall not be chargeable to tax in Japan at a rate exceeding fifteen per cent:

Provided that where the resident of Malaysia is a company which owns at least twenty-five per cent of the entire voting shares of the company paying such dividends during the period of six months immediately preceding the date of payment of the dividends, such dividends shall not be chargeable to tax in Japan at a rate exceeding ten per cent.

4. Where a company which is a resident of one of the Contracting States derives income from the other Contracting State, there shall not be imposed in that other Contracting State any form of taxation on dividends paid by the company to persons not resident in that other Contracting State or any tax in the nature of an undistributed profits tax on undistributed income of the company, whether or not those dividends or undistributed income represent, in whole or in part, income so derived.

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

Article IX

1. The Government of one of the Contracting States shall be exempt from tax in the other Contracting State with respect to interest derived by such Government from that other Contracting State.

2. For the purposes of paragraph 1 of this Article, the term "Government" —

(a) in the case of Malaysia means the Government of Malaysia and shall include —

(i) the governments of the States;

- (ii) the local authorities;
 - (iii) the Bank Negara, Malaysia; and
 - (iv) 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 Governments of the two Contracting States;
- (b) in the case of Japan means the Government of Japan and shall include —
- (i) the local authorities;
 - (ii) the Bank of Japan;
 - (iii) the Export-Import Bank of Japan; and
 - (iv) such institutions, the capital of which is wholly owned by the Government of Japan or the local authorities, as may be agreed from time to time between the Governments of the two Contracting States.

3. Subject to the provisions of paragraph 1 of this Article, interest derived from one of the Contracting States by a resident of the other Contracting State who is subject to tax in respect thereof in that other Contracting State may be taxed in the first-mentioned Contracting State at a rate not exceeding ten per cent, if the loan (including a loan in the form of deferred payments) or other indebtedness in respect of which the interest is paid, is made to, or incurred by, an enterprise of that first-mentioned Contracting State engaged in an industrial undertaking.

4. For the purposes of paragraph 3, the term “industrial undertaking” means an undertaking falling under any of the classes mentioned below —

- (a) manufacturing, assembling and processing;
- (b) construction, civil engineering and ship building;
- (c) electricity, hydraulic power, gas and water supply;
- (d) plantation, agriculture, forestry and fishery; and
- (e) any other undertaking which may be declared to be an “industrial undertaking” for the purposes of this Article by the competent authority of the Contracting State in which the undertaking is situated.

5. Interest shall be treated as derived from one of the Contracting States when the payer is the Government, the government of a State, a local authority or a resident of that Contracting State, except that the interest which is paid —

- (a) by an enterprise of one of the Contracting States with a permanent establishment outside both Contracting States to a resident of the other Contracting State; or
- (b) by an enterprise of one of the Contracting States with a permanent establishment in the other Contracting State,

on indebtedness incurred for the use of (or, in the case of a banking or other financial institution, on deposits made with) that permanent establishment in the conduct of its trade or business and which is borne by that permanent establishment shall be treated as derived from the State where that permanent establishment is situated.

6. The provisions of paragraph 3 of this Article shall not apply if the recipient of the interest, being a resident of one of the Contracting States, has in the other Contracting State from which the interest is derived a permanent establishment with which the indebtedness from which the interest arises is effectively connected. In such a case the provisions of Article V shall apply.

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

Article X

1. Royalties derived from one of the Contracting States by a resident of the other Contracting State who is subject to tax in that other Contracting State in respect thereof may be taxed in the first-mentioned Contracting State at a rate not exceeding ten per cent.

2. The term "royalties" as used in this Article means a payment of any kind received as consideration for the use of, or the right to use, copyright of scientific work, patent, trademark, design or model, plan, secret formula or process or for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial or scientific experience. The term, however, does not include a payment of any kind received as consideration for the use of, or the right to use, copyrights of literary or artistic work, motion picture films or tapes for radio or television

broadcasting, or for the operation of a mine, oil well, quarry or other places of extraction of natural resources or of timber or forest produce.

3. Sums derived from the alienation of any right or property mentioned in the first sentence of paragraph 2 of this Article from one of the Contracting States by a resident of the other Contracting State who is subject to tax in that other Contracting State in respect thereof may be taxed in the first-mentioned Contracting State at a rate not exceeding ten per cent.

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

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

6. Royalties shall be treated as derived from the Contracting State in which the right or property in respect of which the royalties are paid is used.

7. Sums derived from the alienation of any right or property referred to in paragraph 3 of this Article shall be treated as derived from the Contracting State in which such right or property is used.

Article XI

1. Remuneration, including pensions, paid by the Government of Malaysia to any individual who is a citizen of Malaysia in respect of services rendered in the discharge of governmental functions shall be exempt from Japanese tax, unless such individual is a national of Japan or has been admitted to Japan for permanent residence therein.

2. Remuneration paid by the Government of Japan or pensions paid by or out of funds to which contributions are made by the Government of Japan to any individual who is a national of Japan in respect of services rendered in the discharge of governmental functions shall be exempt from Malaysian tax, unless such individual is a citizen of Malaysia or has been admitted to Malaysia for permanent residence therein.

3. The provisions of this Article shall not apply to payments in respect of services rendered in connection with any business carried on by the Government of either of the Contracting States for the purposes of profit.

4. For the purposes of this Article, the term "Government" shall include any State or local authority of either Contracting State.

Article XII

1. Subject to the provisions of Articles XI, XIII, XV, XVI and XVII, salaries, wages and other similar remuneration derived by a resident of one of the Contracting States in respect of an employment shall be taxable only in that Contracting 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 Contracting State.

2. Notwithstanding the provisions of paragraph 1 of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft engaged in international traffic and operated by an enterprise of one of the Contracting States may be taxed in that Contracting State.

3. (a) In relation to remuneration of a director of a company derived from the company, the provisions of the preceding paragraphs of this Article and Article XIII shall apply as if the remuneration were remuneration of an employee in respect of an employment.

(b) Notwithstanding the preceding provisions of this Article, directors' fees and similar payments derived by a resident of one of the Contracting States in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

Article XIII

An individual who is a resident of one of the Contracting States shall be exempt from tax in the other Contracting State on income derived from personal (including professional) services performed in that other Contracting State, if —

- (a) he is present within that other Contracting State for a period or periods not exceeding in the aggregate 183 days in the taxable year or the basis year for a year of assessment, as the case may be; and
- (b) the services are performed for or on behalf of a person who is not a resident of that other Contracting State; and
- (c) the income is not directly deductible from the income of a permanent establishment which the person has in that other Contracting State.

Article XIV

1. The provisions of Article XIII shall not apply to the income derived from one of the Contracting States from services rendered by a public entertainer (such as stage, motion picture, radio or television artiste, musician and athlete) being a resident of the other Contracting State whose visit to that first-mentioned Contracting State is not supported, wholly or substantially, from the public funds of the Government of the other Contracting State.

2. Where the services mentioned in paragraph 1 of this Article are provided in one of the Contracting States by an enterprise of the other Contracting State, then the income derived from providing those services by such enterprise may be taxed in the first-mentioned Contracting State, unless the enterprise is supported, wholly or substantially, from the public funds of the Government of the other Contracting State in connection with the provision of such services.

3. For the purposes of this Article, the term "Government" shall have the same meaning as in paragraph 4 of Article XI.

Article XV

1. Any pension (other than a pension of the kind referred to in Article XI) or any annuity derived by an individual who is a resident of one of the Contracting States from the other Contracting State shall be taxable only in the first-mentioned Contracting State.

2. The term "annuity" includes a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time,

under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

3. The term "pension" includes periodical payments made, whether voluntarily or otherwise, in consideration for services rendered, or by way of compensation for injuries received, in connection with past employment.

Article XVI

An individual who was a resident of one of the Contracting States immediately before making a visit to the other Contracting State, and who, at the invitation of a university, college, school or other similar recognised educational institution in that other Contracting State, visits that other Contracting State for a period not exceeding two years solely for the purpose of teaching or research or both at such educational institution shall be exempt from tax in that other Contracting State on his remuneration for such teaching or research.

Article XVII

1. An individual who was a resident of one of the Contracting States immediately before making a visit to the other Contracting State and is temporarily present in that other Contracting State solely —

- (a) as a student at a recognised university, college, school or other educational institution in that other Contracting State;
- (b) as a recipient of a grant, allowance or award for the primary purpose of study or research from a governmental, religious, charitable, scientific, literary or educational organisation; or

(c) as a business apprentice;

shall be exempt from tax in that other Contracting State in respect of —

- (i) remittances from abroad for the purposes of his maintenance, education, study, research or training;
- (ii) such grant, allowance or award;
- (iii) remuneration for personal services in that other Contracting State paid by his employer in the first-mentioned Contracting State; and

(iv) remuneration for personal services in that other Contracting State other than the remuneration referred to in subparagraph (iii) not exceeding the sum of 360,000 Yen or 3,000 Malaysian Dollars, as the case may be, during any calendar year.

2. An individual who was a resident of one of the Contracting States immediately before making a visit to the other Contracting State and is temporarily present in that other Contracting State for a period not exceeding twelve months as an employee of, or under contract with, an enterprise of the first-mentioned Contracting State, or an organisation referred to in subparagraph (b) of paragraph 1 of this Article, solely to acquire technical, professional or business experience shall be exempt from tax in that other Contracting State on the remuneration for such period for his services directly related to the acquisition of such experience, if the total amount of such remuneration received from abroad by such individual and of remuneration paid in that other Contracting State does not exceed the sum of 1,420,000 Yen or 12,000 Malaysian Dollars, as the case may be, during any calendar year.

3. An individual who was a resident of one of the Contracting States immediately before making a visit to the other Contracting State and is temporarily present in that other Contracting State for a period not exceeding twelve months under arrangements with the Government of that other Contracting State, solely for the purpose of study, research or training, shall be exempt from tax in that other Contracting State on remuneration for services directly related to such study, research or training.

4. Notwithstanding the provisions of paragraphs 1, 2 and 3 of this Article, as respects a period throughout which an individual qualifies for exemption under two or all of these paragraphs, he shall only be entitled to exemption under such one of the paragraphs under which he so qualifies as he may select.

5. For the purposes of this Article, the term "Government" shall have the same meaning as in paragraph 4 of Article XI.

Article XVIII

1. The laws of each of the Contracting States shall continue to govern the taxation of income whether derived from the Contracting State or elsewhere except where express provisions to the contrary are made in this

Agreement. Where income derived from one of the Contracting States is subject to tax in both Contracting States, relief from double taxation on such income shall be given in accordance with the provisions of paragraphs 2 and 3 of this Article.

2. Subject to the laws of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, Japanese tax payable in respect of income derived from Japan shall be allowed as a credit against Malaysian tax payable in respect of that income. Where such income is a dividend paid by a company resident in Japan to a company resident in Malaysia which owns not less than twenty-five per cent of the entire shares with voting power of the company resident in Japan, the credit shall take into account Japanese tax payable by the first-mentioned company in respect of its income.

3. Subject to the laws of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan, Malaysian tax payable in respect of income derived from Malaysia shall be allowed as a credit against Japanese tax payable in respect of that income. Where such income is a dividend paid by a company resident in Malaysia to a company resident in Japan which owns not less than twenty-five per cent either of the voting shares of the company paying the dividend or of the total shares issued by that company, the credit shall take into account Malaysian tax payable by that company in respect of its income.

4. For the purposes of paragraph 3 of this Article, the term "Malaysian tax payable" shall be deemed to include, in the case of interest on any loan or other indebtedness of the kind mentioned in paragraph 3 of Article IX, or in the case of royalties or sums mentioned in paragraph 3 of Article X, the amount of the Malaysian tax which would have been paid if the Malaysian tax had not been reduced in accordance with the provisions of paragraph 3 of Article IX or Article X.

5. For the purposes of paragraph 3 of this Article, the term "Malaysian tax payable" shall be deemed to include the amount of Malaysian tax which would have been paid if the Malaysian tax had not been exempted in accordance with the special incentive measures designed to promote economic development in Malaysia, effective on the date of signature of this Agreement, or which may be introduced in future in the Malaysian tax laws in modification of, or in addition to, the existing measures:

Provided that the scope of the benefit accorded to the taxpayer by those measures shall be agreed to by the Governments of both Contracting States.

Article XIX

1. Citizens or nationals of one of the Contracting States 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 citizens or nationals of that other Contracting State in the same circumstances are or may be subjected. This provision shall not be construed as obliging Malaysia to grant to nationals of Japan 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 citizens of Malaysia or to such other persons as may be specified therein who are not resident in Malaysia.

2. The taxation on a permanent establishment which an enterprise of one of the Contracting States has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities. This provision shall not be construed as obliging either of the Contracting States to grant to citizens or nationals of the other Contracting State not resident in the first-mentioned Contracting State those personal allowances, reliefs and reductions for tax purposes which are by law available only to residents of that first-mentioned Contracting State.

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

4. In this Article, the term "citizens or nationals" means —

- (a) in the case of Malaysia, all individuals possessing the citizenship of Malaysia and all legal persons, partnerships, associations and other entities deriving their status as such from the law in force in Malaysia; and
- (b) in the case of Japan, all individuals possessing the nationality of Japan and all companies or other kinds of juridical persons created under the law of Japan and all organisations without juridical personality treated for the purposes of Japanese tax as juridical persons created under the law of Japan.

Article XX

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or for the prevention of fiscal evasion or for the administration of statutory provisions against tax avoidance in relation to the taxes which are the subject of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those, including a court, concerned with the assessment and collection of those taxes or the determination of appeals in relation thereto and the persons with respect to whom the information relates.

2. In no case shall the provisions of paragraph 1 of this Article be construed so as to impose on one of the Contracting States the obligation:

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

Article XXI

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

2. The competent authority of the first-mentioned Contracting State shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve that case by mutual agreement with the competent authority of the other Contracting State with a view to the avoidance of taxation which is not in accordance with this Agreement.

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

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

Article XXII

1. This Agreement shall be ratified and the instruments of ratification shall be exchanged at Tokyo as soon as possible.

2. This Agreement shall enter into force on the date of the exchange of instruments of ratification and shall have effect:

(a) in Malaysia:

as respects Malaysian tax for the year of assessment beginning on the first day of January, 1970, and subsequent years of assessment;

(b) in Japan:

as respects Japanese tax for the taxable years beginning on or after the first day of January, 1970.

Article XXIII

Either of the Contracting States may terminate this Agreement after a period of three years from the date on which this Agreement enters into force by giving to the other Contracting State, through diplomatic channels, written notice of termination, provided that such notice shall be given on or before the thirtieth day of June, and in such event this Agreement shall cease to have effect:

(a) in Malaysia:

as respects Malaysian tax for the year of assessment beginning on the first day of January in the calendar year next following that in which such notice is given and subsequent years of assessment;

(b) in Japan:

as respects Japanese tax for the taxable years beginning on or after the first day of January in the calendar year next following that in which such notice is given.

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

DONE in duplicate at Kuala Lumpur this thirtieth day of January of the year 1970 in the English language.

For the Government
of Japan:

TAISAKU KOJIMA

For the Government
of Malaysia:

ABDUL RAZAK

EXCHANGES OF NOTES

I a

Kuala Lumpur, 30th January, 1970

Excellency,

I have the honour to refer to the Agreement between the Government of Japan and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed today at Kuala Lumpur and to confirm on behalf of the Government of Japan the following understanding reached during the course of the negotiations for the conclusion of the said Agreement:

1. With reference to paragraph 2 of Article III of the Agreement, where an individual is a resident of both Contracting States, their competent authorities shall settle the question by mutual agreement taking into consideration the following rules:

(a) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (centre of vital interests);

(b) If the Contracting 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 Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

(c) If he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a citizen or national;

(d) If he is both a national of Japan and a citizen of Malaysia or neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

2. With reference to paragraph 1 of Article VII of the Agreement, it is agreed that the methods of computing income (including those for gross income and depreciation allowances) of a shipping company under the Japanese tax laws are not substantially different from those under the Income Tax Act, No. 47 of 1967 of Malaysia and that a certificate issued by the Japanese tax authority shall be regarded as an "acceptable certificate" for the purpose of Section 54 of the said Act.

3. With reference to Article VIII of the Agreement, if the system of taxation applicable in either Contracting State to the income and distributions of companies undergoes any significant change affecting this Article, the Governments of both Contracting States shall, upon request of either of them, consult each other with a view to determining whether it is necessary for this reason to amend the Article.

4. With reference to paragraph 4 of Article XVIII of the Agreement, if the rate of Malaysian tax which but for the provisions of the Agreement would be normally applicable to the interest, or royalties or sums mentioned in paragraph 3 of Article X of the Agreement derived by a person not resident in Malaysia is changed, the Governments of both Contracting States shall consult with each other for the purpose of amending the said paragraph with a view to limiting the amount of Malaysian tax which qualifies, by virtue of the said paragraph, for the credit against Japanese tax payable.

I have further the honour to request Your Excellency to confirm the foregoing understanding on behalf of the Government of Malaysia.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

TAISAKU KOJIMA

Ambassador Extraordinary and Plenipotentiary
of Japan to Malaysia

Y.A.B. Tun Haji Abdul Razak bin Dato' Hussein, S.M.N.
Deputy Prime Minister and Minister of Finance

II a

Kuala Lumpur, 30th January, 1970

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of this date, which reads as follows:

[See note I a]

I have further the honour to confirm the foregoing understanding on behalf of the Government of Malaysia.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

ABDUL RAZAK

Deputy Prime Minister and Minister
of Finance, Malaysia

His Excellency Mr. Taisaku Kojima
Ambassador Extraordinary and Plenipotentiary
of Japan to Malaysia

I b

Kuala Lumpur, 30th January, 1970

Excellency,

I have the honour to refer to paragraph 5 of Article XVIII of the Agreement between the Government of Malaysia and the Government of Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed today at Kuala Lumpur and to propose, on behalf of the Government of Malaysia, that the two Governments shall agree that the measures set forth in the following sections of the Investment Incentives Act, No. 13 of 1968 of Malaysia, effective on the date of signature of the aforesaid Agreement are “the special incentive measures designed to promote economic development in Malaysia, effective on the date of signature of this Agreement” referred to in the said paragraph:

- (i) *Section 21* — relating to exemption from income tax of the income of a pioneer company;
- (ii) *Section 22* — relating to exemption from income tax of dividends attributable to the exempt income of a pioneer company;
- (iii) *Section 26* — relating to exemption from income tax of income equivalent to the investment tax credit of a company (other than a pioneer company) and dividends attributable to such exempt income.

I have further the honour to propose that the present Note and Your Excellency’s reply confirming the acceptance by the Government of Japan of the above proposal shall be regarded as constituting an agreement between the two Governments under paragraph 5 of Article XVIII of the said Agreement.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

ABDUL RAZAK

Deputy Prime Minister and Minister
of Finance, Malaysia

His Excellency Mr. Taisaku Kojima
Ambassador Extraordinary and Plenipotentiary
of Japan to Malaysia

II b

Kuala Lumpur, 30th January, 1970

Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of this date, which reads as follows:

[See note I b]

I have further the honour to confirm that the Government of Japan accepts the proposal contained in Your Excellency's Note, and to agree that the same and the present reply shall be regarded as constituting an agreement between the two Governments under paragraph 5 of Article XVIII of the said Agreement.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

TAISAKU KOJIMA

Ambassador Extraordinary and Plenipotentiary
of Japan to Malaysia

Y.A.B. Tun Haji Abdul Razak bin Dato' Hussein, S.M.N.
Deputy Prime Minister and Minister of Finance
