

No. 24852

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**CANADA
and
MALAYSIA**

Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with protocol). Signed at Ottawa on 15 October 1976

Authentic texts: English, French and Bahasa Malaysia.

Registered by Canada on 16 July 1987.

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**CANADA
et
MALAISIE**

Accord tendant à éviter les doubles impositions et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec protocole). Signé à Ottawa le 15 octobre 1976

Textes authentiques : anglais, français et bahasa malaisie.

Enregistré par le Canada le 16 juillet 1987.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF CANADA AND
THE GOVERNMENT OF MALAYSIA FOR THE AVOIDANCE
OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL
EVASION WITH RESPECT TO TAXES ON INCOME

The Government of Canada 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:

I. SCOPE OF THE AGREEMENT

Article I. PERSONAL SCOPE

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

Article II. TAXES COVERED

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

2. The existing taxes to which the Agreement shall apply are:

(a) In the case of Malaysia:

The income tax and excess profit tax; the supplementary income tax, that is,
tin profit tax, development tax and timber profits tax; the petroleum income
tax (hereinafter referred to as "Malaysian tax");

(b) In the case of Canada:

The incomes taxes imposed by the Government of Canada (hereinafter
referred to as "Canadian tax").

3. The Agreement shall apply also to any identical or substantially similar
taxes on income which are imposed after the date of signature of this Agreement
in addition to, or in place of, the existing taxes. The Contracting States shall notify
each other of important changes which have been made in their respective
taxation laws.

II. DEFINITIONS

Article III. GENERAL DEFINITIONS

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

(a) The term "Malaysia" means the Federation of Malaysia, and includes
any area adjacent to the territorial waters of Malaysia which in accordance with
international law has been or may hereafter be designated, under the laws of
Malaysia concerning the Continental Shelf, as an area within which the rights of
Malaysia with respect to the sea-bed and sub-soil and their natural resources may
be exercised;

¹ Came into force on 18 December 1980, the date of the last of the notifications by which the Parties informed
each other of the completion of the required procedures, in accordance with article XXIX.

(b) The term “Canada”, used in a geographical sense, means the territory of Canada, including any area beyond the territorial waters of Canada which, under the laws of Canada, is an area within which Canada may exercise rights with respect to the sea-bed and sub-soil and their natural resources;

(c) The terms “a Contracting State” and “the other Contracting State” mean, as the context requires, Canada or Malaysia;

(d) The term “person” includes an individual, a company and any other body of persons;

(e) The term “company” means any body corporate or any entity which is treated, under the laws of the respective Contracting States, as a body corporate for tax purposes; in French, the term “société” also means a “corporation” within the meaning of Canadian law;

(f) The terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(g) The term “competent authority” means:

(i) In the case of Malaysia, the Minister of Finance or his authorized representative,

(ii) In the case of Canada, the Minister of National Revenue or his authorized representative;

(h) The term “national” means

(i) Any individual possessing the citizenship of a Contracting State,

(ii) Any legal person, partnership, association and other entity deriving its status as such from the law in force in a Contracting State;

(i) The term “tax” means Canadian tax or Malaysian tax, as the context requires;

(j) The term “international traffic” means any voyage of a ship or aircraft operated by an enterprise of a Contracting State except where the principal purpose of the voyage is to transport passengers or goods between places in the other Contracting State.

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

Article IV. FISCAL DOMICILE

1. For the purposes of this Agreement, the term “resident of a Contracting State” means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

(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 (hereinafter referred to as his “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 national;
- (d) If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question and to determine the mode of application of the Agreement to such person.

Article V. PERMANENT ESTABLISHMENT

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

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

- (a) A place of management;
- (b) A branch;
- (c) An office;
- (d) A factory;
- (e) A workshop;
- (f) A mine, quarry, oil or gas well or other place of extraction of natural resources including timber or forest produce;
- (g) A farm or plantation or any other agricultural or pastoral property;
- (h) A building site or construction, installation or assembly project which exists for more than 6 months.

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

- (a) The use of facilities solely for the purpose of storage, 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 for 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 a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it carries on supervisory activities in that other Contracting State for more than six months in connection with a construction, installation or assembly project which is being undertaken in that other Contracting State.

5. A person (other than an agent of an independent status to whom paragraph 6 applies) acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the first-mentioned State if:

- (a) He has, and habitually exercises in that 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 a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

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

III. TAXATION OF INCOME

Article VI. INCOME FROM IMMOVABLE PROPERTY

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

2. For the purpose of this Agreement, the term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil wells, quarries and other places of extraction of natural resources including timber or 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 and to profits from the alienation of such 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 or other independent activities.

Article VII. BUSINESS INCOME OR PROFITS

1. The income or profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on or has carried 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 a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the 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 deduction all 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 Contracting State in which the permanent establishment is situated or elsewhere.

4. 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.

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

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 VIII. SHIPPING AND AIR TRANSPORT

1. The income or profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1 and Article VII, income or profits derived by an enterprise of a Contracting State from a voyage of a ship or aircraft where the principal purpose of the voyage is to transport passengers or goods between places in the other Contracting State may be taxed in that other State.

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

Article IX. ASSOCIATED ENTERPRISES

Where

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

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

Article X. DIVIDENDS

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

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

3. Dividends paid by a company which is a resident of Canada to a resident of Malaysia who is subject to tax in Malaysia in respect thereof, may be taxed in Canada in accordance with the law of Canada but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

4. Where a company which is a resident of Malaysia has a permanent establishment in Canada it may be subjected therein to a tax in addition to the tax which would be chargeable on the earnings of a company which is a national of Canada but such tax shall not exceed 15 per cent of the earnings of the permanent establishment which have not been subjected to such additional tax in previous taxation years. For the purpose of this provision the term "earnings" means the income or profits attributable to a permanent establishment in a Contracting State in a year and previous years after deducting therefrom all taxes, other than the additional tax referred to herein, imposed on such income or profits by Canada; however, it does not include the income or profits attributable to the permanent establishment of a company in a year during which the business of the company was not carried on principally in Canada.

5. Dividends paid by a company which is a resident of Malaysia to a resident of Canada who is the beneficial owner thereof shall be exempt from any tax in Malaysia which is chargeable on dividends in addition to the tax chargeable in respect of the income of the company. Nothing in this paragraph shall affect the provisions of the Malaysian law under which the tax in respect of a dividend paid by a company 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.

6. The provisions of paragraphs 3 and 5 of this Article shall not apply if the recipient of the dividends, being a resident of a Contracting State, 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 VII shall apply.

7. Where a company is a resident of only one Contracting State, the other Contracting 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 Contracting 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 Contracting State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Contracting State.

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

Article XI. INTEREST

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

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

3. Interest derived from Malaysia by a resident of Canada who is the beneficial owner thereof shall be exempt from Malaysian tax if the loan or other indebtedness in respect of which the interest is paid is an "approved loan" as defined by Section 2(1) of the Income Tax Act 1967 of Malaysia (as amended by Act A.98 of 1972).

4. 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, as well as income assimilated to income from money lent by the taxation law of the State in which the income arises. However, the term "interest" does not include income treated as "dividends" in Article X.

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

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

connection with which the indebtedness on which the interest is paid was incurred, and that interest is borne by that permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

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

Article XII. ROYALTIES

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

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the law of that State; but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 15 per cent of the gross amount of the royalties.

3. Notwithstanding the provisions of paragraph 2, approved industrial royalties derived from Malaysia by a resident of Canada who is the beneficial owner thereof shall be exempt from Malaysian tax.

4. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, patent, trade mark, 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, commercial or scientific experience. The term, however, does not include any royalty or other amount paid in respect of motion picture films or of tapes for radio or television broadcasting.

5. The term "approved industrial royalties" means royalties as defined in paragraph 4 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.

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

7. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident

of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred, and those royalties are borne by that permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

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

Article XIII. GAINS FROM THE ALIENATION OF PROPERTY

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

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

3. Gains from the alienation of shares of a company, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State. Gains from the alienation of an interest in a partnership or a trust, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State.

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

5. The provisions of paragraph 4 shall not affect the right of either of the Contracting States to levy, according to its law, a tax on gains from the alienation of any property derived by an individual who is a resident of the other Contracting State if the alienator has been a resident of the first-mentioned State at any time during the five years immediately preceding the alienation of the property.

Article XIV. INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State. However, in the following circumstances such income may be taxed in the other Contracting State, that is to say:

(a) If he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the

income as is attributable to that fixed base may be taxed in that other Contracting State; or

- (b) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the calendar year; or
- (c) If the remuneration for his services in the other Contracting State is either derived from residents of that Contracting State or is borne by a permanent establishment which a person not resident in that Contracting State has in that State and which, in either case exceeds the greater of four thousand Malaysian ringgit (\$4,000) or two thousand Canadian dollars (\$2,000) in the calendar year, notwithstanding that his stay in that State is for a period or periods amounting to less than 183 days during the calendar year.

2. 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.

Article XV. DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles XVI, XVIII and XIX, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and either

- (a) The remuneration earned in the other Contracting State in the calendar year concerned does not exceed the greater of four thousand Malaysian ringgit (\$4,000) or two thousand Canadian dollars (\$2,000); or
- (b) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and such remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

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

Article XVI. DIRECTORS' FEES

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State, may be taxed in that other State.

Article XVII. ARTISTES AND ATHLETES

1. Notwithstanding the provisions of Articles XIV and XV, income derived by entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are performed.

2. The provisions of paragraph 1 shall not apply to remuneration or profits, salaries, wages and similar income derived from activities performed in a Contracting State by entertainers and athletes if the visit to that Contracting State is, wholly or substantially supported by public funds of the other Contracting State, including any political subdivision, local authority or statutory body thereof.

3. Notwithstanding the provisions of Article VII, where the activities mentioned in paragraph 1 of this Article are provided in a Contracting State by an enterprise of the other Contracting State the profits derived from providing these activities by such an enterprise may be taxed in the first-mentioned Contracting State unless the enterprise is wholly or substantially supported from the public funds of the other Contracting State, including any political subdivision, local authority or statutory body thereof, in connection with the provision of such activities.

Article XVIII. PENSIONS AND ANNUITIES

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

2. Pensions arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the State in which they arise, and according to the law of that State. However, in the case of periodic pension payments, the tax so charged shall not exceed the lesser of

(a) 15 per cent of the gross amount of the payment, and

(b) The rate determined by reference to the amount of tax that the recipient of the payment would otherwise be required to pay for the year if he were resident in the Contracting State in which the payment arises.

3. Notwithstanding the provisions of paragraphs 1 and 2, pensions paid out of public funds of Malaysia or of funds of any State government or local authority of Malaysia to any individual in respect of services rendered to the Government of Malaysia or any State government or local authority of Malaysia in the discharge of governmental functions shall be taxable only in Malaysia unless the individual is a national of and a resident of Canada.

4. Annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the State in which they arise, and according to the law of that State; but the tax so charged shall not exceed 15 per cent of the gross amount of the payment. However, this limitation does not apply to lump-sum payments arising on the surrender, cancellation, redemption, sale or other alienation of an annuity, or to payments of any kind under an income-averaging annuity contract.

5. Notwithstanding anything in this Agreement:

(a) Pensions and allowances received from Canada under the Pension Act, the Civilian War Pensions and Allowances Act or the War Veterans Allowances Act and compensation received under regulations made under section 7 of the Aeronautics Act shall not be taxable in Malaysia so long as they are not subject to Canadian tax;

(b) Pensions and allowances received from Malaysia under paragraphs 7, 8 and 9 in Part I of Schedule 6 to the Income Tax Act, 1967 of Malaysia shall not be taxable in Canada so long as they are not subject to Malaysian tax.

Article XIX. GOVERNMENT SERVICE

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the Contracting State of which the recipient is a resident if the services are rendered in that State and the recipient did not become a resident of that State solely for the purpose of performing the services.

2. The provisions of paragraph 1 shall not apply to remuneration in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political subdivision or a local authority thereof.

Article XX. STUDENTS

Payments which a student, apprentice or business trainee who is, or was immediately before visiting one of the Contracting States, a resident of the other Contracting State and who is present in the first-mentioned Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that first-mentioned State, provided that such payments are made to him from sources outside that State.

Article XXI. ESTATES OR TRUSTS

1. Income received from an estate or trust which is resident of Canada by a resident of Malaysia may be taxed in Canada according to its law, but the tax so charged shall not exceed 15 per cent of the gross amount of the income.

2. Income paid by a trust which is a resident of Malaysia to a resident of Canada who is the beneficial owner thereof shall be exempt from any tax in Malaysia which is chargeable on such income in addition to the tax chargeable (before allowing any relief to the trust in respect of foreign taxes under the Income Tax Act, 1967 of Malaysia) in respect of the chargeable income of the trust.

Article XXII. INCOME NOT EXPRESSLY MENTIONED

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

IV. METHODS FOR PREVENTION OF DOUBLE TAXATION

Article XXIII. ELIMINATION OF DOUBLE TAXATION

1. The laws of each of the Contracting States shall continue to govern the taxation of income in the respective Contracting States 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 tax chargeable 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, tax

payable in Canada in respect of income derived therefrom shall be allowed as a credit against Malaysian tax payable in respect of that income.

3. In the case of Canada, double taxation shall be avoided as follows:

- (a) Subject to the existing provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions (which shall not affect the general principle hereof) and unless a greater deduction or relief is provided under the laws of Canada, tax payable in Malaysia on profits, income or gains arising in Malaysia shall be deducted from any Canadian tax payable in respect of such profits, income or gains.
- (b) Subject to the existing provisions of the law of Canada regarding the determination of the exempt surplus of a foreign affiliate and to any subsequent modification of those provisions (which shall not affect the general principle hereof) for the purpose of computing Canadian tax, a company resident in Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate resident in Malaysia.

4. For the purpose of paragraph 3(a), tax payable in Malaysia by a resident of Canada shall be deemed to include

- (a) In respect of dividends received by it from a company which is a resident of Malaysia, any amount which would have been payable as Malaysian tax for any year but for an exemption from, or reduction of, tax granted for that year or any part thereof under:
 - (i) Sections 21, 22 and 26 of the Investment Incentives Act 1968 of Malaysia so far as they were in force on, and have not been modified since, the date of signature of this Agreement, or have been modified only in minor respects so as not to affect their general character; and except to the extent that any of the said provisions has the effect of exempting or relieving for a period in excess of ten years the income or profits out of which the dividends are paid; or
 - (ii) Any other provisions which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character:

provided that any deduction from Canadian tax granted in accordance with the provisions of this paragraph shall not exceed an amount equal to 15 per cent of the gross amount of the dividends;

- (b) In the case of interest to which paragraph 3 of Article XI applies, an amount not exceeding a sum equivalent to tax at a rate of 15 per cent on the gross amount of the interest in respect of Malaysian tax which would have been payable but for the exemption granted under paragraph 27 of Schedule 6 to the Income Tax Act 1967 of Malaysia; or
- (c) In the case of any approved royalties falling under paragraph 5 of Article XII, an amount not exceeding a sum equivalent to tax at a rate of 15 per cent on the gross amount of the royalties which would have been payable as Malaysian tax but for the exemption granted in accordance with paragraph 3 of Article XII.

5. For the purposes of this Article, profits, income or gains of a resident of a Contracting State which are taxed in the other Contracting State in accordance with this Agreement shall be deemed to arise from sources in that other State.

Article XXIV. LIMITATION OF RELIEF

Where this Agreement provides (with or without other conditions) that income from sources in a Contracting State shall be exempt from tax, or taxed at a reduced rate in that Contracting State and under the laws in force in the other Contracting State the said income is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the exemption or reduction of tax to be allowed under this Agreement in the first-mentioned Contracting State shall apply to so much of the income as is remitted to or received in that other Contracting 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 Contracting State in respect of an amount of income; and
- (b) That amount of income has subsequently been remitted to or received in the other Contracting State and is thereby subject to tax in that other Contracting State,

the competent authority of the first-mentioned Contracting 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.

V. SPECIAL PROVISIONS

Article XXV. NON-DISCRIMINATION

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirements connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

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

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

- (a) A Contracting State to grant to individuals who are resident of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents;
- (b) Malaysia to grant to nationals of Canada not resident in Malaysia those personal allowances, relief 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.

4. In this Article, the term “taxation” means taxes which are the subject of this Agreement.

Article XXVI. MUTUAL AGREEMENT PROCEDURE

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement he may, without prejudice to the remedies provided by the national laws of those States, address to the competent authority of the Contracting State of which he is a resident an application in writing stating the grounds for claiming the revision of such taxation. To be admissible, the said application must be submitted within two years from the first notification of the action which gives rise to taxation not in accordance with the Agreement.

2. The competent authority referred to in paragraph 1 shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Agreement.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement.

4. The competent authorities of the Contracting States may, if necessary, agree to modify the amounts mentioned in paragraph 1(c) of Article XIV and in paragraph 2(a) of Article XV as a result of monetary or economic developments.

5. 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 XXVII. EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by this Agreement insofar as the taxation thereunder is in accordance with this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment, collection or enforcement of the taxes which are the subject of this Agreement or the determination of appeals in relation thereto.

2. In no case shall the provisions of paragraph 1 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 (*ordre public*).

Article XXVIII. DIPLOMATIC AND CONSULAR OFFICIALS

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

2. Notwithstanding Article IV of this Agreement, an individual who is a member of a diplomatic, consular or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of this Agreement to be a resident of the sending State if he is liable in the sending State to the same obligations in relation to tax on his income as are residents of that sending State.

3. This Agreement shall not apply to International Organizations, to organs or officials thereof and to persons who are members of a diplomatic, consular or permanent mission of a third State, being present in a Contracting State and who are not liable in either Contracting State to the same obligations in relation to tax on their income as are residents thereof.

VI. FINAL PROVISIONS

Article XXIX. ENTRY INTO FORCE

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

(a) In Malaysia:

As respects Malaysian tax for any year of assessment beginning on or after the first day of January in the year immediately following the year in which the Agreement enters into force;

(b) In Canada:

- (i) In respect to tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January in the year in which the Agreement enters into force; and
- (ii) In respect of other Canadian tax for taxation years beginning on or after the first day of January in the year in which the Agreement enters into force.

Article XXX. TERMINATION

This Agreement shall continue in effect indefinitely but either Contracting State may, on or before June 30 in any calendar year after the year 1979, give notice of termination to the other Contracting State and in such event:

(a) In Malaysia, the Agreement shall have effect for the last time as respects Malaysian tax for the year of assessment next following the year in which such notice is given;

(b) In Canada, the Agreement shall cease to have effect

- (i) In respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January in the calendar year next following that in which the notice is given; and
- (ii) In respect of other Canadian tax for taxation years beginning on or after the first day of January in the calendar year next following that in which the notice is given.

PROTOCOL

At the signing of the Agreement between the Government of Canada and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed on the following provisions which shall be an integral part of the Agreement.

1. With reference to paragraph 1(d) of Article III, it is understood that the term "person" also includes an estate and a trust.

2. With reference to paragraph 3 of Article VII, it is understood that no deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commissions, for specific services performed or for management, or by way of interest on moneys lent to the permanent establishment. Likewise, it is understood that no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

3. With reference to Article X,

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

the dividend shall be deemed to have been paid by a company resident in Malaysia;

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

the dividend shall be deemed to have been paid by a company not resident in Malaysia.

4. With reference to paragraph 4 of the Article XII, it is understood that the term “royalties” does not include any royalty or other amount paid in respect of the operation of a mine, oil well, quarry or any other place of extraction of natural resources or of timber or forest produce.

5. With reference to the said Agreement, it is agreed that its provisions shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded

(a) By the laws of one of the Contracting States in the determination of the tax imposed by that Contracting State, or

(b) By any other agreement entered into by a Contracting State.

6. With reference to the said Agreement, it is agreed that nothing therein stated shall be construed as preventing Canada from imposing a tax on amounts included in the income of a resident of Canada according to section 91 (Foreign Accrual Property Income) of the Canadian Income Tax Act.

[For the testimonium and signatures, see p. 203 of this volume.]

IN WITNESS WHEREOF the undersigned, duly authorized to that effect, have signed this Agreement.

DONE in duplicate at Ottawa, this 15th day of October 1976 in the English, French and Bahasa Malaysia languages, each version being equally authentic.

EN FOI DE QUOI les soussignés, dûment autorisés à cet effet, ont signé le présent Accord.

FAIT en double exemplaire à Ottawa le 15^e jour d'octobre [1976], en langues française, anglaise et bahasa malaisie, chaque version faisant également foi.

DONALD STOVEL MACDONALD
For the Government of Canada
Pour le Gouvernement du Canada

DATURK HAMZAH BIN ABU SAMAH
For the Government of Malaysia
Pour le Gouvernement de la Malaisie