

No. 26712

**UNION OF SOVIET SOCIALIST REPUBLICS
and
MALAYSIA**

**Agreement for the avoidance of double taxation with respect
to taxes on income (with protocol). Signed at Moscow on
31 July 1987**

Authentic texts: Russian, Malay and English.

Registered by the Union of Soviet Socialist Republics on 14 July 1989.

**UNION DES RÉPUBLIQUES
SOCIALISTES SOVIÉTIQUES
et
MALAISIE**

**Convention tendant à éviter la double imposition en matière
d'impôts sur le revenu (avec protocole). Signée à Moscou
le 31 juillet 1987**

Textes authentiques : russe, malais et anglais.

*Enregistrée par l'Union des Républiques socialistes soviétiques le 14 juillet
1989.*

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE UNION OF
SOVIET SOCIALIST REPUBLICS AND THE GOVERNMENT OF
MALAYSIA FOR THE AVOIDANCE OF DOUBLE TAXATION
WITH RESPECT TO TAXES ON INCOME

The Government of the Union of Soviet Socialist Republics and
The Government of Malaysia

Desiring to conclude an Agreement for the avoidance of double taxation with respect to taxes on income and with the view to promote economic co-operation between the two countries, have agreed as follows:

Article 1. SCOPE OF THE AGREEMENT

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

2. (a) This Agreement applies to the territory of each of the Contracting States, including its territorial sea, and to its Exclusive Economic Zone and its Continental Shelf which extends beyond the limits of its territorial sea over which it exercises, under its laws consistent with International Law, sovereign rights for the purpose of exploring and exploiting the natural resources of such areas.

(b) For the purposes of this Agreement any reference to either of the Contracting States is considered as a reference to the territory of the relevant State, including its territorial sea, its Exclusive Economic Zone and its Continental Shelf which extends beyond the limits of the territorial sea of that State, as mentioned in subparagraph (a) above.

Article 2. TAXES COVERED

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

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

(a) In the Union of Soviet Socialist Republics:

- (i) The income tax on foreign legal persons;
- (ii) The income tax on population; and
- (iii) The tax on profits of a foreign participant of a joint venture, transferred abroad; (hereinafter referred to as "Union of Soviet Socialist Republics tax").

(b) In Malaysia:

- (i) The income tax and excess profit tax;
- (ii) The supplementary income tax, that is, development tax; and
- (iii) The petroleum income tax; (hereinafter referred to as "Malaysian tax").

¹ Came into force on 4 July 1988 by the exchange of the instruments of ratification, which took place at Kuala Lumpur, in accordance with article 25 (2).

3. The Agreement shall also apply 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 competent authorities of the Contracting States shall notify each other of important changes which have been made in their respective taxation laws, necessary for the implementation of this Agreement.

Article 3. GENERAL DEFINITIONS

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

(a) The terms “a Contracting State” and “the other Contracting State” mean the Union of Soviet Socialist Republics (the USSR) or the Federation of Malaysia (Malaysia) as the context requires.

(b) The term “person”:

- (i) In the case of the USSR, includes an individual, any legal person or other organisation created under the laws of the USSR or any Union Republic thereof and treated as a legal person for the purposes of taxation in the USSR;
- (ii) In the case of Malaysia, includes an individual, a company and any other body of persons which is treated as a person for tax purposes — the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes.

(c) The term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(d) The term “competent authority” means:

- (i) In the case of the USSR, the Ministry of Finance of the USSR or their authorised representative; and
- (ii) In the case of Malaysia, the Minister of Finance or his authorised representative.

2. In the application of the Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which the Agreement applies.

Article 4. RESIDENT

1. For the purposes of this Agreement the term “resident of a Contracting State” means:

(a) In the case of the USSR, a person who is resident in the USSR for the purposes of the USSR tax; and

(b) In the case of Malaysia, a person who is resident in Malaysia for the purposes of Malaysian tax.

2. Where by a reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

(a) He shall be deemed to be a resident of the State in which he has a permanent home available to him. If he has a permanent home available to him in both States,

he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests).

(b) If the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode.

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

(d) If either State regards him as its citizen or if he is a citizen of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

Article 5. PERMANENT ESTABLISHMENT

1. In this Agreement the term “a permanent establishment” means any fixed place of business through which a resident of a Contracting State wholly or partly carries on any commercial activity in the other Contracting State.

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

- (a) A branch;
- (b) An office;
- (c) A building or construction site which exists for more than twelve months;
- (d) An installation or assembly project which exists for more than six months.

3. Notwithstanding the provisions of paragraph 1, a permanent establishment in a Contracting State through which a person who is a resident of the other Contracting State wholly or partly carries on any commercial activity shall not include:

- (a) The use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the resident;
- (b) The maintenance of a stock of goods or merchandise belonging to the resident solely for the purpose of storage or display;
- (c) The maintenance of a stock of goods or merchandise belonging to the resident solely for the purpose of processing by another resident;
- (d) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting and disseminating of information, for the resident;
- (e) The maintenance of a fixed place of business solely for the purpose of carrying on, for the resident any other activity of a preparatory or auxiliary character.

4. Notwithstanding the provisions of paragraph 2(c) a resident of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it carries on solely supervisory activities in that other State for more than 6 months in connection with a construction, installation or assembly project which is being undertaken in that other State.

5. A person (other than a broker, general commission agent or any other agent of an independent status to whom paragraph 6 applies) acting in a Contracting State

on behalf of a resident of the other Contracting State shall be deemed to be a permanent establishment in the first-mentioned State, if:

(a) He has, and habitually exercised in the first-mentioned State, an authority to conclude contracts in the name of the resident unless his activities are limited to those activities mentioned in paragraph 3;

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

(c) He processes in the first-mentioned State goods or merchandise belonging to the resident.

6. A resident 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.

However, when the activities of such an agent are devoted wholly or almost wholly on behalf of the resident, he shall not be considered an agent of an independent status if the transactions between the agent and the resident were not made under Arm's length condition.

7. The fact that a person (other than an individual) which is a resident of a Contracting State controls or is controlled by a person (other than an individual) 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 person a permanent establishment of the other.

Article 6. INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other State.

2. For the purposes of this Agreement, the term "immovable property" shall be defined in accordance with the laws of the Contracting State in which the property in question is situated. In respect of Malaysia, the term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil or gas wells, quarries and other places of extracting of natural resources including timber or other forest produce.

Ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also apply to income derived from the direct use, letting, or use in any other form of immovable property.

Article 7. BUSINESS PROFITS

1. The profits of a resident of a Contracting State shall be taxable only in that State unless the resident carries on business in the other Contracting State through a permanent establishment situated therein. If the resident carries on business as aforesaid, the profits of the resident may be taxed in the other State but only on so much thereof as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where a resident of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate entity engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the resident of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be deducted expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses whether incurred in the State in which the permanent establishment is situated or elsewhere.

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

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

6. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

7. Where

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

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

Article 8. AIR TRANSPORT AND SHIPPING

1. Income derived by a resident of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State.

2. Paragraph 1 shall also apply to the share of the profits from the operation of ships or aircraft derived by a resident of a Contracting State through participation in a pool, a joint business or an international operating agency.

Article 9. DIVIDENDS

1. Dividends paid by a company which is a resident of Malaysia to a resident of the USSR 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.

2. Profits of a joint venture accruing to a participant who is a resident of Malaysia, when transferred from the USSR, may be taxed in accordance with the law of the USSR but the tax so charged shall not exceed 15 per cent of such profits transferred from the USSR.

3. The term "dividends" as used in this Article means income from shares or other rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident; for the purposes of this Agreement in the case of the USSR the term means profits mentioned in paragraph 2.

4. The provisions of paragraph 1 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

Article 10. 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 laws of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest to which a resident of the USSR is beneficially entitled shall be exempt from Malaysian tax if the loan or other indebtedness in respect of which the interest is paid is an approved loan as defined under Malaysian law.

4. Notwithstanding the provisions of paragraph 2 interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State where it is paid:

- (a) To the Government of that other State;
- (b) To the Central Bank of that other State; or
- (c) In respect of a loan provided, guaranteed or insured by the Government of that other State which may be agreed upon between the competent authorities of the Contracting States.

5. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds and debentures.

6. The provisions of paragraphs 1, 2, 3 and 4 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, its subdivision or a local authority thereof, or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

8. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest 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 beneficial owner 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 payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 11. ROYALTIES

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

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed:

- (a) 10 per cent of the gross amount of royalties mentioned in paragraph 3(a);
- (b) 15 per cent of the gross amount of royalties mentioned in paragraph 3(b).

3. The term “royalties” as used in this Article means payments of any kind received as a consideration for:

- (a) The use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or any copyright of scientific work, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience; or
- (b) The use of, or the right to use, cinematograph films, or tapes for radio or television broadcasting, any copyright of literary or artistic work.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, and the right of property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, its subdivision or a local authority thereof, or a resident of that State. Where, however, the person paying such 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 such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

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

7. Subject to paragraph 4 of Article 21 royalties derived by a resident of the USSR which are subjected to film hire duty under the Cinematograph Film-Hire Duty Act in Malaysia shall not be liable to Malaysian tax to which this Agreement applies.

Article 12. GAINS FROM THE ALIENATION OF PROPERTY

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

2. Gains derived from the alienation of movable property forming part of property of a permanent establishment which a resident of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment may be taxed in that other State.

However, gains from the alienation of ships or aircraft operated by a resident 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 State.

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

Article 13. INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 14, 15, 16, 17, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned; and
- (b) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) The remuneration is not borne by a permanent establishment which the employer has in the other State.

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

Article 14. 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 or any other legal person which is a resident of the other Contracting State, may be taxed in that other State.

Article 15. ARTISTES AND ATHLETES

1. Notwithstanding the provisions of Article 13, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 13, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2 income derived from activities exercised in a Contracting State by artistes or athletes shall be exempt from tax in that State where a visit to that State is exercised under the programme of exchange agreed upon by the Contracting States or their subdivisions or local authorities thereof.

Article 16. PENSIONS

Subject to the provisions of paragraph 2 of Article 17, any pensions and other similar remuneration for past employment arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

Article 17. GOVERNMENT SERVICE

1. Remuneration, other than a pension, paid by a Contracting State or its subdivision or a local authority thereof to any individual in respect of services rendered to that State or its subdivision or local authority thereof shall be taxable only in that State. However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the recipient is a resident of that State who:

(a) Is a citizen of that State; or

(b) Did not become a resident of that State solely for the purpose of performing the services.

2. Any pension paid by, or out of funds created by, a Contracting State, its subdivision, or a local authority thereof to any individual in respect of services rendered to that State, its subdivision, or local authority thereof shall be taxable only in that State.

3. Where an individual mentioned in paragraph 1 derives remuneration or pension from commercial activities, the provisions of Articles 13 and 14 shall apply.

Article 18. STUDENTS AND TRAINEES

1. An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in the other State solely:

- (a) As a student at a university, college, school or other similar educational institution in that other State; and
- (b) As a business or technical apprentice,

shall be exempt from tax in that other State on all remittances from abroad for the purposes of his maintenance, education, research or training.

2. The provisions of this Article shall also apply to a scholarship, grant and other similar amounts derived from the Government or an organisation of the first-mentioned State or an international organisation in connection with a research or training in an institution other than an educational institution.

Article 19. TEACHERS AND RESEARCHERS

1. An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State, and who, at the invitation of any university, college or other establishment for higher education or scientific research institution established by the other State, visits that other State solely for the purpose of teaching or research or both at such institutions for a period not exceeding 2 years shall be exempt from tax in that other State on any remuneration for such teaching or research.

2. This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

Article 20. OTHER INCOME

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

Article 21. ELIMINATION OF DOUBLE TAXATION

1. In the USSR, double taxation shall be eliminated in accordance with the law of the USSR by taking into account the Malaysian tax paid.

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, Union of Soviet Socialist Republics tax payable under the laws of the USSR and in accordance with this Agreement by a resident of Malaysia in respect of income derived from the USSR shall be allowed as a credit against Malaysian tax payable in respect of that income. The credit shall not, however, exceed that part of the Malaysian tax, as computed before the credit is given, which is appropriate to such item of income.

3. For the purpose of paragraph 1, where royalties derived by a resident of the USSR are, as film rentals, subject to cinematograph film-hire duty in Malaysia, that duty shall be deemed to be Malaysian tax.

Article 22. NON-DISCRIMINATION

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

2. The taxation of the income or profits which a resident of a Contracting State derives through a permanent establishment in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on the income or profits derived through a permanent establishment in that State by residents of third States carrying on similar activities in the same circumstances.

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 tax purposes which it grants to its own residents;
- (b) Malaysia to grant to citizens of the USSR 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 who are not resident in Malaysia.

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

Article 23. 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, notwithstanding the remedies provided by the taxation laws of those States, present his case to the competent authority of the State of which he is a resident or, if his case comes under paragraph 1 of Article 22, to that of the State of which he is a citizen.

The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at 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 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 the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

Article 24. EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement. Any information so exchanged shall be treated as confidential and shall be disclosed only to persons or authorities concerned with the implementation of the laws relating to taxes covered by this Agreement.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

- (a) To carry out administrative measures at variance with 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, trade process, or information the disclosure of which would be contrary to public policy.

Article 25. ENTRY INTO FORCE

1. This Agreement is subject to ratification and the instruments of ratification shall be exchanged at Kuala Lumpur as soon as possible.

2. This Agreement shall enter into force on the day of the exchange of the instruments of ratification and shall have effect in respect of taxes for the year of assessment beginning on the first day of January 1989, and subsequent years of assessment.

Article 26. TERMINATION

This Agreement shall remain in effect indefinitely, but either Contracting State may terminate the Agreement, through diplomatic channels, by giving to the other Contracting State written notice of termination on or before June 30th in any calendar year after the year 1992. In such an event the Agreement shall cease to have effect in respect of taxes for the year of assessment beginning on the first day of January in the calendar year next following that in which the notice of termination is given and subsequent years of assessment.

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

DONE in duplicate at Moscow, this 31 day of July, 1987, each in Russian, Bahasa Malaysia and the English language, the three texts being equally authentic. In case of any divergence of interpretation, the interpretation shall be made in accordance with the English text.

For the Government
of the Union
of Soviet Socialist Republics:

[Signed — Signé]¹

For the Government
of Malaysia:

[Signed — Signé]²

¹ Signed by B. Gostev — Signé par B. Gostev.

² Signed by Rafidah Asiz — Signé par Rafidah Asiz.

PROTOCOL

At the time of signing the Agreement between the Government of the Union of Soviet Socialist Republics and the Government of Malaysia for the Avoidance of Double Taxation with respect to Taxes on Income, the undersigned have agreed that the following provisions shall form an integral part of the Agreement.

1. *In connection with Article 5, "Permanent Establishment"*

In the case of Malaysia the term "Permanent Establishment" shall include, in addition to those mentioned in paragraph 2 of Article 5, the following:

- i) A place of management;
- ii) A factory;
- iii) A workshop;
- iv) A mine, an oil or gas well, a quarry or other place of extraction of natural resources including timber or other forest produce; and
- v) A farm or plantation.

2. *In connection with paragraph 1 of Article 9, "Dividends"*

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

3. *In connection with paragraph 2 of Article 21, "Elimination of Double Taxation"*

Taxes which have been relieved or reduced in Malaysia by virtue of special incentive laws for the promotion of the economic development of Malaysia or any other provisions which may subsequently be introduced in Malaysia in modification of, or in addition to, those laws or by virtue of the provisions of this Agreement (particularly interest to which paragraphs 3 and 4 of Article 10 apply) shall be allowed as a credit in the USSR in an amount equal to the tax which would have been paid if no such relief or reduction had been made.

4. *In connection with Article 22, "Non-Discrimination"*

Nothing in this Article shall be construed so as to prevent Malaysia from limiting to its nationals the enjoyment of tax incentives designed to promote its economic development.

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

DONE in duplicate at Moscow, this 31 day of July, 1987, each in Russian, Bahasa Malaysia and the English language the three texts being equally authentic. In case of any divergence of interpretation, the interpretation shall be made in accordance with the English text.

For the Government
of the Union
of Soviet Socialist Republics:

[*Signed — Signé*]¹

For the Government
of Malaysia:

[*Signed — Signé*]²

¹ Signed by B. Gostev — Signé par B. Gostev.

² Signed by Rafidah Asiz — Signé par Rafidah Asiz.