

**SYNTHESISED TEXT OF THE MLI AND THE AGREEMENT BETWEEN THE  
GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE PEOPLE'S  
REPUBLIC OF CHINA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE  
PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME**

**General disclaimer on the Synthesised text document**

This document presents the synthesised text for the application of the Agreement between the Government of Malaysia and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 23 November 1985 as amended by the Protocol signed on 5 June 2000 (the "Agreement") as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by Malaysia on 24 January 2018 and by China on 7 June 2017 (the "MLI").

This document was prepared on the basis of the MLI position submitted to the Depository by Malaysia on 18 February 2021 and by China on 25 May 2022. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the Agreement.

The sole purpose of this document is to facilitate the understanding of the application of the MLI to the Agreement and it does not constitute a source of law. The authentic legal texts of the Agreement and the MLI take precedence and remain the legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Agreement are included in boxes throughout the text of this document in the context of the relevant provisions of the Agreement.

Changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Agreement (such as "Covered Tax Agreement" and "Agreement", "Contracting Jurisdictions" and "Contracting States"), to ease the comprehension of the provisions of the MLI. The changes in terminology are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI. Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Agreement: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

In all cases, references made to the provisions of the Agreement or to the Agreement must be understood as referring to the Agreement as modified by the provisions of the MLI, provided such provisions of the MLI have taken effect.

## References

Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (P.U.(A) 224/2020) (provides the authentic legal texts of the MLI).

Agreement between the Government of Malaysia and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (P.U.(A) 96/1986) (provides, in the case of Malaysia, the authentic legal text of the Agreement).

Protocol Amending the Agreement between the Government of Malaysia and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (P.U. (A) 393/2000) (provides, in the case of Malaysia, the authentic legal text of the Protocol).

The MLI position of Malaysia submitted to the Depository upon ratification on 18 February 2021 and of the MLI position of China submitted to the Depository upon ratification on 25 May 2022 can be found on the MLI Depository (OECD) webpage.

## **Disclaimer on the entry into effect of the provisions of the MLI**

The provisions of the MLI applicable to the Agreement do not take effect on the same dates as the original provisions of the Agreement. Each of provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by Malaysia and China in their MLI positions.

### Entry into force of the MLI:

1 June 2021 for Malaysia and 1 September 2022 for China.

### Entry into effect of the MLI:

The provisions of the MLI shall have effect to each Contracting State with respect to the Agreement:

- a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2023; and
- b) with respect to all other taxes levied by each Contracting State, for taxes levied with respect to taxable periods beginning on or after 1 March 2023.

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

The Government of Malaysia and the Government of the People's Republic of China,

~~Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,~~

*The following paragraph 1 of Article 6 of the MLI replaces the text referring to an intent to eliminate double taxation in the preamble of this Agreement:*

**ARTICLE 6 OF THE MLI- PURPOSE OF A COVERED TAX AGREEMENT**

Intending to eliminate double taxation with respect to the taxes covered by this Agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third jurisdictions),

have agreed as follows:

Article 1

**PERSONAL SCOPE**

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

Article 2

**TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.
2. The existing taxes to which the Agreement shall apply are:
  - (a) in the People's Republic of China:
    - (i) the individual income tax;
    - (ii) the income tax concerning joint ventures with Chinese and foreign investment (including local income tax); and

(iii) the income tax concerning foreign enterprises (including local income tax);

(hereinafter referred to as "Chinese tax");

(b) in Malaysia:

(i) the income tax and excess profit tax;

(ii) the supplementary income taxes, that is, tin profits tax, development tax and timber profits tax; and

(iii) the petroleum income tax;

(hereinafter referred to as "Malaysian tax").

3. This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes referred to in paragraph 2. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

### Article 3

#### **GENERAL DEFINITIONS**

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

(a) the term "China" means the People's Republic of China, when used in geographical sense, means all the territory of the People's Republic of China, including its territorial sea, in which the Chinese laws relating to taxation apply, and any area beyond its territorial sea, within which the People's Republic of China has sovereign rights of exploration for and exploitation of resources of the sea-bed and its sub-soil and superjacent water resources in accordance with international laws;

(b) the term "Malaysia" means the Federation of Malaysia and includes any area beyond and adjacent to the territorial waters of Malaysia within which Malaysia has and exercises under the laws of Malaysia in consistence with international law, sovereign rights for the purpose of exploring and exploiting the natural resources, whether living or non-living of the sea-bed and the sub-soil, and the waters superjacent to the sea-bed;

(c) the terms "a Contracting State" and "the other Contracting State" mean China or Malaysia as the context requires;

- (d) the term "tax" means Chinese tax or Malaysian tax, as the context requires;
- (e) the term "person" includes an individual, a company and any other body of persons;
- (f) the term "company" means anybody corporate or any entity which is treated as a body corporate for tax purposes;
- (g) 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;
- (h) the term "national" means:
  - (i) in case of China all individuals possessing the nationality of China in accordance with Chinese laws and any legal person, partnership and other body corporate deriving its status as such from Chinese laws;
  - (ii) in relation to Malaysia, any individual possessing the citizenship of Malaysia, and any legal person, partnership, association and any other entity deriving its status as such from the laws in force in Malaysia;
- (i) 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;
- (j) the term "competent authority" means:
  - (i) in the case of China, the Ministry of Finance or its authorized 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 any person who, under the laws of that Contracting State, is liable to tax therein

by reason of his domicile, residence, place of head office, place of effective management, or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, 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 permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where, by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated. However, if such person has a place of effective management in a Contracting State and a head office in the other Contracting State, the competent authorities of the Contracting States shall by mutual agreement determine the State of which the person in question is a resident.

## Article 5

### **PERMANENT ESTABLISHMENT**

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

2. The term "permanent establishment" includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;

- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources including timber or other forest produce;
- (g) a farm or plantation.

3. The term "permanent establishment" likewise encompasses:

- (a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six months;
- (b) the furnishing of services, including consultancy services, by an enterprise of a Contracting State through employees or other personnel in the other Contracting State, provided that such activities continue for the same project or a connected project for a period or periods aggregating more than six months within any twelve- month period.

4. Notwithstanding the provisions of paragraphs 1 to 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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status to whom the provisions of paragraph 6 apply - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, has and habitually exercises an authority to conclude contracts in the name of the enterprise, that

enterprise shall be deemed to have a permanent establishment in the first-mentioned State in respect of any activities which that person undertakes for the enterprise, unless his activities are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

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, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he shall not be considered an agent of an independent status within the meaning of this paragraphs.

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.

#### 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. 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 and other 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 apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

## Article 7

### **BUSINESS PROFITS**

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amount, 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 commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, 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, except in the case of a banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.
4. If the information available to the competent authority of a Contracting State is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, nothing in paragraph 2 shall affect the application of any law of that State relating to the determination of the tax liability of that permanent establishment by the exercise of a discretion or the making of an estimate of the profits to be taxed of that permanent establishment by the competent authority of the Contracting State, provided that the law shall be applied, so far as the information available to the competent authority permits, in accordance with the principle of this Article.

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

6. For the purposes of paragraphs 1 to 5, the 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.

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

#### Article 8

### **SHIPPING AND AIR TRANSPORT<sup>1</sup>**

1. Profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in that State.

2. 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 State, but the tax chargeable in that other State on such income shall be reduced by an amount equal to fifty per cent of such tax.

3. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

#### Article 9

### **ASSOCIATED ENTERPRISES**

Where-

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State; or

(b) the same persons participated 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.

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<sup>1</sup> P.U.(A) 393/2000

*The following paragraph 1 of Article 17 of the MLI applies to this Agreement:*

#### ARTICLE 17 OF THE MLI – CORRESPONDING ADJUSTMENTS

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

#### Article 10

#### **DIVIDENDS**

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. Dividends paid by a company which is a resident of China to a resident of Malaysia shall be taxed in China according to Chinese laws, but if the beneficial owner of the dividends is a resident of Malaysia the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.
3. Dividends paid by a company which is a resident of Malaysia to a resident of China who is the beneficial owner thereof shall be exempt from any tax in Malaysia which is chargeable on dividends in addition to the tax chargeable in respect of the income of the company. Nothing in this paragraph shall affect the provisions of the Malaysian law under which the tax in respect of a dividend paid by a company which is a resident of Malaysia from which Malaysian tax has been, or has been deemed to be, deducted may be adjusted by reference to the rate of tax appropriate to the Malaysian year of assessment immediately following that in which the dividend was paid.
4. The term "dividends" as used in this Article means income from shares, or other rights, not being debt-claims, participating in profits, as well as income is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

#### Article 11

#### **INTEREST**

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest to which a resident of China is beneficially entitled shall be exempt from Malaysian tax if the loan or other indebtedness in respect of which the interest is paid is an approved loan as defined in section 2(1) of the Income Tax Act, 1967 of Malaysia.

4. Notwithstanding the provisions of Paragraphs 2 and 3, the Government of a Contracting State shall be exempt from tax in the other Contracting State in respect of interest derived by the Government from that other State.

5. For the purposes of paragraph 4, 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 thereof, as may be agreed upon from time to time between the competent authorities of the Contracting States;
- (b) in the case of China means the Government of the People's Republic of China and shall include;
  - (i) the local government;
  - (ii) the People's Bank of China, the head office of Bank of China, and the China International Trust and Investment Corporation; and
  - (iii) such institutions, the capital of which is wholly owned by the Government of the People's Republic of China, as may be agreed upon from time to time between the competent authorities of the Contracting States.

6. 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.

7. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, 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 effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

8. Interest shall be deemed to arise in a Contracting State when the payer is the Government of that State, a political subdivision, a local authority thereof, or a resident of that State. Where, however, the person paying the interest, whether he is 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.

9. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case,

the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

## Article 12

### **ROYALTIES**

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed:
  - (a) 10 per cent of the gross amount of the royalties referred to in paragraph 3(a);
  - (b) 15 per cent of the gross amount of the royalties referred to 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, know how, trade mark, design or model, plan, secret formula or process, copyright of any scientific work, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience;
  - (b) the use of, or the right to use any copyright of literary or artistic work including cinematograph films, or tapes for radio or television broadcasting.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is the Government of that State, a political subdivision, a local authority thereof, or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability 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 Contracting 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, having regard to the use, right or information for which they are paid, exceeds the amount which 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. Royalties derived by a resident of China 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 13

#### **GAINS FROM THE ALIENATION OF PROPERTY**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in paragraph 2 of Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic and movable property, pertaining to the operation of such ships or aircraft shall be taxable only in the State of which the enterprise is a resident.

4. Gains from the alienation of shares of the capital stock of a company, the principal property of which consists directly or indirectly 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.

5. Gains derived by a resident of a Contracting State from the alienation of any property other than that referred to in paragraphs 1 to 4 and arising in the other Contracting State may be taxed in that other State.

## Article 14

### **INDEPENDENT PERSONAL SERVICES**

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in one of the following circumstances, when such income may also be taxed in the other Contracting State:

- (a) if his stay in the other State is for a period or periods amounting to or exceeding in the aggregate 183 days in the calendar year concerned;
- (b) if the remuneration for his services in the State is either derived from residents of that State or borne by a permanent establishment which a person not resident in that State has in that State and which, in either case exceeds US\$4000 or the equivalent in Malaysian ringgit or the equivalent in Chinese RMB in the calendar year concerned, notwithstanding that his stay in that State is for a period or periods amounting to less than 183 days during that calendar year.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

## Article 15

### **DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 16, 17, 18, 19, 20 and 21, 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 Contracting State for a period or periods not exceeding in 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 Contracting State; and

- (c) the remuneration is not borne by a permanent establishment which the employer has in the other Contracting State.

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

#### Article 16

#### **DIRECTORS' FEE**

1. 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 17

#### **ARTISTES AND ATHLETES**

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theater, 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, 14 and 15, 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 by entertainers or athletes who are resident of a Contracting State from the activities exercised in the other Contracting State under a plan of cultural exchange between the Governments of the both Contracting States shall be exempt from tax in that other State.

#### Article 18

#### **PENSIONS**

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration or an annuity for past employment paid to a resident of a Contracting State shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, pensions paid and other similar payments made by the Government of a Contracting State or a local authority thereof under a public welfare scheme of the social security system of that State shall be taxable only in that State.

#### Article 19

### **GOVERNMENT SERVICE**

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

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that other State who:

- (i) is a national of that other State; or
- (ii) did not become a resident of that other State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, the Government of a Contracting State, a political subdivision, or a local authority thereof to an individual in respect of services rendered to the Government of that State, a political subdivision, or a local authority thereof shall be taxable only in that State.

(b) However, such pension may be taxable in the other Contracting State if the individual is a resident of, and a national of, that other State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by the Government of a Contracting State, a political subdivision, or local authority thereof.

#### Article 20

### **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, school or other similar educational institution or scientific research institution visits that other State for a period not exceeding three years solely for the purpose of teaching or research or both at such educational institution or scientific research institution shall be exempt from tax in that other State on any remuneration for such teaching or research which is subject to tax in the first-mentioned State.

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

#### Article 21

### **STUDENTS AND TRAINEES**

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 recognized university, college, school or other similar recognised educational institution in that other State;
- (b) as a business or technical apprentice; or
- (c) as a recipient of a grant, allowance or award for the primary purpose of study, research or training from the government of either State or from a scientific, educational, literary or charitable organisation or under a technical assistance programme entered into by the Government of either State,

shall be exempt from tax in that other State on:

- (i) all remittances from abroad for the purposes of his maintenance, education, study, research or training;
- (ii) the amount of such grant, allowance or award; and
- (iii) any remuneration not exceeding US\$2000 or the equivalent in Malaysian ringgit or the equivalent in Chinese RMB per calendar year in respect of services in that other State provided the services are performed in connection with his study, research or training or are necessary for the purposes of his maintenance.

#### Article 22

### **OTHER INCOME**

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, and the right or property in respect of which the income is paid effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may be taxed in that other State.

#### Article 23

#### **ELIMINATION OF DOUBLE TAXATION**

1. In China, double taxation shall be eliminated as follows:

- (a) where a resident of China derives income from Malaysia the amount of Malaysian tax payable on that income in Malaysia in accordance with the provisions of this Agreement, may be credited against the Chinese tax imposed on that resident. The amount of credit, however, shall not exceed the amount of the Chinese tax on that income computed in accordance with the taxation laws and regulations of China.
- (b) where the income derived from Malaysia is a dividend paid by a company which is a resident of Malaysia to a company which is a resident of China and which owns not less than 10 per cent of the shares of the company paying the dividend, the credit shall take into account the Malaysian tax payable by the company paying the dividend in respect of its income.

2. For the purposes of paragraph 1, the term "Malaysian tax payable" shall be deemed to include Malaysian tax which would, under the laws of Malaysia and in accordance with this Agreement, have been payable on:

- (a) any income derived from sources in Malaysia had the income not been taxed at a reduced rate or exempted from Malaysian tax in accordance with:
  - (i) sections 54A, 54B, 60A, 60B and Schedule 7A of the Income Tax Act 1967 of Malaysia; or
  - (ii) sections 21, 22, 26, 30KA and 30Q of the Investment Incentive Act 1968 of Malaysia, so far as they were in force on the date of signature of this Agreement; or
  - (iii) any other provisions which may subsequently be introduced in Malaysia in modification of, or in addition to, the investment incentives laws so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character; and
- (b) interest to which paragraph 3 of Article 11 applies had that interest not been exempted from Malaysian tax in accordance with that paragraph.

3. Subject to the laws of Malaysia regarding the deduction of a credit against Malaysian tax of tax payable in any country other than Malaysia, the Chinese tax payable under the laws of China and in accordance with this Agreement by a resident of Malaysia in respect of income derived from China 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 which is a resident of China to a company which is a resident of Malaysia and which owns not less than 10 per cent of the voting shares of the company paying the dividend, the credit shall take into account the Chinese tax payable by that company in respect of its income out of which the dividend is paid. 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.

4. For the purposes of the credit referred to in paragraph 3, the term "Chinese tax payable" shall be deemed to include the amount of Chinese tax which would have been paid if the Chinese tax had not been exempted, reduced or refunded in accordance with:

- (a) the provisions of Articles 5 and 6 of the Income Tax Law of China Concerning Joint Ventures Using Chinese and Foreign Investment and the provisions of Article 3 of the detailed Rules and Regulations for the Implementation of the Income Tax Law of China Concerning Joint Ventures Using Chinese and Foreign Investment;
- (b) the provisions of Articles 4 and 5 of the Income Tax Law of China Concerning Foreign Enterprises; or
- (c) any other similar special incentive measures designed to promote economic development in China which are in existence or any other incentives measures which may be introduced in the laws of China on or after the date of signature of this Agreement, and which may be agreed upon by the competent authorities of the Contracting States.

#### Article 24

#### **NON-DISCRIMINATION**

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

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

3. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.
4. 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 on account of civil status or family responsibilities which it grants to its own residents;
  - (b) Malaysia to grant to nationals of China not resident in Malaysia those personal allowances, reliefs and reductions for tax purposes which are by law available on the date of signature of this Agreement only to nationals of Malaysia who are not resident in Malaysia.
5. Nothing in this Article shall be construed so as to prevent either Contracting State from limiting to its nationals the enjoyment of tax incentives designed to promote economic development in that State.

#### Article 25

#### **MUTUAL AGREEMENT PROCEDURE**

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. 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 a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the provisions of this Agreement.

*The following second sentence of paragraph 2 of Article 16 of the MLI applies to this Agreement:*

#### ARTICLE 16 OF THE MLI- MUTUAL AGREEMENT PROCEDURE

Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting State.

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 this Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of paragraphs 2 and 3. When it seems advisable for reaching agreement, representatives of the competent authorities of the Contracting States may meet together for an oral exchange of opinions.

#### Article 26

#### **EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting State shall exchange such information as is necessary for carrying out the provisions of this Agreement, in particular for the prevention of evasion of taxes covered by this Agreement. Any information received by a Contracting State shall be treated as secret and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

- (a) to carry out administrative measures at variance with the laws and the administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which could 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 27

**DIPLOMATIC AND CONSULAR OFFICERS**

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

*The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Agreement:*

**ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE**

(Principal purposes test provision)

Notwithstanding any provisions of the Agreement, a benefit under the Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Agreement.

Article 28

**ENTRY INTO FORCE**

1. This Agreement shall enter into force on the thirtieth day after the date on which diplomatic notes indicating the completion of internal legal procedures necessary of this Agreement have been exchanged.

2. This Agreement shall have effect:

(a) in China

as respects income derived during the taxable years beginning on or after the first day of January in the calendar year next following that in which this Agreement enters into force;

(b) in Malaysia:

as respects Malaysian tax for the year of assessment beginning on or after the first day of January in the second calendar year next following that in which this Agreement enters into force and subsequent years of assessment.

Article 29

**TERMINATION**

This Agreement shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through the diplomatic channel, written notice of termination. In such event this Agreement shall cease to have effect:

(a) in China:

as respects income derived during the taxable years beginning on or after the first day of January in the calendar year next following that in which the notice of termination is given;

(b) in Malaysia:

as respects Malaysian tax for the year of assessment beginning on or after the first day of January in the second calendar year next following the year 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 Beijing this 23<sup>rd</sup> day of November 1985 each in Bahasa Malaysia, Chinese and the English language, the three texts being equally authentic. In the event of there being a dispute in the interpretation and the application of this Agreement, the English text shall prevail.

For the Government of  
Malaysia

For the Government of  
the People's Republic of  
China

## PROTOCOL

At the signing of the Agreement between the Government of Malaysia and the Government of the People's Republic of China for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to Taxes on Income (hereinafter referred to as "The Agreement"), both sides have agreed upon the following provisions which form an integral part of the Agreement.

1. In connection with Article 3 "General Definitions":

The term "person" in paragraph 1(e) includes any other body of persons which is treated as a person for tax purposes.

2. In connection with Article 8 "Shipping and Air Transport":

For the purpose of paragraph 2, the tax imposed by the other Contracting State shall be reduced by 100 per cent if, after the date of signature of this Agreement, Malaysia and China have entered into a Shipping Agreement with each other. The reduction shall be effective from the date the Shipping Agreement enters into force. The tax to be exempt means all taxes in relation to the operation of ships imposed, in Malaysia, by the Income Tax Act 1967 and the Supplementary Income Tax Act 1967 and, in China, by the Income Tax Act and the Industrial and Commercial Consolidated Tax Act.

3. In connection with Article 14 "Independent Personal Service":

Where a resident of Malaysia has a fixed base regularly available to him in China and is engaged in providing professional service or other independent activities, then the amount of income attributed to that fixed base may be taxed in China. Such regulation concerning taxes on the fixed base also applies in paragraphs 5 and 6 in Article 10, paragraphs 7 and 8 in Article 11, paragraphs 4 and 5 in Article 12, paragraph 2 in Article 13, paragraph 1(b) in Article 14, paragraph 2(c) in Article 15 and paragraph 2 in Article 22. The term "fixed base" in China means a fixed operating place where an individual is engaged in providing certain professional services.

4. In connection with Article 19 "Government Service":

Employees performing Government Service in Article 19 of the Agreement shall also include other personnel carrying on the function of Government (who in Malaysia include those employees working in statutory bodies) which is mutually recognised by the competent authorities of the Contracting States.

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

DONE in duplicate at Beijing this 23<sup>rd</sup> day of November 1985, each in Bahasa Malaysia, Chinese and the English language, the three texts being equally authentic. In the event of there being a dispute in the interpretations, the English text shall prevail.