

10 December 1996

Excellency

I have the honour to refer to the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income which has been signed today and to propose on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland that:

- (1) with reference to Article 7:
 - (a) if the information available to the competent authority is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, it is understood that nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person by the exercise of a discretion or the making of an estimate by the competent authority, 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.
 - (b) insofar as it has been customary in a Contracting State to determine according to its law the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph (2) of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary, provided that:
 - (i) the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article; and

(ii) that 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.

(2) With reference to paragraph (2) of Article 25:

the provisions of this Agreement shall not apply to persons carrying on offshore business activity under the Labuan Offshore Business Activity Tax Act 1990 (as amended).

"Offshore business activity" means an offshore business activity as defined under Section 2(1) of the Labuan Offshore Business Activity Tax Act 1990 (as amended).

If the foregoing proposals are acceptable to the Government of Malaysia, I have the honour to suggest that the present Note and Your Excellency's reply to that effect should be regarded as constituting an agreement between the two Governments in this matter, which shall enter into force at the same time as the entry into force of this Agreement.

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

D J Moss
High Commissioner

Tan Sri Datuk Clifford F Herbert
Secretary-General
Ministry of Finance

10 December 1996

Your Excellency

I have the honour to acknowledge receipt of Your Excellency's Note of today which read as follows:

"I have the honour to refer to the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income which has been signed today and to propose on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland that:

- (1) with reference to Article 7, it is understood that:
 - (a) if the information available to the competent authority is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, it is understood that nothing in this Article affects the application of any law of that State relating to the determination of the tax liability of a person by the exercise of a discretion or the making of an estimate by the competent authority, provided that the law shall be applied, so far as the information available to the competent authority permits, in accordance with the principle of the Article; and
 - (b) insofar as it has been customary in a Contracting State to determine according to its law the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary, provided that:

- (i) the method of apportionment adopted shall, however, be such that the result be in accordance with the principles contained in this Article; and
- (ii) that 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.

(2) With reference to paragraph 2 of Article 25, the provisions of this Agreement shall not apply to persons carrying on offshore business activity under the Labuan Offshore Business Activity Tax Act 1990 (as amended).

"Offshore business activity" means an offshore business activity as defined under Section 2(1) of the Labuan Offshore Business Activity Tax Act 1990 (as amended)."

The foregoing proposals being acceptable to the Government of Malaysia, I have the honour to confirm that Your Excellency's note and this reply shall be regarded as constituting an agreement between the two Governments in this matter, which shall enter into force at the same time as entry into force of the Agreement.

I take this opportunity to renew to your Excellency the assurances of my highest consideration.

TAN SRI DATUK CLIFFORD F. HERBERT
Secretary General to the Treasury
Malaysia

D.J. MOSS, Esq., CMJ
British High Commissioner
Kuala Lumpur