SYNTHESISED TEXT OF THE MLI AND THE AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE KINGDOM OF DENMARK 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 Kingdom of Denmark for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 4 December 1970 as amended by the Protocol signed on 3 December 2003 (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 Denmark on 7 June 2017 (the "MLI").

This document was prepared on the basis of the MLI position submitted to the Depositary by Malaysia on 18 February 2021 and by Denmark on 30 September 2019. 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made to parts of provisions of the MLI that describe existing provisions of the Agreement: descriptive language has been replaced by legal references of the existing provisions to ease the readability.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.

*Subject to changes (whenever applicable)

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 Kingdom of Denmark for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (P.U.(A) 86/1971) (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 Kingdom of Denmark for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (P.U.(A) 154/2004) (provides, in the case of Malaysia, the authentic legal text of the Protocol).

The MLI position of Malaysia submitted to the Depositary upon ratification on 18 February 2021 and of the MLI position of Denmark submitted to the Depositary upon ratification on 30 September 2019 can be found on the MLI Depositary (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 Denmark in their MLI positions.

Entry into force of the MLI:

1 June 2021 for Malaysia and 1 January 2020 for Denmark.

Entry into effect of the MLI:

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

a) in Malaysia:

   (i) 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 2022; and

   (ii) with respect to all other taxes levied by Malaysia, for taxes levied with respect to taxable periods beginning on or after 1 December 2021; and

b) in Denmark:

   (i) 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 2022; and

   (ii) with respect to all other taxes levied by Denmark, for taxes levied with respect to taxable periods beginning on or after 1 January 2022.

AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE KINGDOM OF DENMARK 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 Kingdom of Denmark,

~~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 I

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

The following paragraphs 1 and 3 of Article 3 of the MLI apply and supersede the provisions of this Agreement:

ARTICLE 3 OF THE MLI – TRANSPARENT ENTITIES

For the purposes of the Agreement, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State but only to the extent that the income is treated, for purposes of taxation by that Contracting State, as the income of a resident of that Contracting State. In no case shall the provisions of this paragraph be construed to affect a Contracting State’s right to tax the residents of that Contracting State.

Article II

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

   (a) in Malaysia—

   the income tax, ~~the supplementary income tax~~[1] and the petroleum income tax (hereinafter referred to as "Malaysian tax");

   (b) in Denmark—

   the national income taxes and the communal income taxes

   (hereinafter referred to as "Danish tax").

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

Article III

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

   (a) the term "Malaysia" means the territories of the Federation of Malaysia, the territorial waters of Malaysia and the sea-bed and subsoil of the territorial waters, and includes any area extending beyond the limits of the territorial waters of Malaysia, and the sea-bed and subsoil of any such area, which has been or may hereafter be designated under the laws of Malaysia as in accordance with international law as an area over which Malaysia has sovereign rights for the purposes of exploring and exploiting the natural resources, whether living or non-living; [2]

   (b) the term "Denmark" means the Kingdom of Denmark including any area outside the territorial sea of Denmark which in accordance with international law has been or may hereafter be designated under Danish laws as an area within which Denmark may exercise sovereign rights with respect to the exploration and exploitation of the natural resources of the sea-bed or its subsoil and the superjacent waters and with respect to other activities for the economic exploration of the area; the term does not comprise the Faroe Island and Greenland; [2]

   (c) the terms "one of the Contracting States" and "the other Contracting State" mean Malaysia or Denmark, as the context requires;

   (d) the term "tax" means Malaysian tax or Danish tax, as the context requires;

   (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

   (f) the term "person" includes an individual, a company and a body of persons,

[1] P.U.(A) 154/2004 Protocol Article 1
[2] P.U.(A) 154/2004 Protocol Article 2(a)

but does not include a partnership, and in the case of Malaysia, also includes a Hindu joint family and a corporation sole;

(g) the terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of one of the Contracting States and an enterprise carried on by a resident of the other Contracting State;

(h) the term "competent authority" means, in the case of Malaysia, the Minister of Finance or his authorized representative; and in the case of Denmark, the Minister for Taxation or his authorized representative; [3]

(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.[4]

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

Article IV

1. For the purposes of this Agreement, the term "resident of a Contracting State" means:

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

(b) in the case of Denmark, a person who is resident in Denmark for the purposes of Danish tax. [5]

2. Where by reason of the provisions of paragraph 1 of this Article 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 Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (centre of vital interests);

[3] P.U.(A) 154/2004 Protocol Article 2(a)& (b)
[4] P.U.(A) 154/2004 Protocol Article 2(c)
[5] P.U.(A) 154/2004 Protocol Article 3

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

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

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

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

Article V

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

2. The term "permanent establishment" shall include especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;[6]

(g) a building site or construction or assembly project which exists for more than six months;

(h) a farm or plantation;

(i) a place of extraction of timber or forest produce; and[7]

(j) a warehouse.[8]

[6] P.U.(A) 154/2004 Protocol Article 4(a)
[7] P.U.(A) 154/2004 Protocol Article 4(b)
[8] P.U.(A) 154/2004 Protocol Article 4(c)

3. ~~The term "permanent establishment" shall not include:~~

~~(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;~~

~~(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;~~

~~(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;~~

~~(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;~~

~~(e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise~~.

ARTICLE 13 OF THE MLI – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH THE SPECIFIC ACTIVITY EXEMPTIONS

The following paragraph 2 of Article 13 of the MLI replaces paragraph 3 of Article V of this Agreement:

Notwithstanding the provisions of Article 5 of the Agreement, the term “permanent establishment” shall be deemed not to include:

a) i) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

ii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

iii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

iv) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

b) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in subparagraph a);

c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and b),

provided that such activity or, in the case of subparagraph c), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

The following paragraph 4 of Article 13 of the MLI applies to paragraph 3 of Article 5 of this Agreement:

Paragraph 3 of Article 5 of the Agreement shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and:

a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of Article 5 of the Agreement; or

b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

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

(a) it carries on supervisory activities in that other Contracting State for more than six months in any twelve months period[9] in connection with a construction or assembly project which is being undertaken in that other Contracting State;

(b) it carries on a business which wholly or partly consists of providing the services of public entertainers of the kind referred to in paragraph 2 of article XV in that other Contracting State.

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

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

[9] P.U.(A) 154/2004 Protocol Article 4(d)

The following paragraph 1 of Article 12 of the MLI replaces subparagraph 5(a) of Article V of this Agreement:

ARTICLE 12 OF THE MLI – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH COMMISSIONNAIRE ARRANGEMENTS AND SIMILAR STRATEGIES

Notwithstanding Article 5 of the Agreement, but subject to paragraph 2 of Article 12 of the MLI, where a person is acting in a Contracting State on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are:

a) in the name of the enterprise; or

b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use; or

c) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that Contracting State in respect of any activities which that person undertakes for the enterprise unless these activities, if they were exercised by the enterprise through a fixed place of business of that enterprise situated in that Contracting State, would not cause that fixed place of business to be deemed to constitute a permanent establishment under the definition of permanent establishment included in the provisions of Article V of the Agreement.

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

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

The following paragraph 2 of Article 12 of the MLI replaces paragraph 6 of Article V of this Agreement:

ARTICLE 12 OF THE MLI – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH COMMISSIONNAIRE ARRANGEMENTS AND SIMILAR STRATEGIES

Paragraph 1 of Article 12 of the MLI shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first-mentioned Contracting State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

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

The following paragraph 1 of Article 15 of the MLI applies to this Agreement:

ARTICLE 15 OF THE MLI – DEFINITION OF A PERSON CLOSELY RELATED TO AN ENTERPRISE

For the purposes of the provisions of Article V of the Agreement, a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.

Article VI

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

2. The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term shall in any case include rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil wells, quarries and other natural resources or timber or forest produce. ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 of this article 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 of this Article shall also apply to the income from immovable property of an enterprise.

Article VII

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

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

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

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

5. Where any item of income is dealt with separately in another Article of this Agreement, the provisions of that other article shall not be affected by the provisions of this Article.

Article VIII

Where—

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

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

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

The following paragraph 1 of Article 17 of the MLI applies and supersedes the provisions of 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 IX [10]

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

2. Paragraph 1 shall also apply to the share of 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 X

1. Dividends paid by a company resident in Denmark to a resident of Malaysia who is subject to Malaysian tax in respect thereof shall be exempt from any tax in Denmark which is chargeable on dividends in addition to the tax chargeable in respect of the income of the company.

2. Dividends paid by a company resident in Malaysia to a resident of Denmark who is subject to Danish tax in respect thereof shall be exempt from any tax in Malaysia

[10] P.U.(A) 154/2004 Protocol Article 5

which is chargeable on dividends in addition to the tax chargeable in respect of the income of the company:

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

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

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the recipient of the dividends, being a resident of one of the Contracting States, has in the other Contracting State, in which the company paying the dividends is resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of Article VII shall apply.

5. If the system of taxation applicable in either of the Contracting States to the income and distributions of companies is altered, the competent authorities may consult each other in order to determine whether it is necessary for this reason to amend the provisions of paragraphs 1 and 2 of this Article.

Article XI

1. Interest derived from one of the Contracting States may be taxed in that Contracting State.

~~2. Notwithstanding the provision of paragraph 1 of this article, interest derived from one of the Contracting States by a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting Stat, if the loan or other indebtedness in respect of which the interest is paid is approved after the signature of this Agreement by the Government of the first-mentioned Contracting State.~~[11]

~~3~~ 2[12]. Interest shall be deemed to be derived from a Contracting State if the payer is the Government, a State Government, a political subdivision, a local authority or a resident of that Contracting State. Where, however, the person paying the interest,

[11] P.U.(A) 154/2004 Protocol Article 6(a)
[12] P.U.(A) 154/2004 Protocol Article 6(c)

whether he is a resident of a Contracting State or not, has in one of the Contracting States 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 be derived from the Contracting State in which the permanent establishment is situated.

4 3[13]. The provisions of paragraphs 1 ~~and 2~~[14] of this article shall not apply if the recipient of the interest, being a resident of one of the Contracting States, has in the other Contracting State in which the interest arises a permanent establishment with which the loan or other indebtedness from which the interest arises is effectively connected. In such a case, the provisions of article VII shall apply.

Article XII[15]

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State. However, such royalties may also be taxed 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 10 per cent of the gross amount of the royalties.

2. The term "royalties" as used in this Article means payments of any kind received as a consideration for:

(a) the use of, or the rights to use, any patent, trade mark, design or model, plan, secret formula or process, any copyright or literary, artistic or scientific work, including cinematographic films and films or tapes for television or radio broadcasting;

(b) the use of, or the right to use, industrial, commercial or scientific equipment;

(c) the supply of scientific, technical, industrial or commercial knowledge or information;

(d) the rendering of any services or assistance of a technical, managerial or consultancy nature.

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

4. Where owing to a special relationship between the payer and the recipient or both of them and some other person, the amount of the royalties paid, having regard to the use, right, property or information, for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this

[13] P.U.(A) 154/2004 Protocol Article 6(c)
[14] P.U.(A) 154/2004 Protocol Article 6(b)
[15] P.U.(A) 154/2004 Protocol Article 7

Article shall apply only to the last-mentioned amount. In that 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.

5. Royalties shall be deemed to be derived from a Contracting State if the payer is the Government, a State Government, a political subdivision, a local authority or a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in one of the Contracting States a permanent establishment by which the royalties are paid, then such royalties shall be deemed to be derived from the Contracting State in which the permanent establishment is situated.

Article XIII

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

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of one of the Contracting States has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise), may be taxed in that other Contracting State. However, gains from the alienation of ships and aircraft operated by an enterprise of one of the Contracting States in international traffic and assets other than immovable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State of which the enterprise is a resident.

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

Article XIV

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

2. Notwithstanding the provisions of paragraph 1 of this article an individual who is a resident of one of the Contracting States shall be exempt from tax in the other Contracting State on income in respect of an employment exercised in that other Contracting State in any calendar year if—

(a) he is present within that other Contracting State for a period or periods not

exceeding in the aggregate 183 days during that year; and

(b) any period for which he is present within that other Contracting State during that year does not form part of a continuous period of more than 183 days throughout which he is present within that other Contracting State; and

(c) the services are performed for or on behalf of an employer who is a resident of the first-mentioned Contracting State; and

(d) the income is subject to tax in that first-mentioned Contracting State; and

(e) the income is not directly deductible from the income for tax purposes of a permanent establishment of the employer in that other Contracting State.

3. In relation to remuneration of a director of a company derived from the company, the provisions of paragraph 1 and 2 of this article shall apply as if the remuneration were remuneration of an employee in respect of an employment. However, directors' fees and similar payments derived by a resident of one of the Contracting States in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other Contracting State.

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

Article XV

1. The provisions of paragraph 2 of Article XIV shall not apply to the income derived from one of the Contracting States from an employment exercised by a public entertainer (such as stage, motion picture, radio or television artiste, musician or sportsman) being a resident of the other Contracting State whose visit to that first-mentioned Contracting State is not directly or indirectly supported, wholly or substantially, form public funds of the Government of that other Contracting State.[16]

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

3. For the purposes of this article the term "Government" shall include any State Government, a political subdivision, or a local or statutory authority of either Contracting State.

[16] P.U.(A) 154/2004 Protocol Article 8

Article XVI

1. Remuneration paid by the Government of one of the Contracting States to any individual in respect of an employment may be taxed in that Contracting State. Where such remuneration is paid to a citizen of that Contracting State who is not a citizen of the other Contracting State, such remuneration shall be taxable only in the first-mentioned Contracting State.

2. Any pension paid by the Government of one of the Contracting States to any individual may be taxed in that Contracting State. If the individual is a resident of the other Contracting State, the pension may be taxed in that other Contracting State.

3. The provisions of this article shall not apply to remuneration or pensions in respect of an employment or past employment in connection with any business carried on by the Government of a Contracting State. In such a case, the provisions of articles XIV, XV, XVII, XVIII and XIX shall apply.

4. (a) Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

(b) Insofar as, due to fiscal privileges granted to diplomatic or consular officials under the general rules of international law or under the provisions of special international treaties, income is not subject to tax in the receiving State, the right to tax shall be reserved to the sending State irrespective of the provisions of this Agreement.

(c) For the purposes of this Agreement, persons who are members of a diplomatic or consular mission of a Contracting State in the other Contracting State or in a third State and who are citizens of the sending State, shall be deemed to be residents of the sending State if they are subjected therein to the same obligations in respect of taxes on income as are residents of that State. 5. For the purposes of this article, the term "Government" shall have the same meaning as in paragraph 3 of article XV.

Article XVII

1. Any pension (other than a pension of the kind referred to in paragraph 2 of article XVI) or any annuity derived by an individual who is a resident of one of the Contracting States from the other Contracting State shall be taxable only in the first-mentioned Contracting State.

2. The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

3. The term "pension" means a periodical payment made, whether voluntarily or otherwise, in consideration for services rendered or by way of compensation for injuries

received.

Article XVIII

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

Article XIX

1. An individual who is a resident of one of the Contracting States immediately before making a visit to the other Contracting State and is temporarily present in that other Contracting State solely as a student at a recognised university, college, school or other similar recognised educational institution in that other Contracting State or as an approved business or technical apprentice therein, for a period not exceeding two years from the date of his first arrival in that other Contracting State in connection with that visit, shall be exempt from tax in that other Contracting State on—

(a) any income not derived from that other Contracting State; and

(b) any income derived from that other Contracting State in respect of services rendered in that other Contracting State with a view to supplementing the resources available to him for such purposes, not exceeding the sum of 3,000 Malaysian Dollars or the equivalent in Danish currency during any calendar year.

2. An individual who is a resident of one of the Contracting States immediately before making a visit to the other Contracting State and is temporarily present in that other Contracting State for the purposes of study, research or training solely as a recipient of a grant, allowance or award from the Government of either of the Contracting States or from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the Government of either of the Contracting States for a period not exceeding two years from the date of his first arrival in that other Contracting State in connection with that visit shall be exempt from tax in that other Contracting State on—

(a) the amount of such grant, allowance or award; and

(b) any income derived from that other Contracting State in respect of services in that other Contracting State if the services are performed in connection with his study, research, training or incidental thereto.

3. An individual who is a resident of one of the Contracting States immediately before making a visit to the other Contracting State and is temporarily present in that other Contracting State solely as an employee of, or under contract with, the Government or an enterprise of the first-mentioned Contracting State solely for the purpose of acquiring technical, professional or business experience for a period not exceeding twelve months from the date of his first arrival in that other Contracting State in connection with that visit shall be exempt from tax in that other Contracting State on—

(a) any income derived from the first-mentioned Contracting State; and

(b) any remuneration, so far as it is not in excess of 12,000 Malaysian Dollars or the equivalent in Danish currency for personal services rendered in that other Contracting State, provided such services are in connection with his studies or training or incidental thereto:

Provided that where that individual is an employee of, or under contract with an enterprise of that other Contracting State, this subparagraph shall apply only in respect of approved employees.

4. In this article "approved" means approved by the Government of the Contracting State in which the individual will be temporarily present.

5. For the purposes of this article, the term "Government" shall have the same meaning as in paragraph 3 of article XV.

Article XX

1. The Government of one of the Contracting States shall be exempt from tax in the other Contracting State in respect of any income derived from the other Contracting State.

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

(a) In the case of Malaysia shall include—

(i) the Governments of the States,

(ii) The Bank Negara Malaysia,

(iii) any local or statutory authority,

(iv) such institutions as may be agreed from time to time between the two Contracting States;

(b) In the case of Denmark shall include—

(i) The National Bank of Denmark,

(ii) any local statutory authority,

(iii) such institutions as may be agreed from time to time between the two Contracting States.

Article XXI[17]

1. The laws of each Contracting States shall continue to govern the taxation of income in that State except where express provision to the contrary is made in this Agreement. Where income is subject to tax in both Contracting States, relief from double taxation shall be given in accordance with the following paragraphs of this Article.

2. Subject to the laws of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia. Danish tax payable under the laws of Denmark and in accordance with this Agreement by a resident of Malaysia in respect of income derived from Denmark 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 Denmark to a company which is a resident of Malaysia but which owns not less than 15 per cent of the voting shares of the company paying the dividend, the credit shall take into account Danish tax payable by that company in respect of its income out of which the dividend is paid. The credit shall not, however, exceed the part of the Malaysian tax as computed before the credit is given, which is appropriate to such item of income.

3. In the case of Denmark, the following provisions shall apply:

(a) double taxation shall be avoided as follows:

(i) subject to the provisions of sub subparagraph 3(a)(iii), where a resident of Denmark derives income which, in accordance with the provisions of this Agreement, may be taxed in Malaysia, Denmark shall allow as a deduction from the tax of the income of that resident, an amount equal to the income tax paid in Malaysia;

(ii) such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Malaysia;

(iii) where a resident of Denmark derives income which, in accordance with the provisions of this Agreement shall be taxable only in Malaysia, Denmark may include this income in the tax base, but shall allow as a deduction from the income tax that part of the income tax, which is attributable to the income derived from Malaysia;

(b) for the purposes of sub subparagraph 3(a)(i) "income tax paid in Malaysia" shall be deemed to include Malaysian tax which would, under the laws of Malaysia and in accordance with this Agreement, have been payable on 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 the special incentives under the Promotion of Investment Act 1986 for the promotion of economic development of Malaysia or any other provisions which may subsequently be introduced in Malaysia in modification of, or in addition to, those laws so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character;

[17] P.U.(A) 154/2004 Protocol Article 9

(c) where dividends are paid by a company which is a resident of Malaysia to a company which is a resident of Denmark, then such dividends shall be exempt from tax in Denmark. This provision shall apply only to that part of the dividends which corresponds to that part of the profits of the first-mentioned company out of which the dividends are paid, and which has been taxed at a reduced rate or exempted from Malaysia tax in accordance with the special incentives under the Promotion of Investments Act 1986 for the promotion of economic development of Malaysia or any other provisions which may subsequently be introduced in Malaysia in modification of, or in addition to, those laws so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character;

(d) the provisions of subparagraphs (b) and (c) shall apply for the first ten years for which the Protocol is effective. The competent authorities shall consult each other in order to determine whether this period shall be extended. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Contracting States in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures;

(e) where dividends are paid by a company which is a resident of Malaysia to a company which is a resident of Denmark and which owns directly or indirectly not less than 25 per cent of the share capital of the first-mentioned company, and such dividends are not exempt from tax in accordance with the provision of subparagraph 3(c), the credit for the purposes of sub-subparagraph 3(a)(i) shall take into account the tax paid in Malaysia by the first-mentioned company in respect of the profits out of which the dividends are paid

Article XXIA[18]

Where under any provision of this Agreement, income or gain is wholly or partly relieved from tax in a Contracting State and under the laws in force in the other Contracting State, a resident, in respect of the said income or gain, is subject to tax by reference to the amount thereof which is remitted to or received in that other State, and not by reference to the full amount thereof, then the relief to be allowed under this Agreement in the first-mentioned State shall apply only to so much of the income or gain as is remitted to or received in that other State.

Article XXII

1. The competent authorities of the Contracting States shall exchange such information (being information which is available under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of this Agreement for the prevention of fraud or underpayment of taxes by reasons

[18] P.U.(A) 154/2004 Protocol Article 10

other than fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than persons, including a court, concerned with the assessment and collection of those taxes or the determination of appeals in relation thereto or to persons with respect to whom the information relates.

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

(a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;

(b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply any information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

Article XXIII

1. Citizens of one of the Contracting States shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which citizens of that other Contracting State in the same circumstances are or may be subjected. This provision shall not be construed as obliging one of the Contracting States to grant to citizens of the other Contracting State not resident in the first-mentioned Contracting State those personal allowances, reliefs and reductions for tax purposes which are by law available only to citizens or residents of that first-mentioned Contracting State or to such other persons as may be specified therein.

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

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

4. In this article the term "taxation" means taxes which are the subject of this Agreement.

Article XXIV

1. ~~Where a person who is a resident of one of the Contracting States considers that the actions of one or both of the Contracting States result or will result in taxation not in accordance with this Agreement he may, notwithstanding the remedies provided by the taxation laws in force in the Contracting States, appeal to the competent authority of the first-mentioned Contracting State~~.

ARTICLE 16 OF THE MLI - MUTUAL AGREEMENT PROCEDURE

The following first sentence of paragraph 1 of Article 16 of the MLI replaces the first sentence of paragraph 1 of Article XXIV of this Agreement:

Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Agreement, that person may, irrespective of the remedies provided by the domestic law of those Contracting States, present the case to the competent authority of either Contracting State.

The following second sentence of paragraph 1 of Article 16 of the MLI applies and supersedes to this Agreement:

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 of the first-mentioned Contracting State shall endeavour, if it is proved to his satisfaction that the appeal is justified and he is not himself able to arrive at an appropriate solution, to come to an agreement with the competent authority of the other Contracting State with a view to avoidance of taxation which is not in accordance with 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 may communicate with each other directly for the purpose of giving effect to this Agreement and for resolving any difficulty or doubt as to the application or interpretation of this Agreement or for the exchange of information within the meaning of article XXII.

The following second sentence of paragraph 3 of Article 16 of the MLI applies to this Agreement:

ARTICLE 16 OF THE MLI - MUTUAL AGREEMENT PROCEDURE

They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

Article XXV

This Agreement may be extended, either in its entirety or with modifications, to any territory for whose foreign relations either Contracting State is responsible and which imposes taxes, or in which are imposed taxes, substantially similar in character to those which are the subject of this Agreement and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the Contracting States in notes to be exchanged for this purpose.

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 XXVI

1. This Agreement shall come into force on the date when the last of all such things shall have been done in Malaysia and Denmark as are necessary to give the Agreement the force of law in Malaysia and Denmark respectively and shall thereupon have effect:

(a) in Malaysia—

as respects Malaysian tax for the year of assessment beginning on 1 January 1968, and subsequent years of assessment;

(b) in Denmark—

as respects Danish tax for the tax year beginning on 1 April 1968, and

subsequent years.

2. The Contracting States shall notify each other of the completion of the requirements mentioned in paragraph 1 of this article.

Article XXVII

1. This Agreement shall continue in effect indefinitely, but either of the Contracting Governments may, on or before 30th June in any calendar year not earlier than the year 1971, give to the other Contracting Government, through diplomatic channels, written notice of termination and in such event this Agreement shall cease to be effective:

(a) in Malaysia—

as respects Malaysian tax for the second year of assessment following that in which such notice is given and subsequent years of assessment;

(b) in Denmark—

as respects Danish tax for the income year beginning on 1 January in the calendar year next following that in which such notice is given and subsequent income years.

IN WITNESS whereof the undersigned, duly authorized thereto, have signed this Agreement.

DONE in duplicate at Kuala Lumpur this fourth day of December of the year one thousand nine hundred and seventy in the English language.

For the Government of Malaysia :	For the Government of the Kingdom of Denmark :