SYNTHESISED TEXT OF THE MLI AND THE AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE FRENCH REPUBLIC 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 French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 24 April 1975 as amended by the Protocol signed on 31 January 1991 and the Second Protocol signed on 12 November 2009 (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 France 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 France on 26 September 2018. 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made to parts of provisions of the MLI that describe existing provisions of the Agreement: descriptive language has been replaced by legal references of the existing provisions to ease the readability.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 French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (P.U.(A) 243/1975) (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 French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (P.U.(A) 131/1992) (provides, in the case of Malaysia, the authentic legal text of the Protocol).

Second Protocol Amending the Agreement between the Government of Malaysia and the Government of the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (P.U.(A)164/2010) (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 France submitted to the Depositary upon ratification on 26 September 2018 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 France in their MLI positions.

Entry into force of the MLI:

1 June 2021 for Malaysia and 1 January 2019 for France.

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 2022; 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 December 2021.

AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE FRENCH REPUBLIC 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 is included 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),

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

   (a) in Malaysia:

      (i) the income tax;

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

      (iii) the petroleum income tax,

      (hereinafter referred to as "Malaysian tax");

   (b) in France:

      (i) the income tax; and

      (ii) the corporation tax;

      including any withholding tax, prepayment (precompte) or advance payment with respect to the aforesaid taxes;

      (hereinafter referred to as "French 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 date of signature of this Agreement.

3. The competent authorities of the Contracting States shall notify to each other of any important changes which have been made in their respective taxation laws.

4. If by reason of changes made in the taxation law of either Contracting State, it seems desirable to amend any article of this Agreement without affecting the general principles thereof, the necessary amendments may be made by mutual consent by means of an exchange of diplomatic notes or in any other manner in accordance with their constitutional procedures.

Article 3
GENERAL DEFINITIONS

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

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

   (b) the term "France" means the European and overseas departments (Guadeloupe, Guyana, Martinique and Reunion) of the French Republic, including any area outside the territorial sea of France and those areas outside the territorial sea of France within which is, in accordance with international law, an area within which France may exercise rights with respect to the sea bed and sub-soil and their natural resources;

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

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

   (e) the term "company" means any body corporate or any entity which is treated as a body corporate under the taxation laws of the respective Contracting States;

   (f) the term "income" includes profits;

   (g) the term national means:

      (i) in relation to Malaysia all individuals who are citizens of Malaysia and all legal persons, associations and other entities deriving their status as such from the law in force in Malaysia;

      (ii) in relation to France individuals, legal persons, associations and other entities possessing French nationality;

(h) the term "person" shall have the meaning assigned to it in the taxation laws in force in the respective Contracting States;

(i) the terms "Malaysian enterprise" and "French enterprise" mean respectively an enterprise carried on by a resident of Malaysia and an enterprise carried on by a resident of France;

(j) the terms "enterprise of one of the Contracting State" and "enterprise of the other Contracting State" mean a Malaysian enterprise or a French enterprise, as the context requires;

(k) the term "competent authority" means, in the case of Malaysia, the Minister of Finance or his authorised representative; and in the case of France, the Minister of Economy and Finance or his authorised representative.

2. As regards 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 4
FISCAL DOMICILE

1. For the purposes of this Agreement,

(a) the term "resident of a Contracting State" means:

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

(ii) in the case of France a person who is a resident in France for the purposes of French tax;

(b) the terms "resident of one of the Contracting States" and "resident of the other Contracting State" mean a resident of Malaysia or a resident of France, as the context requires.

2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both Contracting States, then his residential 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 closer;

(b) if the Contracting State with which his personal and economic relations are closer cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

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

(d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall determine 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 5
PERMANENT ESTABLISHMENT

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

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

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, oil well, quarry or other place of extraction of natural resources;

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

(h) a farm or plantation;

(i) a place of extraction of timber or other forest produce.

3. The term "permanent establishment" shall not be deemed 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 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.

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

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

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 it carries on supervisory activities in that other Contracting State for more than six months in connection with a construction, installation or assembly project which is being undertaken in that other Contracting State.

5. 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 on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise~~; or

The following paragraph 1 of Article 12 of the MLI replaces subparagraph 5(a) of Article 5 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 5 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 an independent status, where such persons are acting in the ordinary course of their business~~.

The following paragraph 2 of Article 12 of the MLI replaces paragraph 6 of Article 5 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 to 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 provisions of this Agreement:

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

For the purposes of the provisions of Article 5 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 6
INCOME FROM IMMOVABLE PROPERTY

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 property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil wells, quarries and other places of extraction of natural resources or of timber or other 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 and to income from immovable property used for the performance of professional services or other independent activities.

Article 7
BUSINESS PROFITS

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, the income of the enterprise may be taxed in the other State but only so much of it as 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 the determination of the income 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 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 by that permanent establishment of goods or merchandise for the enterprise.

5. Where income includes 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

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

2. The provisions of paragraph 1 shall also apply to income derived from participation in a pool, a joint business or an international operating agency.

3. For the purposes of this Agreement the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of one of the Contracting States, except when the ship or aircraft is operated only between places in the other Contracting State.

Article 9
ASSOCIATED ENTERPRISES

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 10
DIVIDEND

1. Dividends paid by a company which is a resident of one of the Contracting States to a resident of the other Contracting State may be taxed in that other Contracting State if such recipient is the beneficial owner of the dividends.

Dividends Paid by a Company which is a Resident of France

2. Notwithstanding the provision of paragraph 1 of this Article, dividends paid by a company which is a resident of France to a resident of Malaysia who is subject to tax in

Malaysia in respect thereof, may be taxed in France in accordance with French law but the tax so charged shall not exceed:

(a) 5 per cent of the amount of the dividends if the recipient is a company which holds directly or indirectly at least 10 per cent of the share capital of the company paying the dividends;

(b) in all other cases, 15 per cent of the gross amount of the dividends.

3. (a) A resident of Malaysia who receives from a company which is resident in France dividends which, if received by a resident of France would entitle such resident to a fiscal credit (avoir fiscal), shall be entitled to a payment from the French Treasury equal to such credit (avoir fiscal) subject to deduction of the tax provided for in subparagraph (b) of paragraph 2 of this Article.

(b) The provisions of sub-paragraph (a) of this paragraph shall apply only to residents of Malaysia other than a company referred to in sub-paragraph (a) of paragraph 2 of this Article.

(c) The provisions of sub-paragraph (a) of this paragraph shall not apply if the recipient of the dividends referred to in sub -paragraph (a) of this paragraph and of the payment from the French Treasury provided for under sub-paragraph (a) of this paragraph is not subject to Malaysian tax in respect of these dividends and of that payment.

(d) Payments from the French Treasury provided for under subparagraph (a) of this paragraph shall be deemed to be dividends for the purposes of this Agreement.

4. (a) Where a prepayment (precompte) is levied in respect of dividends paid by a company which is a resident of France to a resident of Malaysia who is not entitled to the payment from the French Treasury referred to in paragraph 3 of this Article with respect to such dividends, the resident of Malaysia shall be entitled to a refund of that prepayment, subject to deduction of the tax with respect to the refunded amount in accordance with paragraph 2 of this Article.

(b) Amounts refunded under the provisions of sub-paragraph (a) of this paragraph shall be deemed to be dividends for the purposes of this Agreement.

5. When a company which is a resident of Malaysia has a permanent establishment in France, it may be subjected therein to a withholding tax provided by the French law but such tax shall not exceed 15 per cent of two-thirds of the profits of the permanent establishment after payment of the corporation tax on those profits.

Dividends Paid by a Company which is a Resident of Malaysia

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

in Malaysia from which Malaysian tax has been, or has been deemed to be, deducted may be adjusted by reference to the rate of tax appropriate to the Malaysian year of assessment immediately following that in which the dividend was paid.

7. (a) Where a dividend was paid by a company-

(i) which was a resident of both Malaysia and Singapore and the meeting at which the dividend was declared was held in Malaysia, or

(ii) which was resident in Singapore and the time of payment of that dividend the company declared itself to be a resident of Malaysia for the purposes of Artic le VII of the Agreement between the Government of Malaysia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income signed in Singapore on 26th December 1968,

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

(b) Where a dividend was paid by a company-

(i) which was resident of both Malaysia and Singapore and the meeting at which the dividend was declared was held in Singapore, or

(ii) which was resident in Singapore and at the time of payment of that dividend the company declared itself to be a resident of Malaysia for the purposes of Article VII of the Agreement between the Government of Malaysia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income signed in Singapore on 26th December, 1968,

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

General Provisions

8. The provisions of paragraphs 1, 2, 3 and 6 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 of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of Article 7 shall apply.

9. The term "dividends" as used in this Article means income from shares, "jouissance" shares or jouissance rights, mining shares, founder's shares or other rights, not being debt-claims, participating in profits, as well as income treated as distribution by the taxation laws of the State of which the company making the distribution is a resident.[1]

[1] P.U.(A) 131/1992 Protocol 1 – Article 1

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

3. Notwithstanding the provisions of paragraph 2 of this Article, interest paid to a resident of France on approved loans shall be exempted from Malaysia tax payable thereon. The term "approved loan" means approved loan as defined in section 2(1) of the Income Tax Act 1967 of Malaysia (as amended).[2]

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

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

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

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

[2] P.U.(A) 131/1992 Protocol 1 – Article 2

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 Contracting State.

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the law of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10 per cent of the amount of the royalties.

3. Notwithstanding the provisions of paragraph 2 of this Article, royalties paid to a resident of France by a resident of Malaysia and approved by the competent authority of Malaysia shall be exempt from Malaysian tax payable thereon.

4. Notwithstanding the provisions of paragraphs 2 and 3 of this Article, royalties of the kind referred to in paragraph 5(b) of this Article may be taxed accordance with the law of the Contracting State in which they arise.

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

(a) the use of, or the right to use any patent, trade mark, design or model, plan, secret formula or process, any copyright of literary, artistic or 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, cinematograph films, or works recorded on tapes for television broadcasting.

6. The provisions of paragraphs 2 and 3 of this Article shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of Article 7 shall apply.

7. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, local authority or statutory body 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.

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

Article 12A
FEES FOR TECHNICAL SERVICES[3]

1. Notwithstanding the provisions of Article 15, fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner thereof and is subject to tax in that other State in respect thereof may be taxed in the first-mentioned State at a rate not exceeding 10 per cent of the gross amount of the fees for the technical services.

2. The term "fees for technical services" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.

3. The provision of paragraph (1) of this Article shall not apply if the beneficial owner of the fees for technical services, being a resident of a Contracting State, carries on business or industrial activity in the other Contracting State in which the fees for technical services, arise through a permanent establishment situated therein, and the fees for the technical services are effectively connected with such permanent establishment. In such case, the provision of Article 7 shall apply.

4. Fees for technical services shall be deemed to arise in a Contracting State when the payers is that State itself, a political subdivision, a local authority or statutory body thereof or a resident of that State. Where however, the person paying the fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State permanent establishment in connection with which the obligation to pay the fees for technical services was incurred, and such fees for technical service are borne by such permanent establishment, then such fees for technical services shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

5. Where, by reason a special relationship between the payer and the beneficial owner of the fees for technical services or between both of them and some other person, the amount of the fees for technical services paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provision of this Article shall apply only to the last-mention amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provision of this Agreement.

[3] P.U.(A) 131/1992 Protocol 1 – Article 3

Article 13
CAPITAL GAINS

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6 and from the sale or exchange of shares or comparable interests on a real property co-operative or in company whose assets consist principally of such property, may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) may be taxed in the other State. However, gains from the alienation of ships and aircraft operated in international traffic and movable 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 property other than those mentioned in paragraphs 1 and 2 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14
DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18 and 19 salaries, wages, and other similar remuneration derived by an individual who is 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 Malaysia shall be taxable only in Malaysia on remuneration in respect of an employment exercised in France if-

(a) he is present in France for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned; and

(b) he is present in France for a continuous period not exceeding 183 days; and

(c) the remuneration is paid by, or on behalf of, an employer who is not a resident of France; and

(d) the remuneration is not borne by a permanent establishment which the employer has in France.

3. Notwithstanding the provisions of paragraph 1 of this Article, an individual who is a resident of France shall be taxable only in France on remuneration in respect of an employment exercised in Malaysia if-

(a) he is present in Malaysia for a period or periods not exceeding in the aggregate 183 days during any basis year for a year of assessment; and

(b) he is present in Malaysia for a continuous period not exceeding 183 days; and

(c) the remuneration is paid by, or on behalf of, an employer who is not a resident of Malaysia; and

(d) the remuneration is not borne by a permanent establishment which the employer has in Malaysia.

Article 15
INDEPENDENT PERSONAL SERVICES

1. Remuneration derived by an individual who is a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that Contracting State unless such services or activities are exercised in the other Contracting State. If the professional services or the other activities are 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 Malaysia shall be taxable only in Malaysia on remuneration in respect of such services or activities exercised in France if:

(a) he is present in France for a period or periods not exceeding in the aggregate 183 days during the calendar year concerned, and

(b) he is present in France for a continuous period not exceeding 183 days, and

(c) the remuneration is not deductible in computing the income of any person chargeable to French tax.

3. Notwithstanding the provisions of paragraph 1 of this Article, an individual who is a resident of France shall be taxable only in France on remuneration in respect of such services or activities exercised in Malaysia if:

(a) he is present in Malaysia for a period or periods not exceeding in the aggregate 183 days during any basis year for a year of assessment; and

(b) he is present in Malaysia for a continuous period not exceeding 183 days; and

(c) the remuneration is not deductible in computing the income of any person chargeable to Malaysian tax.

Article 16
DIRECTOR'S FEES

Notwithstanding the provisions of Articles 14 and 15 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.

Article 17
ARTISTES AND ATHLETES

1. Notwithstanding the provisions of Articles 14 and 15 income derived by public entertainers (such as stage, motion picture, radio or television artistes and musicians) or athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

2. The provisions of paragraph 1 shall not apply to remuneration or profits derived from activities exercised in one of the Contracting States by public entertainers if the visit to that Contracting State is directly or indirectly supported, wholly or substantially from the public funds of the other Contracting State, a political sub-division, local authority or statutory body thereof.

3. Where the personal activities referred to in paragraph 1 are provided in one of the Contracting States by an enterprise of the other Contracting State, the profits derived from providing these activities by such on enterprise may be taxed in the first-mentioned Contracting State unless the enterprise is substantially supported by public funds of the other Contracting State, a political sub-division, a local authority or statutory body thereof.

Article 18
PENSION

Subject to the provisions of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that Contracting State.

Article 19
GOVERNMENT REMUNERATION AND PENSION

1. Remuneration paid by or out of funds created by a Contracting State to any individual who is a national of that Contracting State without being a national of the other Contracting State in respect of services rendered to that Contracting State in the discharge of functions of a governmental nature shall be exempt from tax in the other Contracting State.

2. The provisions of paragraph 1 of this Article shall not apply to remuneration in respect of services rendered in connection with any trade or business carried on by a Contracting State.

3. Any pensions paid by or out of funds created by a Contracting State, a political sub-division, a local authority or statutory body thereof to any individual in respect, or one of their public establishments to any individual in consideration of past services rendered to that Contracting State in the discharge of functions of a governmental nature may be taxed in that Contracting State.

Article 20
STUDENTS AND APPRENTICES

1. An individual who is a resident of one of the Contracting States and who visits in the other Contracting State solely as a student at a recognized university, college, school or other similar recognized educational institution in that other Contracting State or as a business or technical apprentice therein, for a period not exceeding five 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) all remittances from abroad for the purposes of his maintenance, education or training; and

(b) any remuneration for personal services rendered in that other Contracting State with a view to supplementing the resources available to him for such purposes.

2. An individual who is a resident of one of the Contracting States and who visits the other Contracting State for the purposes of study, research or training solely as a recipient of a grant, allowance or award from one of the Contracting States, a political subdivision, a local authority or statutory body thereof or from a scientific educational, religious or charitable organisation or under a technical assistance programme entered into by one of the Contracting States, a political subdivision, a local authority or statutory body thereof for a period not exceeding five 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;

(b) all remittances from abroad for the purposes of his maintenance, education or training; and

(c) any remuneration in respect of services in that other Contracting State if such services are performed in connection with his study, research, training or are incidental thereto.

3. An individual who is a resident of one of the Contracting States and who visits the other Contracting State solely as an employee of, or under contract with, one of the Contracting States, a political sub-division, a local authority or statutory body thereof, 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 12 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) all remittances from abroad for the purposes of his maintenance, education or training; and

(b) any remuneration for personal services rendered in that other Contracting State, provided such services are in connection with his studies or training or incidental thereto.

4. For the purposes of this Article and Article 21 an individual shall be deemed to be a resident of a Contracting State if he is a resident in that Contracting State in the calendar year in which he visits the other Contracting State or the immediately preceding calendar year.

Article 21
PROFESSORS, TEACHER AND RESEARCHERS

1. An individual who is a resident of one of the Contracting States and who, at the invitation of the Government of the other Contracting State or of a recognised university, college, school or other similar recognised educational institution situated in that other Contracting State, visits that other Contracting State for the primarily purpose of teaching or engaging in research, or both, at such recognised educational institution shall be exempt from tax in that other Contracting State on his income from personal services for teaching or research or both at such recognised educational institution, for a period not exceeding two years from the date of his arrival in that other Contracting State.

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

Article 22
INCOME OF CONTRACTING STATES AND INSTITUTIONS

1. Either Contracting State shall be exempt from tax in the other Contracting State in respect of any income derived by such Contracting State from the other Contracting State.

2. The provisions of paragraph 1 of this Article shall also apply:

(a) in the case of Malaysia-

(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, as may be agreed between the competent authorities of the two Contracting States;

(b) in the case of France-

(i) the local authorities;

(ii) the Bank of France (Banque de France); and

(iii) such institutions the capital of which is wholly owned by the State or by local authorities insofar as they engaged in public interest activities, as may be agreed between the competent authorities of the two Contracting States.

Article 23
METHOD FOR ELIMINITION OF DOUBLE TAXATION

Double taxation shall be avoided as following manner:

1. In the case of France:

(a) income other than that mentioned in subparagraph (b) below shall be exempt from French tax mentioned in subparagraph (b) of paragraph 1 of Article 2 if the income is taxable in Malaysia under the Agreement and the law of Malaysia;

(b) as regards income mentioned to in Articles 10, 11, 12, 15, 16 and 17 which has borne the Malaysian tax in accordance with the provisions of these Articles, France shall allow to a resident of France receiving such income from Malaysia a tax credit corresponding to the amount of tax levied in Malaysia. Such tax credit is to be treated as income for taxation purposes. Such tax credit not exceeding the amount of French tax levied on the such income, shall be allowed against taxes mentioned in subparagraph (b) of paragraph 1 of Article 2, in the bases of which such income is included. In the case of royalties referred to in subparagraph (b) of paragraph 5 of Article 12 the tax credit shall not exceed 15 per cent of the gross amount of royalties;

(c) for the purpose of subparagraph (b) above, the tax levied in Malaysia shall be deemed to include:

(i) the amount of Malaysian tax which would have been paid if the Malaysian tax have been exempted in accordance with the special incentive measures designed to promote economic development in Malaysia, which are in effective on the date of signature of this Agreement, or which may be introduced in future in Malaysia tax laws in modification of, or in addition to, the existing measures; the scope of the benefit accorded to taxpayers by the aforesaid measures shall be agreed by the competent authorities of both Contracting States;

(ii) in the case of interest, the amount referred to in subparagraph (c) (i) above shall not exceed a sum equivalent to tax at a rate of 15 per cent of the gross amount of such interest. However, the provision of subparagraph (c) shall apply only to interest as referred to in paragraph 3 of Article 11, and provided that the loan or other indebtedness in respect of which the interest is paid is certified by the competent authority of Malaysia as being for the purpose of promoting economic development in Malaysia;[4]

(iii) in the case of royalties to which paragraphs 2 and 3 of Article 12 apply the amount referred to in subparagraph (i) above is a sum equivalent to tax at a rate of 15 per cent of the gross amount of such royalties;

(d) notwithstanding the subparagraphs (a) and (b) French tax may be computed on income chargeable in France by virtue of this Agreement at the rate appropriate to the total of the income chargeable in accordance with French law. Editor's Note: New subparagraphs (e) and (f) have been added by Article 4(b) of the Protocol signed January 31, 1991.

(e) the provision of paragraph 1, except for the provision of subparagraph (a) and (c), shall be applicable to income mentioned in Article 12A.[5]

(f) as regards as application of subparagraph (b) to income mentioned in Article 11, 12 and 12A, where the amount of tax levied in Malaysia, in accordance with those Articles, exceeds the amount of French tax levied on such income, the resident of France receiving such income may present his case to the French competent authority. In that case, where it appears to it that such a situation results in double taxation or taxation which is not comparable to taxation on net income, the French authority may allow, subject whatever conditions it determines, the non-credited amount of tax levied in Malaysia as a deduction from the tax levied on the other income from foreign sources of that resident.[6]

[4] P.U.(A) 131/1992 Protocol 1 – Article 4(a)
[5] P.U.(A) 131/1992 Protocol 1 – Article 4(b)
[6] P.U.(A) 131/1992 Protocol 1 – Article 4(b)

2. In the case of Malaysia, subject to the provisions of the law of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, the amount of French tax payable under the law of France and in accordance with the provisions of this Agreement, by a resident of Malaysia in respect of income from sources within France which has been subjected to tax both in France and Malaysia shall be allowed as a credit against Malaysian tax payable in respect of such income, but in an amount not exceeding that portion of the Malaysian tax which such income bears to the entire income chargeable to Malaysian tax.

Article 24
NON-DISCRIMINATION

1. The nationals 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 nationals of that other Contracting State in the same circumstances and under the same conditions are or may be subjected.

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 activities in the same circumstances and under the same conditions.

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 that first-mentioned Contracting State in the same circumstances and under the same condition.

4. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to individuals not resident in that Contracting State any of the personal allowances, reliefs and reductions for tax purposes which are by law available only to residents of that Contracting State.

5. Nothing contained in this article shall be construed as obliging a Contracting State to grant to nationals of the other Contracting State not residents of the first-mentioned Contracting State those personal allowances, reliefs and reductions for tax purposes which are by law available only to nationals of the first - mentioned Contracting State or to such other persons specified therein who are not resident in that Contracting State.

6. In this Article-
the term "taxation" means taxes which are the subject of this Agreement.

Article 25
MUTUAL AGREEMENT PROCEDURE

1. ~~Where 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 the Contracting States, present his case to the competent authority of the Contracting State of which he is a resident.~~

The following first sentence of paragraph 1 of Article 16 of the MLI replaces the first sentence of paragraph 1 of Article 25 of this Agreement:

ARTICLE 16 OF THE MLI- MUTUAL AGREEMENT PROCEDURE

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 the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve that case by mutual agreement with the competent authority of the other Contracting State with a view to the avoidance of taxation which is not in accordance with this Agreement.

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 application of this Agreement.~~

The following first sentence of paragraph 3 of Article 16 of the MLI replaces the first sentence of paragraph 3 of Article 25 of this Agreement:

ARTICLE 16 OF THE MLI- MUTUAL AGREEMENT PROCEDURE

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 the preceding paragraphs.

5. The competent authorities of the Contracting States shall settle the mode of application of this Agreement.

Article 26
EXCHANGE OF INFORMATION[7]

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. 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.

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

(a) to carry out administrative measures at variance with the laws and 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;

[7] P.U.(A) 164/2010 Protocol 2 – Article 1

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

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 of this Article but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 27
DIPLOMATIC AND CONSULAR OFFICIALS

1. 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.

2. This Agreement shall not apply to International Organisations, to organs or officials thereof and to persons who are members of a diplomatic or consular mission of a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income.

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
TERRITORIAL EXTENSION

1. This Agreement may be extended, either in its entirety or with any necessary modifications by agreement between Contracting States to the overseas territories of the French Republic which impose taxes substantially similar in character to those to which the Agreement applies. 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 the diplomatic channel or in any other manner in accordance with their constitutional procedures.

2. Unless otherwise agreed by both Contracting States, the termination of the Agreement by one of them under Article 30 shall terminate, in the manner provided for in that Article, the application of the Agreement to any territory to which it has been extended under this Article.

Article 29
ENTRY INTO FORCE

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

(a) in Malaysia

as respects Malaysian tax for the year of assessment beginning on the 1st day of January, 1974 and subsequent years of assessment;

(b) in France

as respects French tax for the year of assessment beginning on the 1st January, 1973 and subsequent assessment years.

Article 30
TERMINATION

This Agreement shall continue in effect indefinitely, but either of the Contracting States may, on or before 30th June in any calendar year after the year 1977 give to the other Contracting State written notice of termination and in such event this Agreement shall cease to be effective:

(a) in Malaysia

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

(b) in France

as respects French tax for the year of assessment in which such notice is given and subsequent years of assessment.

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

Done in duplicate at Paris, this twenty-fourth day of April of the year one thousand nine hundred and seventy-five in Bahasa Malaysia and French, both texts being equally authentic.

For the Government of Malaysia	For the Government of the French Republic

PROTOCOL

At moment of proceeding this day to the signature of the Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the undersigned have agreed on the following provisions:

The term “political subdivision” shall, wherever mentioned in this Agreement, means a political subdivision of Malaysia.[8]

Article 6 - Addendum

For the purposes of Article 6 of this Agreement, it is understood that in appropriate cases, the term "immovable property" shall be construed in France in accordance with the taxation laws of France.

[8] P.U.(A) 131/1992 Protocol 1 – Article 5