SYNTHESISED TEXT OF THE MLI AND THE AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF ROMANIA 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 Socialist Republic of Romania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 26 November 1982 (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 Romania on 7 June 2017 (the "MLI").

This document was prepared in consultation with the competent authority of Romania and represents our shared understanding of the modifications made to the Agreement by 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 Romania on 28 February 2022. These MLI positions are subject to modifications as provided in the MLI.

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

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

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made to parts of provisions of the MLI that describe existing provisions of the Agreement: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

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

References

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

Agreement between the Government of Malaysia and the Government of the Socialist Republic of Romania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (P.U.(A) 156/1983) (provides, in the case of Malaysia, the authentic legal text of the Agreement).

The MLI position of Malaysia submitted to the Depositary upon ratification on 18 February 2021 and of the MLI position of Romania submitted to the Depositary upon ratification on 28 February 2022 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 Romania in their MLI positions.

Entry into force of the MLI:
1 June 2021 for Malaysia and 1 June 2022 for Romania.

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 2024; and

   (ii) with respect to all other taxes levied by Malaysia, for taxes levied with respect to taxable periods beginning on or after 5 October 2023; and

b) in Romania:

   (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 2024; and

   (ii) with respect to all other taxes levied by Romania, for taxes levied with respect to taxable periods beginning on or after 1 January 2024.

AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF ROMANIA 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 Socialist Republic of Romania ~~desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and with a view to promote and strengthen the economic relations between the two countries,~~

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

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

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

have agreed as follows:

Article 1
PERSONAL SCOPE

The 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 2
TAXES COVERED

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

(a) in the case of Romania:

-- tax on income derived by individuals and corporate bodies;

-- tax on the profits of joint companies constituted with the participation of Romanian economic organisations and foreign partners;

-- tax on income derived from agricultural activities;

(hereinafter referred to as "Romanian tax");

(b) in the case of Malaysia:

-- income tax and excess profit tax;

-- supplementary income taxes, that is, tin profits tax, development tax and timber profits tax; and

-- petroleum income tax;

(hereinafter referred to as "Malaysian tax").

2. The Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any important changes which have been made in their respective taxation laws.

Article 3
GENERAL DEFINITIONS

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

(a) the term "Romania" means the territory of the Socialist Republic of Romania including the territorial sea and the continental shelf as well as any other areas beyond the territorial sea of Romania where Romania exercises sovereign rights, in accordance with the international law and with its own law concerning the exploration and exploitation of the natural, biological and mineral resources existing in the sea waters, sea bed and subsoil of these waters;

(b) 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 exploration and exploitation of natural

resources, whether living or non-living, of the sea bed and subsoil and the superjacent waters, may be exercised;

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

(d) the term "national" means:
  (i) any individual possessing the citizenship of a Contracting State;
  (ii) any legal person, partnership, association and other entity deriving its status as such from the laws in force in a Contracting State;

(e) the term "person" includes an individual, a company and any other body of persons which is treated as a person for tax purposes;

(f) the term "company" means any body corporate including a joint company incorporated under Romanian law or any entity which is treated as a body corporate for tax purposes;

(g) the term "tax" means Malaysian tax or Romanian tax, as the context requires;

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

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

(j) the term "competent authority" means:
  (i) in respect of Romania, the Minister of Finance or his authorised representative;
  (ii) in respect of Malaysia, the Minister of Finance or his authorised representative;

(k) the term "political sub-division" applies to Malaysia and the term "territorial administrative unit" applies to Romania.

2. As regards the application of this Agreement by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that 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—

— in respect of Romania, a person who is resident in Romania for the purpose of Romanian tax; or

— in respect of Malaysia, a person who is resident in Malaysia for the purposes of Malaysian tax;

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

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

(a) he shall be deemed to be a resident of the State in which he has a permanent home available to him. If he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interest);

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

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

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

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

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, an oil or gas well, a quarry or other place of extraction of natural resources including timber or other forest produce;

(g) an installation or structure used for the exploration of natural resources;

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

(i) a farm or plantation.

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 for collecting information, for the enterprise;

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

4. An enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State and to carry on business through that permanent establishment if it carries on supervisory activities in that other State for more than six months in connection with a building site, or a construction, installation or assembly project which is being undertaken in that other State.

5. A person (other than an agent of an independent status to whom paragraph 6 applies) acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the first-mentioned State, if:

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

(b) he maintains in the first-mentioned 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 a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in the other State through a broker, general commission agent of any other agent of an independent status, where such persons are acting in the ordinary course of their business.

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

Article 6
INCOME FROM IMMOVABLE PROPERTY

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

2. The term "immovable property" shall be defined in accordance with the laws of the Contracting State in which the property 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 or gas 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 shall apply to income derived from the direct use, letting or use in any other form of immovable property.

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

Article 7
BUSINESS PROFITS

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

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

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

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

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

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

Article 8
SHIPPING AND AIR TRANSPORT

1. Income derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

Article 9
ASSOCIATED ENTERPRISES

Where:

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

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

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

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

ARTICLE 17 OF THE MLI – CORRESPONDING ADJUSTMENTS

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

Article 10
DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. Dividends paid by a company which is a resident of Romania to a resident of Malaysia may be taxed in Romania according to the laws of Romania, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

3. Subject to the provisions of this Article, dividends paid by a company which is resident in Malaysia to a resident of Romania who is the beneficial owner thereof, shall be exempt from any tax in Malaysia which is chargeable on dividends in addition to the tax chargeable in respect of the income of the company.

4. Nothing in the preceding paragraph shall affect the provisions of the Malaysian law under which the tax in respect of a dividend paid by a company which is 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.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, there shall not be imposed in that other State any form of taxation on dividends paid by the company to persons not resident in that other 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.

6. The provisions of paragraphs 2, 3, 4 and 7 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, 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 7 shall apply.

7. If after the date of signature of this Agreement the system of company taxation in Malaysia is altered by the introduction of a tax on the income or profits of a company for which no tax credit or only partial tax credit is given to its shareholders and of a tax on dividends paid by the company, the Malaysian tax on dividends paid by a company which is resident in Malaysia to a resident of Romania who is the beneficial owner thereof, shall not exceed 10 per cent of the gross amount of the dividends.

8. The term "dividends" as used in this Article means income from shares or rights, not being debt-claims, participating in profits or income, as well as income from other corporate rights assimilated to income from shares by the taxation laws of the Contracting State of which the company making the distribution is a resident.

In this context, the profits distributed by a joint company incorporated under Romanian law to shareholders are assimilated to dividends.

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

3. Notwithstanding the provisions of paragraph 2, interest to which a resident of Romania is beneficially entitled shall be exempt from Malaysian tax if the loan or other indebtedness in respect of which the interest is paid is an approved loan or a long-term loan.

4. The provisions of paragraphs 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on in the other Contracting State in which the interest arises a trade or 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 provision of Article 7 shall apply.

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

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

7. The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt claims of every kind as well as all

other income assimilated to income from money lent by the taxation laws of the Contracting State in which the income arises.

Article 12
ROYALTIES

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

2. However, such royalties may be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 12 per cent of the gross amount of the royalties.

3. Notwithstanding the provisions of paragraph 2, approved industrial royalties derived from Malaysia by a resident of Romania who is the beneficial owner thereof shall be exempt from Malaysian tax.

4. 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 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 tapes for radio or television broadcasting, or any copyright of literary or artistic work.

5. The term "approved industrial royalties" means royalties as defined in subparagraph 4 (a) which are approved and certified by the competent authority of Malaysia as payable for the purpose of promoting industrial development in Malaysia and which are payable by an enterprise which is wholly or mainly engaged in activities falling within one of the following classes:

(a) manufacturing, assembling or processing;

(b) construction, civil engineering or shipbuilding; or

(c) electricity, hydraulic power, gas or water supply.

6. The provisions of paragraph 2 and 3 shall not apply if the beneficial owner 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 State itself, a territorial administrative unit, a political sub-division, a 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 State in which the permanent establishment is situated.

8. Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In 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.

9. Royalties derived by a resident of Romania, being royalties that, as film rentals, are subject to the cinematograph film-hire duty in Malaysia, shall not be liable to Malaysian tax.

Article 13
CAPITAL GAINS

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

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

3. Notwithstanding the provisions of paragraph 2, gains from the alienation of ships or aircraft operated by an enterprise of a Contracting State in international traffic and movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the State in which the place of effective management of the enterprise is situated.

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

Article 14
INDEPENDENT PERSONAL SERVICES

1. Income derived by 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 State. However, in the following circumstances such income may be taxed in the other Contracting State:

(a) if his stay in the other State is for a period or periods amounting to or exceeding in the aggregate 183 days in the calendar year concerned; or

(b) if the remuneration for his services in the other State is either derived from residents of that State or borne by a permanent establishment which a person not resident in that State has in that State and which in either case exceeds 4,000 United States dollars in the calendar year concerned, notwithstanding that his stay in that State is for a period or periods amounting to less than 183 days during that calendar year.

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

Article 15
DEPENDENT PERSONAL SERVICES

1. Subject to the provision of Articles 16, 17, 18, 19, 20 and 21 salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is exercised in the other Contracting State, such remuneration as is derived therefrom may be taxed in that other State.

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

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

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

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

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised abroad a ship or aircraft of the enterprise of a Contracting State as specified in paragraph 1 of Article 8, shall be taxable only in that State.

Article 16
DIRECTORS' FEES

Notwithstanding the provisions of Articles 14 and 15, directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17
ARTISTES AND ATHLETES

1. Notwithstanding the provisions of Articles 14 and 15, income derived by public entertainers (such as theatre, 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. Where the personal activities referred to in paragraph 1 are provided in a Contracting State by an enterprise of the other Contracting State, the profits derived from providing these activities by such an enterprise may be taxed in the first-mentioned State.

3. Notwithstanding the provisions of paragraphs 1 and 2, remuneration or profits derived from activities exercised in a Contracting State by public entertainers or athletes shall be exempt from tax in that State if the visit to that State is made under an exchange programme agreed between the Governments of the two Contracting States or a territorial administrative unit, a political sub-division, a local authority or statutory body thereof.

Article 18
PENSIONS AND ANNUITIES

1. Any pension (other than a pension of the kind referred to in paragraph 2 of Article 20) or any annuity derived by an individual who is a resident of a Contracting State from the other Contracting State shall be taxable only in the first-mentioned 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.

Article 19
STUDENTS

An individual who is a resident of a Contracting State and is temporarily present in the other Contracting State solely:

(a) as a student at a university, college or school in the other State;

(b) as a business or technical apprentice, or

(c) as a trainee recipient of a grant, allowance or award for the primary purpose of study or research, shall be exempted in the other State, from any income tax in respect of remittances from abroad for the purposes of his maintenance, education or training or in respect of a scholarship grant. The individual will also be exempted from any income tax for a period of two years in respect of any remuneration received for services exercised as an employee in that other State, provided that such services are in connection with his studies or practical training or are necessary for the purpose of his maintenance.

Article 20
GOVERNMENTAL FUNCTIONS

1 (a) Remuneration, other than a pension, paid by a Contracting State or a territorial administrative unit, a political sub-division, local authority or statutory body thereof to an individual in respect of services rendered to that State or a territorial administrative unit, a political sub-division, local authority or statutory body thereof shall be taxable only in that State.

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

(i) is a national of that State; or

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

2. Any pension paid by, or out of funds created by, a Contracting State or a territorial administrative unit, a political sub-division, local authority or statutory body thereof to

any individual in respect of services rendered to that State or a territorial administrative unit, a political sub-division, local authority or statutory body thereof shall be taxable only in that State.

3. The provisions of Articles 14, 15, 16 and 18 shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by a Contracting State or a territorial administrative unit, a political sub-division, local authority or statutory body thereof.

Article 21
PROFESSORS AND TEACHERS

1. An individual who, at the invitation of a university, college, school or other similar recognised educational institution in a Contracting State, visits that State for a period not exceeding two years solely for the purpose of teaching or conducting research or both at such educational institution and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned State on any remuneration for such teaching or research in respect of which he is subject to tax in the other State.

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

Article 22
INCOME NOT EXPRESSLY MENTIONED

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

Article 23
METHODS FOR ELIMINATION OF DOUBLE TAXATION

1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting States except where express provisions to the contrary are made in this Agreement. Where income is subject to tax in both States relief from double taxation shall be given in accordance with the following paragraphs.

2. In the case of Romania, taxes paid in Malaysia by a resident of Romania on income under the laws of Malaysia and in accordance with the provisions of this

Agreement shall be deducted from Romania taxes payable, but in an amount not exceeding that portion of Romania tax which such income bears to the entire income chargeable to Romanian tax. Profits paid by the Romanian State enterprises to the State budget shall, in this Article, be deemed as a tax of Romania.

3. For the purpose of paragraph 2 the term "Malaysian tax payable" shall be deemed to include:

(a) in respect of dividends received from a company which is a resident of Malaysia, any amount which would have been payable as Malaysian tax but for an exemption from tax granted under the Malaysian laws relating to incentives for the promotion of economic development in Malaysia which were in force on the date of signature of this Agreement 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;

(b) interest to which paragraph 3 of Article 11 applies had that interest not been exempted from Malaysian tax in accordance with that paragraph; and

(c) approved industrial royalties to which paragraph 3 of Article 12 applies had those royalties not been exempted from Malaysian tax in accordance with that paragraph.

4. For the purposes of paragraph 2, where royalties derived by a resident of Romania are, as film rentals, subject to cinematograph film-hire duty in Malaysia, that duty shall be deemed to be Malaysian tax.

5. In the case of Malaysia, subject to the provisions of the laws of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, Romanian tax payable under the laws of Romania and in accordance with the provisions of this Agreement, whether directly or by deduction, (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) by a resident of Malaysia in respect of income from sources within Romania which has been subjected to tax both in Romania 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 Malaysian tax which such income bears to the entire income chargeable to Malaysian tax.

Article 24
NON-DISCRIMINATION

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

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

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

4. Nothing contained in this Article shall be construed as obliging either 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 granted to individuals so resident.

5. Moreover nothing contained in this Article shall be construed as obliging a Contracting State to grant to nationals of the other Contracting State not resident in the first-mentioned State those personal allowances, reliefs and reductions for tax purposes which are by law available on the date of signature of this Agreement only to nationals of the first-mentioned State or to such other persons specified therein who are not resident in that 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 Contracting State considers that the of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the taxation laws of those States, present his case to the competent authority of the Contracting State of which he is a resident~~.

ARTICLE 16 OF THE MLI - MUTUAL AGREEMENT PROCEDURE

The following first sentence of paragraph 1 of Article 16 of the MLI replaces paragraph 1 of Article 25 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 the 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 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 shall endeavour, if the objections appear to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Agreement.

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

ARTICLE 16 OF THE MLI - MUTUAL AGREEMENT PROCEDURE

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

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement.

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 Covered Tax 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.

Article 26
EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement and for the prevention or detection of evasion or avoidance of the taxes which are the subject of this Agreement. Any information so exchanged shall be treated as secret and shall be disclosed only to persons or authorities, including a court or administrative body, concerned with the assessment, collection, enforcement or prosecution in respect of those taxes or the determination of appeals in relation thereto.

2. In no case shall the provisions of paragraph 1 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 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).

Article 27
DIPLOMATIC AND CONSULAR PRIVILEGES

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.

The following paragraph 1 of Article 7 of the MLI applies to this Agreement:

ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE
(Principal purposes test provision)

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

Article 28
ENTRY INTO FORCE

1. This Agreement shall be ratified and the instruments of ratification shall be exchanged at Bucharest as soon as possible.

2. The Agreement shall enter into force upon the exchange of instruments of ratification and shall have effect in respect of the income arising on or after the first day of January of the year next following the year in which exchange of instruments of ratification takes place.

Article 29
TERMINATION

This Agreement shall remain in force indefinitely but either of the Contracting States may terminate the Agreement, through diplomatic channels, by giving to the other Contracting State, notice of termination on or before the 30th June of any calendar year from the fifth year following that in which the Agreement entered into force. In such event, the Agreement shall cease to have effect in respect of income arising on or after the first day of January of the year next following the year in which the notice of termination is given.

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

Done in duplicate at Kuala Lumpur this 26th day of November 1982 each in the Romanian, Bahasa Malaysia and English languages the three texts being equally authentic. In the case of any divergence of interpretation the English text shall prevail.

On behalf of the Government of Malaysia	On behalf of the Government of the Socialist Republic of Romania

PROTOCOL

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

2. In connection with Article 10 "Dividends":

Where, 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--

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

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

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

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

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

(ii) which was resident in Malaysia and at the time of payment of that dividend the company declared itself to be a resident of Singapore,

the dividend shall be deemed to have been paid by a company not resident in Malaysia.

3. In connection with Article 22 "Income Not expressly Mentioned":

Commission arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State. However, such commission may be taxed in the Contracting State in which it arises.

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

Done in duplicate at Kuala Lumpur this 26th day of November 1982 each in the Romanian, Bahasa Malaysia and English languages the three texts being equally authoritative. In case of any divergence of interpretation the English text shall prevail.

On behalf of the Government of Malaysia	On behalf of the Government of the Socialist Republic of Romania