

MALAYSIA /MAURITIUS DOUBLE TAXATION AGREEMENT

SIGNED 23 AUGUST 1992

Effective in Malaysia:

- 1. the income tax;**
- 2. the supplementary income tax, that is, development tax; and**
- 3. the petroleum income tax.**

**Effective in Mauritius:
the income tax**

Synthesised text of the MLI and the Agreement between the Government of Mauritius and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

This document was prepared in consultation with the competent authorities of Mauritius and Malaysia and represents a shared understanding of the modifications made to the Agreement by the Multilateral Convention.

General disclaimer on the Synthesised text document

This document presents the synthesised text for the application of the Agreement between the Government of Mauritius and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 23 August 1992 (the “Agreement”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by Mauritius on 05 July 2017 and signed by Malaysia on 24 January 2018 (the “MLI”).

The document was prepared on the basis of the MLI position of Mauritius submitted to the Depository upon ratification on 18 October 2019 and of the MLI position of Malaysia upon ratification on 18 February 2021. 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 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. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the 2017 OECD Model Tax Convention.

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

The authentic legal texts of the MLI and the Agreement can be found at the following links:

The MLI:

<http://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to->

[prevent-BEPS.pdf](#)

In Mauritius:

https://www.mra.mu/download/Mtius_Malaysia.pdf

In Malaysia:

<http://phl.hasil.gov.my/pdf/pdfam/Mauritius.pdf>

The MLI position of Mauritius submitted to the Depository upon ratification on 18 October 2019 and of the MLI position of Malaysia submitted to the Depository upon ratification on 18 February 2021 can be found [on the MLI Depository \(OECD\) webpage](#).

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

The provisions of the MLI applicable to this 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 Mauritius and Malaysia in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval: 18 October 2019 for the Republic of Mauritius and 18 February 2021 for Malaysia.

Entry into force of the MLI: 01 February 2020 for Mauritius and 01 June 2021 for Malaysia.

Unless it is stated otherwise elsewhere in this document, the provisions of the MLI have effect:

(a) with respect to the application of the Agreement by Malaysia, in accordance with paragraph 1 of Article 35 of the MLI:

- 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;

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

and

b) with respect to the application of the Agreement by Mauritius, in accordance with paragraphs 1 and 2 of Article 35 of the MLI:

- 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 01 July 2021;

- with respect to all other taxes levied by Mauritius, for taxes levied with respect to taxable periods beginning on or after 1 December 2021.

**Agreement between the Government of Mauritius and the Government of Malaysia
for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with
respect to Taxes on Income**

The Government of Mauritius and the Government of Malaysia,

[REPLACED by paragraph 1 of Article 6 of the MLI] [Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,]

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

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

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

Have agreed as follows:

Article 1 - Personal Scope

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

Article 2 - Taxes Covered

1. This Agreement shall apply to taxes on income imposed by a Contracting State, irrespective of the manner in which they are levied.
2. The taxes which are the subject of this Agreement are:
 - (a) in Malaysia:
 - (i) the income tax;
 - (ii) the supplementary income tax, that is, development tax; and
 - (iii) the petroleum income tax,
(hereinafter referred to as "Malaysian tax");
 - (b) in Mauritius, the income tax,
(hereinafter referred to as "Mauritius tax").
3. The Agreement shall also apply to any identical or substantially similar taxes on income 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 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 "Malaysia" means the territories of the Federation of Malaysia, the territorial waters of Malaysia and the sea-bed and subsoil of the territorial waters, and includes any area extending beyond the limits of the territorial waters of Malaysia, and the sea-bed and subsoil of any such area, which has been or may hereafter be designated under the laws of Malaysia as in accordance with international law as an area over which Malaysia has sovereign rights for the purposes of exploring and exploiting the natural resources, whether living or non-living;
- (b) the term "Mauritius" means all the territories, including all the islands, which, in accordance with the laws of Mauritius, constitute the State of Mauritius and includes:
 - (i) the territorial sea of Mauritius; and
 - (ii) any area outside the territorial sea of Mauritius which in accordance with international law has been or may hereafter be designated, under the laws of Mauritius relating to the Continental Shelf, as an area within which the rights of Mauritius with respect to the sea bed and sub-soil and their natural resources may be exercised;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Malaysia or Mauritius as the context requires;
- (d) the term "person" includes an individual, a company and any other body of persons which is treated as a person for tax purposes;
- (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term "tax" means Malaysian tax or Mauritius tax, as the context requires;
- (h) the term "national" means:
 - (i) any individual possessing the nationality or 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;

- (j) 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;
- (k) the term "competent authority" means:
 - (i) in the case of Malaysia, the Minister of Finance or his authorised representative; and
 - (ii) in the case of Mauritius, the Minister of Finance or his authorised representative.

2. In the application of the Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which the Agreement applies.

Article 4 - Resident

- 1. For the purposes of this Agreement, the term "resident of a Contracting State" means:
 - (a) in the case of Malaysia, a person who is resident in Malaysia for the purposes of Malaysian tax; and
 - (b) in the case of Mauritius, a person who is resident in Mauritius for the purposes of Mauritius tax.

However, the term "resident of a Contracting State" does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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

3 Where, by reason of the provisions of paragraph 1, 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 through which the business of an enterprise is wholly or partly carried on.

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

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources including timber or other forest produce;
- (g) a farm or plantation;
- (h) a building site, construction or installation or assembly project, or supervisory activities in connection therewith, constitutes a permanent establishment only if the site, project or activity lasts more than six months.

3. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), subject to the overall activity of the fixed place of business resulting from this combination being of a preparatory or auxiliary character.

4 A person (other than a broker, general commission agent or any other agent of an independent status to whom paragraph 5 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 that first-mentioned State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise;
- (b) he has no such authority, but habitually maintains in that first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly delivers goods or merchandise on behalf of the enterprise; or
- (c) he manufactures or processes in the first-mentioned State for the enterprise goods or merchandise belonging to the enterprise.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business. An agent shall not be regarded as of an independent status if he acts exclusively or almost exclusively for the enterprise.

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

Article 6 - Income from Immovable Property

1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed that other State.

2. For the purposes of this Agreement, the term "immovable property" shall be defined in accordance with the laws of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil or gas wells, quarries and other places of extraction of natural resources including 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 immovable property of an enterprise and to income from immovable property used for the performance of personal services.

Article 7 - Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only on so much thereof as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent in establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions all expenses of the enterprise 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. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise no account shall be taken, in determining the profits of a permanent establishment, of amounts charged (otherwise than towards reimbursement of the actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary, the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods merchandise for the enterprise.
6. 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.
7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of Articles shall not be affected by the provisions of this Article.

Article 8 - Shipping and Air Transport

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.
2. Paragraph 1 shall also apply to the share of the profits from the operation of ships or aircraft derived by a resident of a Contracting through participation in a pool, a joint business or an international operating agency.

Article 9 - Associated Enterprises

Where-

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

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

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 - 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. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed:
 - (a) five per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which controls, directly or indirectly at least ten per cent of the voting power in the company paying the dividends;

- (b) fifteen per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. Dividends paid by a company which is a resident of Malaysia to a resident of Mauritius who is the beneficial owner thereof shall be exempt from any tax in Malaysia which is chargeable on dividends in addition to the tax chargeable in respect of the income of the company. Nothing in this paragraph shall affect the provisions of the Malaysian law under which tax in respect of a dividend paid by a company which is a resident of Malaysia from which Malaysian tax has been, or has been deemed to be, deducted may be adjusted by reference to the rate of tax appropriate to the Malaysian year of assessment immediately following that in which the dividend was paid.

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

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

6. Where a company which is a resident of a Contracting State derives income or profits from the other Contracting State, that other State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of income or profits arising in such other State.

Article 11 - Interest

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

2. However, such interest may 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 fifteen percent of the gross amount of the interest.

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

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

5. For the purposes of paragraph 4, the term "Government":
- (a) in the case of Malaysia means the Government of Malaysia and shall include:
 - (i) the governments of the States;
 - (ii) the local authorities;
 - (iii) the statutory bodies;
 - (iv) the Bank Negara Malaysia; and
 - (v) such institutions, the capital of which is wholly owned by the Government of Malaysia, or the governments of the States, or the local authorities or the statutory body thereof, as may be agreed upon from time to time between the competent authorities of the Contracting States;
 - (b) in the case of Mauritius means the Government of Mauritius and shall include:
 - (i) the local authorities;
 - (ii) the statutory bodies;
 - (iii) the Bank of Mauritius; and
 - (iv) such institutions, the capital of which is wholly owned by the Government of Mauritius, or the local authorities or the statutory body thereof, as may be agreed upon from time to time between the competent authorities of the Contracting States.
6. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures
7. The provisions of paragraphs 1, 2 and 3 shall not apply if beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.
8. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a 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.
9. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest 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 such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12 - Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed fifteen per cent of the gross amount of the royalties.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for:
 - (a) the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or any copyright 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 tapes for radio or television broadcasting, any copyright of literary or artistic work.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a statutory body thereof, or a resident of that State. Where, however, the person paying such 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 obligation 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.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties 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 such a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13 - Income from the Alienation of Property

1. Income 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. Income from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other

Contracting State or of movable property available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such income from the alienation of such a permanent establishment (alone or together with the whole enterprise) may be taxed in that other State. However, income 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 of which the enterprise is a resident.

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

Article 14 - Personal Services

1. Subject to the provisions of Articles 15, 17, 18 and 19 remuneration derived by an individual who is a resident of a Contracting State in respect of an employment or a profession shall be taxable only in that State unless the employment or profession is exercised in the other Contracting State. If the employment or profession is so exercised, such income as is derived therefrom may be taxed in that other State.

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

- (a) the individual is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned; and
- (b) the remuneration is paid by, or on behalf of, a person who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment which the person paying the remuneration has in the other State.

3. Notwithstanding the provisions of paragraphs 1 and 2 remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic operated by an enterprise of a Contracting State may be taxed in that Contracting State.

Article 15 - Directors' fees

Directors' fees and other similar payments derived by a resident of 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 16 - Artistes and Athletes

1. Notwithstanding the provisions of Article 14 income derived by a resident of a Contracting State as an entertainer, such as theatre, motion picture, radio or television artiste,

or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities exercised in a Contracting State if the visit to that State is directly or indirectly supported wholly or substantially from the public funds of the other Contracting State, a political subdivision, a local authority or a statutory body thereof.

Article 17 - Pensions and Annuities

1. Subject to the provisions of paragraph 2 of Article 18, any pensions and other similar remuneration for past employment or any annuity arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

2. The term "annuity" includes 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 18 - Government Service

1. (a) Remuneration, other than a pension, paid by or out of funds created by a Contracting State or a political subdivision or a local authority or a statutory body thereof to any individual in respect of services rendered to that State or political subdivision or 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 other 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, a political subdivision or a local authority or a statutory body thereof to any individual in respect of services rendered to that State, political subdivision, local authority or statutory body thereof shall be taxable only in that State.

3. The provisions of Articles 14, 15 and 17 shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by a Contracting State, a political subdivision or a local authority or a statutory body thereof.

Article 19 - Students and Trainees

1. An individual who is or was a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in the other State solely:

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

shall be exempt from tax in that other State on:

- (i) all remittances from abroad for the purposes of his maintenance, education, study, research or training;
- (ii) the amount of such grant, allowance or award;
- (iii) any remuneration not exceeding US3,000dollars per annum in respect of services in that other State provided the services are performed in connection with his study, research or training or are necessary for the purposes of his maintenance.

Article 20 - Teachers and Researchers

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

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

Article 21 - 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 sources in the other Contracting State, it may also be taxed in that other State.

Article 22 - Elimination of Double Taxation

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

2. For the purposes of paragraph 1 and subject to paragraph 3, the term "Mauritius tax payable" shall be deemed to include any amount which would have been payable as Mauritius tax for any year but for an exemption or reduction of tax granted for that year, or any part thereof, in accordance with this Agreement and under the laws of Mauritius in respect of incentives provided to an enterprise with a view to promoting economic development under or by virtue of any other law which may subsequently come into operation and agreed by the competent authorities of the Contracting States as having its main object the promotion of economic development.

3. Credit against Malaysian tax shall not be given by virtue of this paragraph in respect of income of an enterprise if the income arises in a period more than ten years after the exemption from, or reduction of, Mauritius tax was first granted to that enterprise in respect of that income.

4. In the case of Mauritius:

- (a) Subject to the other sub-paragraphs of this paragraph and to the provisions of the laws of Mauritius regarding the allowance as a credit against Mauritius tax of tax payable in a territory outside Mauritius (which shall not affect the general principle hereof), where a resident of Mauritius derives profits, income or gains from sources within Malaysia and which, under the law of Malaysia and in accordance with the Agreement are taxable or may be taxed in Malaysia, whether directly or by deduction, Mauritius shall allow as a credit against any Mauritius tax computed by reference to the same profits, income or gains by reference to which Malaysian tax payable is computed.
- (b) In the case of a dividend, the credit referred to in sub-paragraph (a) shall only take into account such tax in respect thereof as is additional to any tax payable in Malaysia by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient of the dividend without any reference to any tax so payable.
- (c) Where a company which is a resident of Malaysia pays a dividend to a company which is a resident of Mauritius and which controls directly or indirectly at least ten per cent of the voting power of the company paying the dividend, the credit shall take into account (in addition to any Malaysian tax for which credit may be allowed under the provisions of sub-paragraphs (a) and (b) of this paragraph) the Malaysian tax payable by the first-mentioned company in respect of the profits out of which such dividend is paid.
- (d) The credit under this paragraph shall not exceed that part of the Mauritius tax computed before the credit is allowed and which is appropriate to such item of income.

5. For the purposes of paragraph 4, the term "Malaysian tax payable" shall be deemed to include Malaysian tax which would, under title laws of Malaysia and in accordance with this Agreement, have been payable on any income derived from sources in Malaysia had the income not been taxed at a reduced rate or exempted from Malaysian tax in accordance with the provisions of this Agreement and

- (a) the special incentives under the Malaysian laws for the promotion of economic development of Malaysia or any other provisions which may subsequently be introduced in Malaysia in modification of, or in addition to, those laws so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character; and
- (b) interest to which paragraph 3 of Article 11 applies had that interest not been exempted from Malaysian tax in accordance with that paragraph.

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

Article 23 - Mutual Agreement Procedure

1. **[The first sentence of paragraph 1 of Article 23 of this Agreement is replaced by the first sentence of paragraph 1 of Article 16 of the MLI]** [Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the taxation laws of those States, present his case to the competent authority of the State of which he is a resident.] 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.

The following first sentence of paragraph 1 of Article 16 of the MLI replaces the first sentence of paragraph [1] of Article [23] 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*].

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at 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 which is 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 States].

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly for the purposes of reaching an agreement in the sense of the preceding paragraphs.

Article 24 - Exchange of Information

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

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

- (a) to carry out administrative measures at variance with the laws 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.

Article 25 - Diplomatic and Consular Officers

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

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

ARTICLE 7 OF THE MLI –PREVENTION OF TREATY ABUSE

(Principal purposes test provision)

Notwithstanding any provisions of [the Agreement], a benefit under [the Agreement] shall not be granted

in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of [*the Agreement*].

Article 26 - Entry into Force

1. This Agreement shall be ratified by the Governments of the Contracting States and the instruments of ratification shall be exchanged as soon as possible.

2. This Agreement shall enter into force upon the exchange of the instruments of ratification and shall have effect:

- (a) in Malaysia:
in respect of Malaysian tax for the year of assessment beginning on the first day of January 1991, and subsequent years of assessment;
- (b) in Mauritius:
in respect of income tax for the year of assessment beginning on the first day of July 1991, and subsequent years of assessment.

Article 27 - Termination

This Agreement shall remain in effect indefinitely, but either Contracting State may terminate the Agreement, through diplomatic channels, by giving to the other Contracting State written notice of termination on or before June 30th in any calendar year after the year 1997. In such an event the Agreement shall cease to have effect:

- (a) in Malaysia:
in respect of Malaysian tax for year of assessment beginning on or after 1 January in the calendar year next following that in which the notice is given;
- (b) in Mauritius:
in respect of income tax for any year of assessment beginning on or after 1 July in the calendar year next following that in which the notice is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, by their respective Governments, have signed this Agreement. Done in duplicate at Kuala Lumpur this day of 23 August one thousand nine hundred and ninety two, each in Bahasa Malaysia and the English language, the two texts being equally authoritative. In the event of there being a dispute in the interpretation and the application of this Agreement, the English text shall prevail.

PROTOCOL

At the time of signature of the Agreement between the Government of Mauritius 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 provision shall form an integral part of the Agreement.

In connection with Article 14 (Personal Services) inasmuch as the Mauritius Income Tax Act provides emolument relief to persons in employment or in receipt of pensions the word "remuneration" shall not be deemed, for the purposes of the granting of the emolument relief, to include emolument derived from any source other than employment and pension.

Done at Kuala Lumpur this day of 23 August one thousand nine hundred and ninety two in duplicate, in the Bahasa Malaysia and the English language, both texts being equally authoritative.

