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**AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA 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 DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, 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; and
  - (ii) the petroleum income tax;
- (hereinafter referred to as "Malaysian tax");

(b) in Sri Lanka:

the income tax, including the income tax based on the turnover of enterprise licensed by the Board of Investment;

(hereinafter referred to as "Sri Lanka tax").

3. This 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 "Sri Lanka" means the Democratic Socialist Republic of Sri Lanka, including any area outside the territorial sea of Sri Lanka which in accordance with international law has been or may hereafter be designated, under the laws of Sri Lanka concerning the Continental Shelf, as an area within which the rights of Sri Lanka with respect to the waters, sea-bed and subsoil and the natural resources may be exercised;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Malaysia or Sri Lanka 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 Sri Lanka 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 any other entity deriving its status as such from the laws in force in a Contracting State;
- (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 the case of Malaysia, the Minister of Finance or his authorised representative; and
  - (ii) in the case of Sri Lanka, the Commissioner-General of Inland Revenue.

2. In the application of this Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law 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 Sri Lanka, a person who is resident in Sri Lanka for the purposes of Sri Lanka tax.

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 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 interests);

- (b) if the 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 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 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;

3. The term "permanent establishment" likewise encompasses:

- (a) a building site, construction, assembly or installation project, or an installation or drilling rig or ship used for the exploration or development of natural resources, including supervisory activities in connection

therewith, but only if that site, project, use lasts or those activities last more than 183 days;

- (b) the furnishing of services, including technical, managerial or consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than 60 days within any twelve month period.

4. The term “permanent establishment” shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage or display 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 or display;
- (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 carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

5. A person (other than a broker, general commission agent or any other 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 in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the 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 or delivers goods 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.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except with regard to reinsurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. 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.

However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he shall not be considered an agent of an independent status if the transactions between the agent and the enterprise were not made under arm's length conditions.

8. 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 in 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 extracting 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 independent 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 of them 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 establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions all expenses incurred 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. If the information available to the competent authority is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person by the exercise of a discretion or the making of an estimate by the competent authority, provided that the law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.

5. 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.

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 those 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 ship or aircraft in international traffic shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, profit derived from the operation of ships in international traffic may be taxed in the Contracting State in which such operation is carried on, but the tax chargeable in that State on such profits shall be reduced by an amount equal to 50 per cent of such tax.

3. The provision of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency of any kind by such enterprise engaged in the operation of ships or aircraft in international traffic.

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.

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 Sri Lanka to a resident of Malaysia may be taxed in Sri Lanka in accordance with the laws of Sri Lanka, but

if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

3. Dividends paid by a company which is a resident of Malaysia to a resident of Sri Lanka 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 the tax in respect of a dividend paid by a company which is a resident of Malaysia from which tax has been, or has 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 the 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 that 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 also 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 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest to which a resident of Sri Lanka is beneficially entitled shall be exempt from Malaysian tax in the loan or

other indebtedness in respect of which the interest is paid is an approved loan as defined in section 2(1) 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 Export-Import Bank of Malaysia Berhad (Exim Bank);
- (v) the Bank Negara Malaysia; and
- (vi) such institutions, the capital of which is wholly owned by the Government of Malaysia, 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 Sri Lanka means the Government of Sri Lanka and shall include:

- (i) the Central Bank of Sri Lanka;
- (ii) the local authorities;
- (iii) the statutory bodies; and
- (iv) such institutions, the capital of which is wholly owned by the Government of Sri Lanka, the local authorities or the statutory bodies 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 the 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 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.

## 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 10 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 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, 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

#### **GAINS FROM THE ALIENATION OF PROPERTY**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

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 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 together with the whole enterprise) may be taxed in that other State.

3. 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 of which the enterprise is a resident.

4. Gains from the alienation of stocks and shares of a company representing a participation of 25 per cent or more of the issued capital of that company may be taxed in the Contracting State in which they have been issued.

5. Gains from the alienation of any property or assets, other than that referred to in paragraphs 1, 2, 3 and 4 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 fiscal 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 seven thousand five hundred US dollars in the fiscal year concerned, notwithstanding that his stay in that State is for a period or periods amounting to less than 183 days in the fiscal year concerned.

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 provisions of Articles 16, 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, 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 the other 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 Contracting 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, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a resident of the other Contracting State or 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 aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in the State.

#### Article 16

#### **DIRECTORS' FEES**

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 SPORTSMEN**

1. Notwithstanding the provisions of Articles 14 and 15 income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, 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 a sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to remuneration or profits 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 18

### **PENSIONS AND ANNUITIES**

1. Subject to the provisions of paragraph 2 of Article 19, any pension 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 19

### **GOVERNMENT SERVICE**

1. (a) Remuneration, other than a pension, paid 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 other State, or
- (ii) did not become a resident of that other 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 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.

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

## Article 20

### **STUDENTS AND TRAINEES**

An individual who is 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; and
  - (iii) any remuneration not exceeding US 3000 dollars 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 21

#### **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 public university, college, institution primarily for research purposes or other similar public institutions, visits that other State for a period not exceeding two years solely for the purpose of teaching or research or both at such public 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 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 sources in the other Contracting State, it may also be taxed in that other State.

Article 23

**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 provision to the contrary is made in this Agreement. Where income is subject to tax in both Contracting States, relief from double taxation shall be given in accordance with the following paragraphs of this Article.

2. Subject to the laws of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, Sri Lanka tax payable under the laws of Sri Lanka and in accordance with this Agreement by a resident of Malaysia in respect of income derived from Sri Lanka 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 Sri Lanka to a company which is a resident of Malaysia and which owns not less than 15 per cent of the voting shares of the company paying the dividend, the credit shall take into account Sri Lanka 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.

3. For the purposes of paragraph 2, the term "Sri Lanka tax payable" shall be deemed to include the amount of Sri Lanka tax which would, under the laws of Sri Lanka and in accordance with this Agreement, have been payable not been taxed at a reduced rate or exempted from Sri Lanka tax in accordance with the provisions of this Agreement and the special incentives under the Sri Lanka which were in force on the date of signature of this Agreement or any other provisions which may subsequently be introduced in Sri Lanka 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.

4. Subject to the laws of Sri Lanka regarding the allowance as a credit against Sri Lanka tax of tax payable in any country other than Sri Lanka, Malaysian tax payable under the laws of Malaysia and in accordance with this Agreement by a resident of Sri Lanka in respect of income derived from Malaysia shall be allowed as a credit against the Sri Lanka tax payable in respect of that income. Where such income is a dividend paid by a company which is a resident of Malaysia to a company which is a resident of Sri Lanka and which owns not less than 15 per cent of the voting shares of the company paying the dividend, the credit shall take into account Malaysian 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 Sri Lanka tax, as computed before the credit is given, 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 the amount of Malaysian tax which would, under the laws of Malaysia and in accordance with this Agreement, have been payable on any income derived from sources in Malaysia had the income not been taxed at a reduced rate or exempted from Malaysian tax in accordance with the provisions of this Agreement and:

- (a) the special incentives under the Malaysian laws for the promotion of economic development of 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 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.

#### 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 a 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 in this Article shall be construed as obliging:

- (a) a Contracting State to grant to individuals who are resident of the other Contracting State any personal allowances, reliefs and reductions for tax purposes on account of civil status or family responsibilities which it grants to its own residents; or

- (b) Malaysia to grant to nationals of Sri Lanka not resident in Malaysia 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 Malaysia who are not resident in Malaysia.

5. In this Article, the term "taxation" means taxes to which this Agreement applies.

#### Article 25

### **MUTUAL AGREEMENT PROCEDURE**

1. 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 or, if his case comes under paragraph 1 of Article 24, to that of the State of which he is a national. 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 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. 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 proceeding paragraphs.

#### Article 26

### **EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting State shall exchange such information as is necessary for carrying out 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 27

### **DIPLOMATIC AND CONSULAR OFFICERS**

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.

Article 28

### **ENTRY INTO FORCE**

This Agreement shall enter into force on the date on which the Contracting States exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give this Agreement the force of law in Malaysia and Sri Lanka, as the case may be, and thereupon this Agreement shall have effect:

- (a) in Malaysia:
  - (i) in respects of taxes withheld at source, to income derived on or after the first day of January in the calendar year next following the year in which this Agreement enters into force; and
  - (ii) in respect of other taxes on income, to taxes chargeable for any year of assessment beginning on or after the first day of January of the second calendar year next following the year in which this Agreement enters into force and subsequent years of assessment;

b) in Sri Lanka:

in respects of income derived on or after the first day of April in the calendar year next following the year in which this Agreement enters into force

Article 29

## **TERMINATION**

This Agreement shall remain in effect indefinitely, but either Contracting States 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 period of five years from the date on which this Agreement enters into force. In such an event the Agreement shall cease to have effect:

(a) in Malaysia:

- (i) in respects of taxes withheld at source, to income derived on or after the first day of January in the calendar year next following the year in which the notice is given; and
- (ii) in respect of other taxes on income, to taxes chargeable for any year of assessment beginning on or after the first day of January of the second calendar year next following the year in which the notice is given;

(b) in Sri Lanka:

in respects of income derived on or after the first day of April in the calendar year next following the year 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 16 day of September 1997, each in the Malay, Sinhala and English languages, the three texts being equally authentic. 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 signing the Agreement between the Government of Malaysia and the Government of the Democratic Socialist Republic of Sri Lanka for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, both Governments have agreed that the following provisions shall form an integral part of the Agreements.

2. In connection with Article 13 "Gains From The Alienation of Property":

Paragraph 4 of that Article will only apply to gains arising from the alienation of stocks and shares of companies in Sri Lanka.

3. In connection with Article 28 "Entry Into Force":

The Convention between the Government of Malaysia and the Government of the Republic of Sri Lanka for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to Taxes on Income signed on 16 September, 1972, shall terminate and cease to have effect in regard to taxes on income, with the coming into force of this Agreement in accordance with the provision of that Article.

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

DONE in duplicate at Kuala Lumpur this 16 day of September 1997, each in the Malay, Sinhala and English language, the three texts being equally authentic. In the event of there being any dispute in the interpretation and the application of this Protocol, the English text shall prevail.