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Signed: 23 February 2010
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AGREEMENT BETWEEN MALAYSIA AND THE FEDERAL REPUBLIC OF GERMANY FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

MALAYSIA

AND

THE FEDERAL REPUBLIC OF GERMANY

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

PERSONS COVERED

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 on behalf of a Contracting State, of a Land or a political subdivision or local authority thereof, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.

3. The existing taxes to which the Agreement shall apply are in particular:

(a) in the Federal Republic of Germany:

(i) the income tax (Einkommensteuer),

(ii) the corporation tax (Körperschaftsteuer), and
(iii) the trade tax (Gewerbesteuer),

including the supplements levied thereon.
(hereinafter referred to as “German tax”);

(b) in Malaysia:

(i) the income tax, and

(ii) the petroleum income tax,

(hereinafter referred to as "Malaysian tax”).

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

Article 3

GENERAL DEFINITIONS

1. For the purposes of 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 the airspace above such areas, 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 and in accordance with international law as an area over which Malaysia has sovereign rights or jurisdiction for the purposes of exploring and exploiting the natural resources, whether living or non-living;

(b) the term “Federal Republic of Germany” means the territory of the Federal Republic of Germany as well as the area of the sea-bed, its subsoil and the superjacent water column adjacent to the territorial sea wherein the Federal Republic of Germany exercises sovereign rights or jurisdiction in accordance with international law and its national legislation for the purpose of exploring, exploiting, conserving and managing the living and non-living natural resources;

(c) the terms “a Contracting State” and “the other Contracting State” mean Malaysia or the Federal Republic of Germany, as the context requires;

(d) the term "person" includes an individual, a company and any other body of persons;

(e) the term "company" means any body corporate or any entity that 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 "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(h) the term "national" means:

(i) in respect of Malaysia:

any individual possessing the citizenship of Malaysia and any legal person, partnership or association deriving its status as such from the laws in force in Malaysia;

(ii) in respect of the Federal Republic of Germany:

any German within the meaning of the Basic Law of the Federal Republic of Germany and any legal person, partnership and association deriving its status as such from the laws in force in the Federal Republic of Germany;

(i) 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 the Federal Republic of Germany, the Federal Ministry of Finance or the agency to which it has delegated its powers.

2. As regards the application of this Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4

RESIDENT

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State, a Land, a political subdivision, a local authority or a statutory body thereof.

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

(a) he shall be deemed to be a resident only 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 only 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 only 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 only 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" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop; and

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site, a construction, installation or assembly project constitutes a permanent establishment only if it lasts more than nine months.

4. 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 a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

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

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

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

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

6. Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status to whom paragraph 7 applies is acting in a

Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned State in respect of any activities which that person undertakes for the enterprise if the person:

(a) has, and habitually exercises in the first-mentioned State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or

(b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise.

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, provided that such persons are acting in the ordinary course of their business.

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 (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships 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 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 expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

4. In the absence of appropriate accounting data or other information permitting the determination of profits to be attributed to the permanent establishment of an enterprise, tax may be assessed in the Contracting State in which the permanent establishment is situated in accordance with the laws of that State by the making of an estimate on the basis of available information, so far as the information available permits, in accordance with the principle 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 from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. For the purposes of this Article the terms “profits from the operation of ships or aircraft in international traffic” shall include profits from:

(a) the occasional rental of ships or aircraft on a bare-boat basis; and

(b) the use or rental of containers (including trailers and ancillary equipment used for transporting the containers),

if these activities are incidental to the operation of ships or aircraft in international traffic.

3. Paragraph 1 shall also apply to the share of the profits from the operation of ships or aircraft through participation in a pool, a joint business or an international operating agency.

Article 9

ASSOCIATED ENTERPRISES

1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State and taxes accordingly profits on which an enterprise of the other Contracting State

has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits where that other State considers the adjustment justified. In determining such adjustment, due regard shall be had to the other provisions of this 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 beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

(a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends;

(b) 15 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. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

3. The term “dividends” as used in this Article means income from shares, “jouissance” shares or “jouissance” rights or other rights, not being debt-claims, participating in profits, as well as other income which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distributions is a resident and distributions on certificates of an investment fund.

4. The provisions of paragraphs 1 and 2 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, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent

establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income 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 also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

3. Notwithstanding the provisions of paragraph 2, 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.

4. For the purposes of paragraph 3, 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 Bank Negara Malaysia;

(iii) the local authorities;

(iv) the statutory bodies; and

(v) the Export-Import Bank of Malaysia Berhad (EXIM Bank);

(b) in the case of the Federal Republic of Germany means the Government of the Federal Republic of Germany and shall include:

(i) the Länder;

(ii) the political subdivisions or the local authorities; and

(iii) the “Deutsche Bundesbank” (German Federal Bank), the “Kreditanstalt für Wiederaufbau” (Credit Bank for Reconstruction), and the “Deutsche Finanzierungsgesellschaft für Beteiligungen in Entwicklungsländern”.

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

6. 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, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or a fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is 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 or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

8. 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, 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 AND FEES FOR TECHNICAL SERVICES

1. Royalties and fees for technical services 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 and fees for technical services may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the royalties or fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed 7 per cent of the gross amount of the royalties or fees for technical services. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information (know-how) concerning industrial, commercial or scientific experience.

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

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Royalties and fees for technical services shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties or fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the royalties or fees for technical services was incurred, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. 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 or fees for technical services, having regard to the use, right, information or services 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 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

CAPITAL GAINS

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

2. Gains from the alienation of shares and similar rights in a company, the assets of which consist – directly or indirectly – mainly of immovable property situated in a Contracting State may be taxed in that State.

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

4. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

5. Gains from the alienation of any property other than that referred to in paragraphs 1 to 4, shall be taxable only in the Contracting State of which the alienator is a resident.

6. Where an individual was a resident of a Contracting State for a period of 5 years or more and has become a resident of the other Contracting State, paragraph 5 shall not prevent the first-mentioned State from taxing under its domestic law the capital appreciation of shares in a company resident in the first-mentioned State for the period of residency of that individual in the first-mentioned State. In such case, the appreciation of capital taxed in the first-mentioned State shall not be included in the determination of the subsequent appreciation of capital by the other State.

Article 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

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

Article 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 17, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so 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 a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending 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 permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed in the Contracting State in which the place of effective management of the enterprise which operates the ship or aircraft is situated.

Article 16

DIRECTORS' FEES

Directors' fees and other 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 7, 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 in his capacity as such accrues not to the entertainer or 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 income derived from activities exercised by an entertainer or a sportsman in a Contracting State if the visit to that State is wholly or mainly supported by public funds of the other Contracting State, a Land, a political subdivision, a local authority or a statutory body thereof. In such a case, the income is taxable only in the Contracting State in which the entertainer or the sportsman is a resident.

Article 18

PENSIONS, ANNUITIES AND SIMILAR PAYMENTS

1. Subject to the provisions of paragraph 2 of Article 19, pension and other similar remuneration and annuities paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, payments received by an individual being a resident of a Contracting State from the statutory social insurance of the other Contracting State shall be taxable only in that other State.

3. Notwithstanding the provisions of paragraph 1, recurrent or non-recurrent payments made by one of the Contracting States or a political subdivision thereof to a person resident in the other Contracting State as compensation for political

persecution or for an injury or damage sustained as a result of war (including restitution payments) or of military or civil alternative service or of a crime, vaccination or a similar event shall be taxable only in the first-mentioned State.

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

Article 19

GOVERNMENT SERVICE

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State, a Land, a political subdivision, a local authority or a statutory body thereof to an individual in respect of services rendered to that State, Land, political subdivision, local authority or statutory body shall be taxable only in that State.

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

      (i) is a national of that other State; or

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

2. (a) Any pension paid by, or out of funds created by, a Contracting State, a Land, a political subdivision, a local authority or a statutory body thereof to an individual in respect of services rendered to that State, Land, political subdivision, local authority or statutory body shall be taxable only in that State.

   (b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration and to pensions in respect of services rendered in connection with a business carried on by a Contracting State, a Land, a political subdivision, a local authority or a statutory body thereof.

4. The provisions of paragraph 1 shall likewise apply in respect of remuneration paid, under a development assistance programme of a Contracting State, a Land, a political subdivision or a local authority thereof, out of funds exclusively supplied by that State, Land, political subdivision or local authority, to a specialist or volunteer seconded to the other Contracting State with the consent of that other State.

5. The provisions of paragraph 1 and 2 shall likewise apply in respect of remuneration paid by or for the Goethe Institute or the German Academic Exchange Service ("Deutscher Akademischer Austauschdienst") of the Federal Republic of Germany. Corresponding treatment of the remuneration of other comparable institutions of the Contracting States may be agreed by the competent authorities by mutual agreement.

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; and

(ii) the amount of such grant, allowance or award.

Article 21

LECTURERS AND RESEARCHERS

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 institutions shall be exempt from tax in that other State on any remuneration for such teaching or research provided that such remuneration is derived by him from outside that State.

Article 22

OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

Article 23

AVOIDANCE OF DOUBLE TAXATION IN THE STATE OF RESIDENCE

1. Tax shall be determined in the case of a resident of the Federal Republic of Germany as follows:

(a) Unless foreign tax credit is to be allowed under subparagraph (b), there shall be exempted from the assessment basis of the German tax any item of income arising in Malaysia which, according to this Agreement, may be taxed in Malaysia. In the case of items of income from dividends the preceding provision shall apply only to such dividends as are paid to a company (not including partnerships) being a resident of the Federal Republic of Germany by a company being a resident of Malaysia at least 10 per cent of the capital of which is owned directly by the German company and which were not deducted when determining the profits of the company distributing these dividends.

(b) Subject to the provisions of German tax law regarding credit for foreign tax, there shall be allowed as a credit against German tax on income payable in respect of the following items of income the Malaysian tax paid under the laws of Malaysia and in accordance with this Agreement:

(i) dividends not dealt with in subparagraph (a);

(ii) interest;

(iii) royalties and fees for technical services;

(iv) items of income that may be taxed in Malaysia according to paragraph 2 of Article 13;

(v) directors' fees;

(vi) items of income in the meaning of Article 17.

(c) The provisions of subparagraph (b) shall apply instead of the provisions of subparagraph (a) to items of income as defined in Articles 7 and 10 if the resident of the Federal Republic of Germany does not prove that the gross income of the permanent establishment in the business year in which the profit has been realised or of the company resident in Malaysia in the business year for which the dividends were paid was derived exclusively or almost exclusively from activities within the meaning of numbers 1 to 6 of paragraph 1 of section 8 of the German Law on External Tax Relations (Aussensteuergesetz); the same shall apply to income from immovable property used by a permanent establishment (paragraph 4 of Article 6) and to profits from the alienation of such immovable property (paragraph 1 of Article 13) and of the movable property forming part of the business property of the permanent establishment (paragraph 3 of Article 13).

(d) The Federal Republic of Germany, however, retains the right to take into account in the determination of its rate of tax the items of income, which are under the provisions of this Agreement exempted from German tax.

(e) Notwithstanding the provisions of subparagraph (a) double taxation shall be avoided by allowing a tax credit as laid down in subparagraph (b):

(i) if in the Contracting States items of income is placed under differing provisions of this Agreement or attributed to different persons (except pursuant to Article 9) and this conflict cannot be settled by a procedure in accordance with paragraph 3 of Article 25 and if as a result of this difference in placement or attribution the relevant income would remain untaxed or be taxed lower than without this conflict; or

(ii) if after due consultation with the competent authority of Malaysia the Federal Republic of Germany notifies Malaysia through diplomatic channels of other items of income to which it intends to apply the provisions of subparagraph b). Double taxation is then avoided for the notified income by allowing a tax credit from the first day of the calendar year, next following that in which the notification was received.

(f) For the purpose of tax credit referred to in sub-sub paragraphs (i), (ii) and (iii) of subparagraph (b), the Malaysian tax shall, irrespective of the amount of tax actually paid, be deemed to have been paid in the amount as high as the amount resulting from the applicable tax rates at source mentioned in Articles 10, 11 and 12 of this Agreement as the case may be. This subparagraph shall cease to have effect concerning income which arise or accrue after 31 December 2010.

2. Tax shall be determined in the case of a resident of Malaysia as follows:

Subject to the laws of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, the German tax payable under the laws of the Federal Republic of Germany and in accordance with this Agreement by a resident of Malaysia in respect of income derived from the Federal Republic of Germany 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 the Federal Republic of Germany to a company which is a resident of Malaysia and which owns not less than 10 per cent of the voting shares of the company paying the dividend, the credit shall take into account the German 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.

Article 24

NON-DISCRIMINATION

1. 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, especially with respect to residence, 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. This provision shall not be construed as obliging a Contracting State to grant to residents 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.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 8 of Article 11, or paragraph 7 of Article 12, apply, interest, royalties, fees for technical services and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. 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 the first-mentioned State are or may be subjected.

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

Article 25

MUTUAL AGREEMENT PROCEDURE

1. Where a resident considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting 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 a satisfactory 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 purpose of reaching an agreement according of the preceding paragraphs.

Article 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting State shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning

taxes of every kind and description imposed on behalf of the Contracting States, of Land or a political subdivision or local authority thereof, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes covered to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

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

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

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

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

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

Article 27

APPLICATION OF THE AGREEMENT IN SPECIAL CASES

This Agreement shall not be interpreted to mean that a Contracting State is prevented from applying its domestic legal provisions on the prevention of tax evasion or tax avoidance. If this provision results in double taxation, the competent authorities shall consult each other pursuant to paragraph 3 of Article 25 on how to resolve the issue of double taxation.

Article 28

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

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

Article 29

PROTOCOL

The attached Protocol shall be an integral part of this Agreement.

Article 30

ENTRY INTO FORCE

1. This Agreement shall enter into force on the date on which the Contracting States have notified each other that the national requirements for such entry into force have been fulfilled. The relevant date shall be the day on which the last notification is received.

2. The provisions of this Agreement shall have effect:

(a) in the Federal Republic of Germany:

(i) in the case of taxes withheld at source, in respect of amounts paid on or after the first day of January of the calendar year next following that in which the Agreement entered into force;

(ii) in the case of other taxes, in respect of taxes levied for periods beginning on or after the first day of January of the calendar year next following that in which the Agreement entered into force;

(b) in Malaysia:

(i) in respect of Malaysian tax, other than petroleum income tax, to tax chargeable for any year of assessment beginning on or after the first day of January in the calendar year following the year in which this Agreement enters into force;

(ii) in respect of petroleum income tax, to tax chargeable for any year of assessment beginning on or after the first day of January of the second calendar year following the year in which this Agreement enters into force.

3. The Agreement between Malaysia and the Federal Republic of Germany for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital and other matters related thereto signed on 8 April 1977 shall cease to have effect for all cases covered by this Agreement as from the date on which the provisions of this Agreement come into effect.

Article 31

TERMINATION

This Agreement shall continue in effect indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State, through diplomatic channels, written notice of termination and, in such event, this Agreement shall cease to have effect:

(a) in the Federal Republic of Germany:

(i) in the case of taxes withheld at source, in respect of amounts paid on or after the first day of January of the calendar year next following that in which notice of termination is given;

(ii) in the case of other taxes, in respect of taxes levied for periods beginning on or after the first day of January of the calendar year next following that in which notice of termination is given;

(b) in Malaysia:

(i) in respect of Malaysian tax, other than petroleum income tax, to tax chargeable for any year of assessment beginning on or after the first day of January in the calendar year following the year in which the notice is given;

(ii) in respect of petroleum income tax, to tax chargeable for any year of assessment beginning on or after the first day of January of the second calendar year following the year in which the notice is given.

The date of receipt of such notice by the other Contracting State shall be definitive for the determination of the deadline.

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

DONE at **Putrajaya** on **23 February 2010** in duplicate, each in the Malaysian, German and English languages, all three texts being authentic. In the case of divergent interpretation of the Malaysian and the German texts, the English text shall prevail.

For Malaysia	For the Federal Republic of Germany

PROTOCOL

PROTOCOL TO THE AGREEMENT BETWEEN MALAYSIA AND THE FEDERAL REPUBLIC OF GERMANY FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EFVASION WITH RESPECT TO TAXES OF INCOME SIGNED ON 23 FEBRUARY 2010

On signing the Agreement between Malaysia and the Federal Republic of Germany for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income the signatories being duly authorised thereto, have in addition agreed on the following provisions which shall form an integral part of the said Agreement:

1. With reference to Articles 3, 4, 8, 13 and 15:

   It is understood that the “place of effective management” is the place where a company is actually managed and controlled or the place where the decision-making at the highest level on the important policies essential for the management of a company takes place.

2. With reference to Article 4:

   The term “statutory body” means a body constituted by statute of a Contracting State or a political subdivision thereof and in the case of the Federal Republic of Germany by a Land and performing functions which

would otherwise be performed by that Contracting State or political subdivision thereof or Land.

The competent authority of a Contracting State shall upon request confirm to the competent authority of the other Contracting State whether a particular entity is a statutory body of the first-mentioned Contracting State.

3. With reference to Articles 6 to 23

Where, under any provision of this Agreement, income derived from a Contracting State, except interest to which paragraph 3 of Article 11 applies, is relieved from tax in that State and, under the law in force in the other Contracting State, such income is subject to tax by reference to the amount thereof which is remitted to or received in that other State and not by reference to the full amount thereof, then the relief is to be allowed under this Agreement in the first-mentioned State shall apply only to so much of the income as is remitted to or received in the other State:

Provided that where –

(a) in accordance with the foregoing provisions, relief has not been allowed in the first instance in the first-mentioned State in respect of an amount of income, and

(b) that amount of income has subsequently been remitted to or received in that other State and is thereby subject to tax in that other State –

the competent authority of the first-mentioned State shall, subject to any laws thereof for the time being in force limiting the time and setting out the method for the making of a refund of tax, allow relief in respect of that amount of income in accordance with the appropriate provisions of this Agreement.

4. With reference to Article 7

(a) Where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received therefore by the enterprise but only on the basis of the amount which is attributable to the actual activity of the permanent establishment for such sales or business.

(b) In the case of contracts, in particular for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, where the enterprise has a permanent establishment in the other Contracting State, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the Contracting State in which it is situated. Profits derived from the supply of goods to that permanent establishment or profits related to the part of the contract which is carried out in the Contracting State in which the head office of the enterprise is situated shall be taxable only in that State.

5. With reference to Articles 10 and 11

Notwithstanding the provisions of Articles 10 and 11 of this Agreement, dividends and interest may be taxed in the Contracting States in which they arise, and according to the law of that State,

(a) if they are derived from rights or debt claims carrying a right to participate in profits, including income derived by a silent partner ("stiller Gesellschafter") from his participation as such, or from a loan with an interest rate linked to borrower's profit ("partiarisches Darlehen") or from profit sharing bonds ("Gewinnobligationen") within the meaning of the tax law of the Federal Republic of Germany; and

(b) under the condition that they are deductible in the determination of profits of the debtor of such income.

6. With reference to Article 11

The competent authority of Malaysia will consider favourably applications for exemption from taxes on interest arising in Malaysia and paid in consideration of a loan guaranteed by the Federal Republic of Germany in respect of export or foreign direct investment, subject to the prevailing policy on interest exemptions.

7. With reference to paragraph 5 of Article 19:

It is understood that the remuneration according to paragraph 5 of Article 19 is paid out of public funds.

8. With reference to paragraph 1 of Article 23

(a) Insofar as the Federal Republic of Germany does not avoid double taxation by allowing tax credit according to sub-sub paragraph (e)(ii) of paragraph 1 of Article 23 it is understood that Malaysian income exempted under Section 133A of the Income Tax Act 1967 and Sections 22, 23, 29, 29A to 29H, 31E, 32, 33 and 41B of the Promotion of Investments Act 1986 of Malaysia and Section 45 of that Act to the extent that it relates to Sections 21, 22 and 26 of the Investment Incentives Act 1968 so far as the Sections were in force on or before, and have not been modified since, the date of signature of this Agreement or have been modified only in minor respects so as not to affect their general character is fully entitled to the exemptions provided for in sub-paragraph (a) of paragraph 1 of Article 23.

(b) It is understood that the Federal Republic of Germany shall not invoke sub-sub paragraph (e)(ii) of paragraph 1 of Article 23 before 31 December 2010.

9. With reference to Article 26

If in accordance with domestic law personal data are exchanged under this Agreement, the following additional provisions shall apply subject to the legal provisions in effect in each Contracting State:

(a) the receiving agency may use such data only for the stated purpose and shall be subject to the conditions prescribed by the supplying agency;

(b) the receiving agency shall on a written request inform the supplying agency regarding the use of any data supplied;

(c) personal data may be supplied only to the persons or authorities specified in Article 26. The supply of any personal data to any other agencies may be effected only with the prior approval of the supplying agency;

(d) the supplying agency shall be obliged to ensure that the data to be supplied are accurate and necessary for and proportionate to the purpose for which they are supplied. Any prohibition and restriction on the supply of data prescribed under the applicable domestic law shall be complied with. If it emerges that inaccurate data or data which should not have been supplied have been supplied, the receiving agency shall be informed of this without undue delay and it shall be obliged to correct or erase such data from its record forthwith;

(e) upon application the person concerned shall be informed of any data supplied relating to him and of the use to which such data are to be put. There shall be no obligation to furnish this information if on balance the public interest in withholding it outweighs the interest of the person concerned in receiving it. In all other respects, the right of the person concerned to be informed of any data relating to him shall be governed by the domestic law of the Contracting State in whose sovereign territory the application for the information is made;

(f) the receiving agency shall be responsible and shall be liable in accordance with its domestic laws to any person who suffers any damage or loss as a result of the supply of any data concerning that person pursuant to this Agreement. The receiving agency shall not be discharged from its responsibility and liability by pleading that the damage or loss had been caused by the supplying agency;

(g) if the domestic law of the supplying agency provided for special provisions for the erasure or cancellation of any personal data supplied, that agency shall inform the receiving agency accordingly. Irrespective of such domestic law, any personal data supplied shall be erased once they are no longer required for the purpose for which they were supplied;

(h) the supplying and the receiving agencies shall be obliged to keep and maintain official records of all personal data supplied and or received under this Agreement; and

(i) the supplying and the receiving agencies shall be obliged to take effective measures to protect the personal data supplied and or received against any unauthorised access, unauthorised alteration or unauthorised disclosure.

10. With reference to Article 27:

(a) Persons who are entitled to tax benefits according to the Labuan Offshore Business Activity Tax Act 1990 (as amended) are not entitled to benefits from this Agreement; however the competent authority of Malaysia will provide information regarding these persons according to Article 6.

(b) The provisions of this Agreement shall apply to an offshore company that has made an irrevocable election to be charged to tax in accordance with the Income Tax Act 1967 (as amended).

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

DONE at **Putrajaya** on **23 February 2010** in duplicate, each in the Malaysian, German and English languages, all three texts being authentic. In the case of divergent interpretation of the Malaysian and the German texts, the English text shall prevail.

For Malaysia	For the Federal Republic of Germany