

THIRD PROTOCOL AMENDING THE AGREEMENT

BETWEEN

THE GOVERNMENT OF AUSTRALIA

AND

THE GOVERNMENT OF MALAYSIA

FOR THE AVOIDANCE OF DOUBLE TAXATION

AND

THE PREVENTION OF FISCAL EVASION

WITH RESPECT TO TAXES ON INCOME

AS AMENDED BY THE FIRST PROTOCOL OF 2 AUGUST 1999 AND

THE SECOND PROTOCOL OF 28 JULY 2002

THE GOVERNMENT OF MALAYSIA
AND
THE GOVERNMENT OF AUSTRALIA

DESIRING to amend the Agreement between the Government of Malaysia and the Government of Australia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income done at Canberra on 20 August 1980 (as amended by the first Protocol to that Agreement, done at Sydney on 2 August 1999 and the Second Protocol to that Agreement, done at Genting Highlands on 28 July 2002), in this Protocol (hereinafter referred to as “the Agreement, as amended”)

Have agreed as follows:

Article 1

Article 25 of the Agreement, as amended, is deleted and substituted with the following:

"Article 25

EXCHANGE OF INFORMATION

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

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

referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

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

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (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 2

This Protocol, which shall form an integral part of the Agreement, as amended, shall enter into force on the last of the dates 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 Protocol the force of law in Australia and in Malaysia respectively, and thereupon this Protocol shall have effect.

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

Done in duplicate in the English and Malay languages at Canberra, this twenty-fourth day of February two thousand and ten, both texts being equally authentic.