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Signed : 3 December 2003
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PROTOCOL AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT OF THE KINGDOM OF DENMARK FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME SIGNED AT KUALA LUMPUR ON DECEMBER 4TH, 1970.

THE GOVERNMENT OF MALAYSIA
AND
THE GOVERNMENT OF THE KINGDOM OF DENMARK

DESIRING to conclude Protocol to amend the Agreement between the Contracting Governments for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Kuala Lumpur on December 4th, 1970 (hereinafter referred to as "the Agreement"), have agreed as follows:

Article 1

Article II of the Agreement shall be amended by deleting the words", the supplementary income tax" in subparagraph 1(a).

Article 2

Article III of the Agreement shall be amended by:

- (a) substituting for subparagraphs (a), (b), and (h) of paragraph I the following:
 - “(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 “Denmark” means the Kingdom of Denmark including any area outside the territorial sea of Denmark which in accordance with international law has been or may hereafter be designated under Danish laws as an area within which Denmark may exercise sovereign rights with respect to the exploration and exploitation of the natural resources of the sea-bed or its subsoil and the superjacent waters and with respect to other activities for the economic exploration of the area; the term does not comprise the Faroe Island and Greenland;
- (h) the term “competent authority” means, in the case of Malaysia, the Minister of Finance or his authorized representative; and in the case of Denmark, the Minister for Taxation or his authorized representative;”;
- (b) substituting for the full stop at the end of subparagraph (h) of paragraph I with a semi-colon; and
- (c) inserting after subparagraph (h) of paragraph I the following subparagraph:
 - “(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.”.

Article 3

Article IV of the Agreement shall be amended by substituting for paragraph I the following:

- “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 Denmark, a person who is resident in Denmark for the purposes of Danish tax.”

Article 4

Article V of the Agreement shall be amended by:

- (a) substituting for subparagraph (f) of paragraph 2 the following:
 - “(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;”;
- (b) substituting for the full stop at the end of subparagraph (i) of paragraph 2 with the words, “; and “;
- (c) inserting after subparagraph (i) of paragraph 2 a new subparagraph (j) as follows:
 - “(j) a warehouse.”; and
- (d) inserting the words “in any twelve months period” between the words “more than six months” and the words “in connection with” in sub-paragraph (a) of paragraph 4.

Article 5

Article IX of the Agreement shall be amended by substituting for that Article the following new Article:

“Article IX

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

Article 6

Article XI of the Agreement shall be amended by:

- (a) deleting paragraph 2;
- (b) substituting for the words, “The provisions of paragraph 1 and 2” in paragraph 4 with the words, “The provision of paragraph 1”,; and
- (c) renumbering paragraphs 3 and 4 as paragraphs 2 and 3 respectively.

Article 7

Article XII of the Agreement shall be amended by substituting for that Article the following new Article:

- “1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State. However, such royalties may also be taxed 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.
2. The term “royalties” as used in this Article means payments of any kind received as a consideration for:

 - (a) the use of, or the rights to use, any patent, trade mark, design or model, plan, secret formula or process, any copyright or literary, artistic or scientific work, including cinematographic films and films or tapes for television or radio broadcasting;
 - (b) the use of, or the right to use, industrial, commercial or scientific equipment;
 - (c) the supply of scientific, technical, industrial or commercial knowledge or information;
 - (d) the rendering of any services or assistance of a technical, managerial or consultancy nature.
3. The provision of paragraph 1 of this Article shall not apply if the recipient of the royalties, being a resident of one of the Contracting States, has in the other Contracting State from which the royalties are derived a permanent establishment with which the rights or property giving rise to the royalties is effectively connected. In such case, the provisions of Article VII shall apply.
4. Where owing to a special relationship between the payer and the recipient or both of them and some other person, the amount of the royalties paid, having regard to the use, right, property or information, for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient 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.
5. Royalties shall be deemed to be derived from a Contracting State if the payer is the Government, a State Government, a political subdivision, a local

authority or a resident of that Contracting State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in one of the Contracting States a permanent establishment by which the royalties are paid, then such royalties shall be deemed to be derived from the Contracting State in which the permanent establishment is situated..

Article 8

Article XV of the Agreement shall be amended by substituting for paragraph 1 the following:

“1. The provisions of paragraph 2 of Article XIV shall not apply to the income derived from one of the Contracting States from an employment exercised by a public entertainer (such as stage, motion picture, radio or television artiste, musician or sportsman) being a resident of the other Contracting State whose visit to that first-mentioned Contracting State is not directly or indirectly supported, wholly or substantially, from public funds of the Government of that other Contracting State.

Article 9

Article XXI of the Agreement shall be amended by substituting for that Article the following new Article:

“Article XXI

1. The laws of each Contracting States shall continue to govern the taxation of income in that State 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. Danish tax payable under the laws of Denmark and in accordance with this Agreement by a resident of Malaysia in respect of income derived from Denmark 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 Denmark to a company which is a resident of Malaysia but which owns not less than 15 per cent of the voting shares of the company paying the dividend, the credit shall take into account Danish tax payable by that company in respect of its income out of which the dividend is paid. The credit shall not, however, exceed the part of the Malaysian tax as computed before the credit is given, which is appropriate to such item of income.

3. In the case of Denmark, the following provisions shall apply:

- (a) double taxation shall be avoided as follows:
- (i) subject to the provisions of sub subparagraph 3(a)(iii), where a resident of Denmark derives income which, in accordance with the provisions of this Agreement, may be taxed in Malaysia, Denmark shall allow as a deduction from the tax of the income of that resident, an amount equal to the income tax paid in Malaysia;
 - (ii) such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Malaysia;
 - (iii) where a resident of Denmark derives income which, in accordance with the provisions of this Agreement shall be taxable only in Malaysia, Denmark may include this income in the tax base, but shall allow as a deduction from the income tax that part of the income tax, which is attributable to the income derived from Malaysia;
- (b) for the purposes of sub subparagraph 3(a)(i) "income tax paid in Malaysia" shall be deemed to include 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 special incentives under the Promotion of Investment Act 1986 for the promotion of economic development of Malaysia or any other provisions which may subsequently be introduced in Malaysia in modification of, or in addition to, those laws so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character;
- (c) where dividends are paid by a company which is a resident of Malaysia to a company which is a resident of Denmark, then such dividends shall be exempt from tax in Denmark. This provision shall apply only to that part of the dividends which corresponds to that part of the profits of the first-mentioned company out of which the dividends are paid, and which has been taxed at a reduced rate or exempted from Malaysia tax in accordance with the special incentives under the Promotion of Investments Act 1986 for the promotion of economic development of Malaysia or any other provisions which may subsequently be introduced in Malaysia in modification of, or in addition to, those laws so far as they are

agreed by the competent authorities of the Contracting States to be of a substantially similar character;

- (d) the provisions of subparagraphs (b) and (c) shall apply for the first ten years for which the Protocol is effective. The competent authorities shall consult each other in order to determine whether this period shall be extended. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Contracting States in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures;
- (e) where dividends are paid by a company which is a resident of Malaysia to a company which is a resident of Denmark and which owns directly or indirectly not less than 25 per cent of the share capital of the first-mentioned company, and such dividends are not exempt from tax in accordance with the provision of subparagraph 3(c), the credit for the purposes of sub-subparagraph 3(a)(i) shall take into account the tax paid in Malaysia by the first-mentioned company in respect of the profits out of which the dividends are paid.”.

Article 10

The following new Article shall be inserted immediately after Article XXI of the Agreement:

“Article XXIA

Where under any provision of this Agreement, income or gain is wholly or partly relieved from tax in a Contracting State and under the laws in force in the other Contracting State, a resident, in respect of the said income or gain, 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 to be allowed under this Agreement in the first-mentioned State shall apply only to so much of the income or gain as is remitted to or received in that other State.”.

Article 11

1. Each of the contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Protocol which shall form an integral part of the Agreement. This Protocol shall enter into force on the date of the later of these notifications and, subject to the provision of paragraph 2 of this Article, shall thereupon have effect:

- (a) in Malaysia:
 - (i) in respect of Malaysian tax, other than petroleum income tax, to taxes chargeable for any year of assessment beginning on or after the first day of January of the calendar year following the year in which this Protocol 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 Protocol enters into force;
- (b) in Denmark in respect of taxes for the income year immediately following that in which this Protocol enters into force and subsequent income years.

2. This Protocol shall cease to be effective at such a time as the Agreement ceases to be effective in accordance with Article XXVII of the Agreement.

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

DONE in duplicate at Putrajaya this 3rd day of December 2003, each in Danish, Malay 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 Protocol, the English text shall prevail.

For the Government of
Malaysia

For the Government of
the Kingdom of Denmark

Made 15 April 2004
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