SYNTHESISED TEXT OF THE MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING AND THE AGREEMENT BETWEEN THE GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG AND THE GOVERNMENT OF MALAYSIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

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

General disclaimer on the synthesised text document

This document presents the synthesised text for the application of the Agreement between the Government of the Grand Duchy of Luxembourg and the Government of Malaysia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital signed on 21 November 2002 (the "Agreement"), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by Luxembourg on 7 June 2017 and by Malaysia on 24 January 2018 (the "MLI").

The document was prepared on the basis of the MLI position of Luxembourg submitted to the Depositary upon ratification on 9 April 2019 and of the MLI position of Malaysia submitted to the Depositary upon ratification on 18 February 2021. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the Agreement.

The authentic legal texts of the Agreement and the MLI take precedence and remain the legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Agreement are included in boxes throughout the text of this document in the context of the relevant provisions of the Agreement. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the 2017 OECD Model Tax Convention.

Changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Agreement (such as "Covered Tax Agreement" and "Agreement", "Contracting Jurisdictions" and "Contracting States"), to ease the comprehension of the provisions of the MLI. The changes in terminology are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI. Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Agreement: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

In all cases, references made to the provisions of the Agreement or to the Agreement must be understood as referring to the Agreement as modified by the provisions of the MLI, provided such provisions of the MLI have taken effect.

References

The authentic legal text of the Agreement can be found at the following link:
impotsdirects.public.lu
The text of the MLI and the MLI position of Luxembourg submitted to the Depositary upon ratification on 9 April 2019 and of the MLI position of Malaysia submitted to the Depositary upon ratification on 18 February 2021 can be found on the MLI Depositary (OECD) webpage.

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

Entry into Effect of the MLI Provisions

The provisions of the MLI applicable to this Agreement do not take effect on the same dates as the original provisions of the Agreement. Each of the provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by Luxembourg and Malaysia in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval: 9 April 2019 for Luxembourg and 18 February 2021 for Malaysia.

Entry into force of the MLI: 1 August 2019 for Luxembourg and 1 June 2021 for Malaysia.

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

In Luxembourg:

- with respect of taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2022;
- with respect to all other taxes, for taxes levied with respect to taxable periods beginning on or after 1 December 2021.

In Malaysia:

- with respect of taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2022;
- with respect to all other taxes, for taxes levied with respect to taxable periods beginning on or after 1 December 2021.

AGREEMENT BETWEEN

THE GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG AND THE GOVERNMENT OF MALAYSIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Grand Duchy of Luxembourg and the Government of Malaysia

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

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

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

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

have agreed as follows:

Article 1

Persons covered

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

The following paragraphs 1 and 3 of Article 3 of the MLI apply and supersede the provisions of this Agreement:

ARTICLE 3 OF THE MLI - TRANSPARENT ENTITIES

For the purposes of the [*Agreement*], income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either [*Contracting State*] shall be considered to be income of a resident of a [*Contracting State*] but only to the extent that the income is treated, for purposes of taxation by that [*Contracting State*], as the income of a resident of that [*Contracting State*]. In no case shall the provisions of this paragraph be construed to affect a [*Contracting State's*] right to tax the residents of that [*Contracting State*].

Article 2

Taxes covered

1. The existing taxes which are the subject of this Agreement are:
   a) in the Grand Duchy of Luxembourg:
      (i) the income tax on individuals (l'impôt sur le revenu des personnes physiques);
      (ii) the corporation tax (l'impôt sur le revenu des collectivités);
      (iii) the tax on fees of directors of companies (l'impôt spécial sur les tantiémes);
      (iv) the capital tax (l'impôrt sur la fortune); and
      (v) the communal trade tax (l'impôt commercial communal);
      (hereinafter referred to as "Luxembourg tax");
   b) in Malaysia:
      (i) the income tax; and
      (ii) the petroleum income tax;
      (hereinafter referred to as "Malaysian tax").

2. This Agreement shall also apply to any identical or substantially similar taxes which 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 of any changes which 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 "Luxembourg" means the territory of the Grand Duchy of Luxembourg;
   b) 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 and 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;
   c) the term "person" includes an individual, a company and any other body of persons;
   d) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
   e) 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;
   f) the term "national" means:
      (i) any individual possessing the citizenship or nationality of a Contracting State;
      (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;

g) 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;

h) the term "competent authority" means:

(i) in the case of Luxembourg, the Minister of Finance or his authorised representative; and

(ii) in the case of Malaysia, the Minister of Finance or his authorised representative.

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, any political subdivision, local authority or statutory body thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

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 the competent authorities of the Contracting States shall settle the question by mutual agreement.

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 9 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 sub-paragraphs 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 5 months in connection with a building site or a construction, installation or assembly project which is being undertaken in that other State.

6. A person (other than a broker, general commission agent or any other agent of independent status to whom paragraph 7 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; or

b) he maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly secures and fulfills 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, where 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, 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 so much thereof as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent 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. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that result shall be in accordance with the principles contained in this Article.

5. 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.

6. 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.

7. 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.

8. 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 of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. Paragraph 1 shall also apply to the share of the profits from the operation of ships or aircraft derived by an enterprise of a Contracting State 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 enterprise, 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) 10 per cent of the gross amount of the dividends in all other cases.

   This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
3. Notwithstanding the provisions of paragraph 2, dividends paid by a company which is a resident of a Contracting State shall not be taxable in that State if the beneficial owner of the dividends is a company that is a resident of the other Contracting State and that

has had, during an uninterrupted period of 12 months preceding the date of payment of the dividends, a direct shareholding of at least 25 per cent of the company paying the dividends. The provision of this paragraph shall only apply if the distributed dividend is derived from the active conduct of trade business in the first-mentioned State, other than business of making or managing investments, unless such business is carried on by a banking or insurance company.

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 and other payments which are 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, 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 a case the provisions of Article 7 or Article 15, as the case may be, shall apply.

6. 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.

3. Notwithstanding the provisions of paragraph 2, interest paid or credited to a resident of Luxembourg by a person licensed to carry on banking business in Malaysia, or on an approved loan shall be exempt from Malaysian tax.

4. 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 Contracting 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 Bank Negara Malaysia;
      (iii) the local authorities;
      (iv) statutory bodies; and
      (v) the Export-Import Bank of Malaysia Berhad (EXIM Bank);
   b) in the case of Luxembourg means the Government of Luxembourg and shall include:
      (i) the local authorities;
      (ii) the National Credit Investment Corporation (la Société Nationale de Crédit et d'Investissement); and
      (iii) the Central Bank of Luxembourg (la Banque Centrale du Luxembourg).

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 profit, and in particular, income from government securities and income from bonds or debentures, including premiums attaching to such securities, bonds or debentures. However, the term "interest" shall not include income referred to in Article 10. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

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, 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 fixed base. In such a case the provisions of Article 7 or Article 15, as the case may be, shall apply.

8. 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.

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, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 12

Royalties

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

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 8 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 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 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, 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 royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is 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 or a fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base 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, 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 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

Fees for technical services

1. 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 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 where the beneficial owner of the fees for technical services is a resident of the other Contracting State the tax so charged shall not exceed 8 per cent of the gross amount of the fees for technical services.

3. 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.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the 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 fees for technical services are effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. 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 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 fees for technical services was incurred, and such fees for technical services are borne by such permanent establishment or fixed base, then such fees for technical services shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base 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 fees for technical services paid exceeds, for whatever reason, 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 to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 14

Capital gains

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 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 fixed base, may be taxed in that other State.

3. Gains derived by an enterprise of a Contracting State 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 that Contracting State.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 15

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, lawyers, engineers, architects, dentists and accountants.

Article 16

Dependent personal services

1. Subject to the provisions of Articles 17, 19, 20, 21 and 22, 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 Contracting 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 the this Article, remuneration derived in respect of an employment exercised aboard a ship, aircraft or road vehicle operated in international traffic by an enterprise of a Contracting State may be taxed in that Contracting State.

Article 17

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 18

Artistes and sportsmen

1. Notwithstanding the provisions of Articles 15 and 16, 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, 15 and 16, 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 wholly or mainly supported by public funds of the other Contracting State, a political subdivision, a local authority or a statutory body thereof. In such a case, the remuneration or profits is taxable only in the Contracting State in which the artiste or the sportsman is a resident.

Article 19

Pensions

1. Subject to the provisions of paragraph 2 of Article 20, pensions and other similar remuneration 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, pensions and other payments made under the social security legislation of a Contracting State may be taxed in that State.

Article 20

Government service

1. a) Salaries, wages and other similar 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 salaries, wages and other similar 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) a national of that State; or

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

2. a) 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 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 16, 17, 18 and 19 shall apply to salaries, wages and other similar 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 body thereof.

Article 21

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 by 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 3000 USD per annum in respect of services in that other State provided the services are performed in connection with his study, research or training and are necessary for the purposes of his

maintenance. However, this amount may be revised by mutual agreement between the competent authorities of the Contracting States.

Article 22

Lecturers 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 or a cumulative 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. However, if the visit in that other State exceeds two years, that other State may tax the individual with respect to the period which exceeds the two years.

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 23

Other income

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 24

Taxation of capital

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by 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 by 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, may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic by an enterprise of a Contracting State and by movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 25

Elimination of double taxation

1. Subject to the laws of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, the Luxembourg tax payable under the laws of Luxembourg and in accordance with this Agreement by a resident of Malaysia in respect of income derived from Luxembourg 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 Luxembourg 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 Luxembourg tax payable by that company in respect of its income out of which the dividend is paid. The credit shall not, however, exceed that part of the Malaysian tax, as computed before the credit is given, which is appropriate to such item of income.

2. Subject to the provision of the law of Luxembourg regarding the elimination of double taxation which shall not affect the general principle hereof, double taxation shall be eliminated as follows:

   a) Where a resident of Luxembourg derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in Malaysia, Luxembourg shall, subject to the provisions of sub-paragraphs b) to d), exempt such income or capital from tax, but may, in order to calculate the amount of tax on the remaining income or capital of the resident, apply the same rates of tax as if the income or capital had not been exempted.

   b) Where a resident of Luxembourg derives income which, in accordance with the provisions of Articles 10, 11, 12, 13, 18, and 23 may be taxed in Malaysia, Luxembourg shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Malaysia. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from Malaysia.

   c) Notwithstanding the provisions of sub-paragraph b), where a resident of Luxembourg derives interest, royalties or technical fees in Malaysia, Luxembourg shall allow as a deduction from the tax on the income of that resident an amount equal to the tax which would have been payable but for the exemption or reduction of Malaysian tax in accordance with special incentive measures for the promotion of development of industry, infrastructure, tourism and agriculture in Malaysia, provided that in the case of interest, royalties or technical fees, such tax shall be deemed to have been paid at:

      (i) 10 per cent of the gross amount of the interest referred to in Article 11;
      (ii) 8 per cent of the gross amount of the royalties referred to in Article 12;
      (iii) 8 per cent of the gross amount of the fees for technical services referred to in Article 13.

      The provisions of this sub-paragraph shall apply for a period of ten years beginning on the 1 January in the calendar year following the year in which the Agreement enters into force. This period may be extended by mutual agreement between the competent authorities.

d) Where a company which is a resident of Luxembourg derives dividends from Malaysian sources, Luxembourg shall exempt such dividends from tax, provided that the company which is a resident of Luxembourg holds directly at least 10 per cent of the capital of the company paying the dividends since the beginning of the accounting year and if this company is subject in Malaysia to an income tax corresponding to the Luxembourg corporation tax. The above-mentioned shares in the Malaysian company are, under the same conditions, exempt from the Luxembourg capital tax. The exemption under this sub-paragraph shall also apply notwithstanding that the Malaysian company is exempted from tax or taxed at a reduced rate in Malaysia in accordance with Malaysian laws providing incentives for the promotion of development of industry, infrastructure, tourism and agriculture in Malaysia.

Article 26

Limitation of relief

Where under the provisions of this Agreement any income is relieved from tax in a Contracting State and, under the law in force in the other Contracting State a person, in respect of that income, is subject to tax by reference to the amount thereof which is remitted to or received in the other Contracting State and not by reference to the amount thereof, then the relief to be allowed under this Agreement in the first-mentioned Contracting State shall apply only to so much of the income as is remitted to or received in the other Contracting State.

Article 27

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, in particular 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 taxation 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 9 of Article 11, paragraph 6 of Article 12 or paragraph 6 of Article 13, 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, provided that the provisions

of domestic law of that Contracting State have been complied with in respect of withholding tax. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted 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 that first-mentioned State are or may be subjected.

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

Article 28

Mutual agreement procedure

1. **[The first sentence of paragraph 1 of Article 28 of this Agreement is replaced by the first sentence of paragraph 1 of Article 16 of the MLI]** [Where a person 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 of the remedies provided by the domestic law of those States, present his case to the competent authority of the State of which he is a resident.]

The following first sentence of paragraph 1 of Article 16 of the MLI replaces the first sentence of paragraph 1 of Article 28 of this Agreement:
ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE
Where a person considers that the actions of one or both of the [*Contracting States*] result or will result for that person in taxation not in accordance with the provisions of [*this Agreement*], that person may, irrespective of the remedies provided by the domestic law of those [*Contracting States*], present the case to the competent authority of either [*Contracting State*].

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 this 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 this 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 this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

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

Article 29

Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by this Agreement insofar as the taxation thereunder is not contrary to this Agreement. Any information received by a Contracting States 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 by this Agreement. 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.

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 and the 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).

Article 30

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.

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

ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE

(Principal purposes test provision)

Notwithstanding any provisions of [*the Agreement*], a benefit under [*the Agreement*] shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of [*the Agreement*].

Article 31

Exclusion of certain companies

1. The provisions of this Agreement shall not apply to companies enjoying a special fiscal treatment by virtue of the laws or the administrative practice of either one of the Contracting States. Neither shall they apply to income derived from such companies by a resident of the other Contracting State, nor to shares or other rights in such companies owned by such person.

2. The Government of the Contracting States shall agree periodically on the types of special fiscal treatment that are applicable under the provisions of paragraph 1 of this Article. The Governments of both Contracting States shall communicate with each other through exchange of notes for this purpose.

Article 32

Entry into force

This Agreement shall enter into force on the date on which the Contracting State 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 Luxembourg, as the case may be, and thereupon this Agreement shall have effect:

a) 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;

b) in Luxembourg:

(i) in respect of taxes withheld at source, to income derived on or after first January of the calendar year next following the year in which the Agreement enters into force;

(ii) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after first January of the calendar year next following the year in which the Agreement enters into force.

Article 33

Termination

This Agreement shall remain in effect indefinitely, but either Contracting State may terminate this Agreement, through the diplomatic channel, 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, this Agreement shall cease to have effect:

a) 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;

b) in Luxembourg:

(i) in respect of taxes withheld at source, to income derived on or after first January in the calendar year next following the year in which the notice is given;

(ii) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after first January in the calendar year next following the year in which the notice is given.

Protocol

At the signing of the Agreement between the Government of the Grand Duchy of Luxembourg and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital (hereinafter referred to as "the Agreement"), the undersigned have agreed upon the following provisions which shall form an integral part of the Agreement.

1. With reference to paragraph 3 of Article 10, it is understood that, in the case of Luxembourg, the term "dividend" shall include the investor's share of profit in a commercial, industrial, mining or craft undertaking, paid proportionally to the profits and by virtue of his capital outlay as provided for under sub-paragraph 2 of paragraph 1 of Article 97 of the Income Tax Law of Luxembourg.
2. With reference to paragraph 3 of Article 11, it is understood that the term "approved loan" shall have the meaning as defined under section 2 of the Income Tax Act 1967 of Malaysia.
3. With reference to Article 11, interest derived by a resident of a Contracting State in respect of a loan guaranteed by that State shall only be taxable in that State, provided that both Contracting States shall consult each other in order to agree on the applicability of such tax treatment in respect of such loan.
4. With reference to this Agreement, it is understood that the Capital Tax is applicable only under the Taxation Law of Luxembourg.

Exchange of Notes

Your Excellency,

I have the honour to refer to the Agreement between the Government of Malaysia and the Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital signed today and to confirm on behalf of the Government of Malaysia that with reference to paragraph 2 of Article 31:

The provisions of this Agreement shall not apply:

(i) in the case of Malaysia: to any person carrying on offshore business activity as defined under the provisions of the Labuan Offshore Business Activity Tax Act 1990 (as amended) and;

(ii) in the case of Luxembourg: holding companies within the meaning of the Act (loi) of 31 July, 1929 and the Decree (arrêté grand-ducal) of 17 December, 1938.

I have further the honour to propose that the present Note and Your Excellency's Note in reply confirming on behalf of the Government of the Grand Duchy of Luxembourg that the above understanding shall be regarded as constituting an agreement between the two Governments under paragraph 2 of Article 31 of the Agreement which will enter into force at the same time as the entry into force of this Agreement.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

For the Government of Malaysia

***

Your Excellency,

I have the honour to acknowledge the receipt of Your Excellency's Note of today's date which read as follows:

[See I]

I have the honour to propose that the present Note and Your Excellency's Note in reply confirming on behalf of the Government of the Grand Duchy of Luxembourg that the above understanding and to agree that Your Excellency's Note and this Note shall be regarded as constituting an agreement between the two Governments, which will enter into force at the same time as the entry into force of this Agreement.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

For the Government of the Grand Duchy of Luxembourg