



No. 46 of 1993.

*Income Tax (International Agreements) (Amendment) Act 1993.*

Certified on : 29.12.93

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No.        of        1993.

*Income Tax (International Agreements) (Amendment) Act 1993.*

ARRANGEMENT OF SECTIONS.

1. Interpretation (Amendment of Section 1).
2. New Section 3D.

    "3D. AGREEMENT WITH MALAYSIA."

3. New Schedule 5.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 1993.

AN ACT

entitled

*Income Tax (International Agreements) (Amendment) Act 1993,*

Being an Act to amend the *Income Tax (International Agreements) Act 1987,*

MADE by the National Parliament to come into operation on 1 January 1994.

1. INTERPRETATION (AMENDMENT OF SECTION 1).

Section 1(1) of the Principal Act is amended by inserting after the definition "the Canadian agreement" the following new definition:-

"'the Malaysian agreement' means the Agreement between the Government of the Independent State of Papua New Guinea and the Government of Malaysia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, being the agreement a copy of which is set out in Schedule 5;"

2. NEW SECTION 3D.

The Principal Act is amended by inserting after Section 3C the following new section:-

"3D. AGREEMENT WITH MALAYSIA.

Subject to this Act, on and after the date of entry into force of the Malaysian agreement, the provisions of the agreement so far as those provisions affect Papua New Guinea tax, have the force of law according to their tenor."

3. NEW SCHEDULE 5.

The Principal Act is amended by inserting after Schedule 4 the following new schedule:-

S C H E D U L E 5 .

AGREEMENT BETWEEN THE GOVERNMENT OF THE INDEPENDENT STATE  
OF PAPUA NEW GUINEA AND THE GOVERNMENT OF MALAYSIA  
FOR THE AVOIDANCE OF DOUBLE  
TAXATION AND THE PREVENTION OF FISCAL EVASION WITH  
RESPECT TO TAXES ON INCOME

THE GOVERNMENT OF THE  
INDEPENDENT STATE OF PAPUA NEW GUINEA  
AND  
THE GOVERNMENT OF MALAYSIA

DESIRING to conclude an Agreement for the avoidance  
of double taxation and the prevention of fiscal  
evasion with respect to taxes on income, have agreed  
as follows:

## ARTICLE 1.

### Personal Scope

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

## ARTICLE 2.

### Taxes Covered

1. This Agreement shall apply to taxes on income imposed by a Contracting State, irrespective of the manner in which they are levied.
2. The taxes which are the subject of this Agreement are:
  - (a) in Malaysia:
    - (i) the income tax;
    - (ii) the development tax; and
    - (iii) the petroleum income tax;(hereinafter referred to as "Malaysian tax");
  - (b) in Papua New Guinea:

the income tax imposed under the law of Papua New Guinea, including:

    - (i) the salary or wages tax;
    - (ii) the additional profits tax upon taxable additional profits from mining operations;
    - (iii) the additional profits tax upon taxable additional profits from petroleum operations;
    - (iv) the specific gains tax;
    - (v) the dividend withholding tax;
    - (vi) the training levy;
    - (vii) the foreign contractor withholding tax; and
    - (viii) the management fee withholding tax;(hereinafter referred to as "Papua New Guinea tax").
3. This Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the taxes of that Contracting State referred to in Paragraph 2 of this Article. The competent authorities of the Contracting States shall notify each other of any important changes which are made in their respective taxation laws.

## ARTICLE 3 .

### General Definitions.

1. In this Agreement, unless the context otherwise requires:

- (a) the term "Malaysia" means the territories of the Federation of Malaysia, the territorial waters of Malaysia and the sea-bed and subsoil of the territorial waters, and includes any area extending beyond the limits of the territorial waters of Malaysia, and the sea-bed and subsoil of any such area, which has been or may hereafter be designated under the laws of Malaysia 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;;
- (b) the term "Papua New Guinea" means the Independent State of Papua New Guinea and, when used in a geographical sense, includes any area adjacent to territorial limits of Papua New Guinea in respect of which there is for the time being in force, consistently with international law, a law of Papua New Guinea dealing with the exploitation of any of the natural resources of the Continental Shelf, its sea bed and sub-soil;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Malaysia or Papua New Guinea as the context requires;
- (d) the term "person" includes an individual, a company and any other body of persons which is treated as a person for tax purposes;
- (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term "tax" means Malaysian tax or Papua New Guinea tax, as the context requires, but does not include any penalty or interest imposed under the taxation laws of either Contracting State;
- (h) the term "national" means:
  - (i) any individual possessing the nationality or citizenship of a Contracting State;
  - (ii) any legal person, partnership, association or other entity deriving its status as such from the laws in force in a Contracting State;
- (i) the term "competent authority" means:
  - (i) in the case of Malaysia, the Minister of Finance or his authorised representative; and

(i) in the case of Papua New Guinea, the Chief Collector of Taxes or an authorised representative of the Chief Collector of Taxes;

(j) the term "international traffic" means any transport by a ship or an aircraft operated by an enterprise of a Contracting State, except when the ship or the aircraft is operated solely between places in the other Contracting State.

2. In the application of this Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which this Agreement applies.

## ARTICLE 4 .

### Resident

1. For the purposes of this Agreement, the term "resident of a Contracting State" means:
- (a) in the case of Malaysia, a person who is resident in Malaysia for the purposes of Malaysian tax; and
  - (b) in the case of Papua New Guinea a person who is resident in Papua New Guinea for the purposes of Papua New Guinea tax.
2. Where by reason of the provisions of Paragraph 1 of this Article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules;
- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interest);
  - (b) if the State in which he has his centre of vital interests cannot be determined, or if he has no permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
  - (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
  - (d) if he is a national of both States or is a national 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 of this Article a person other than an individual is a resident of both Contracting States, then its status shall be determined in accordance with the following rules:
- (a) that person shall be deemed to be a resident of the State in which its place of effective management is situated;
  - (b) if it is not possible to determine that person's status under Paragraph 4(a) of this Article the competent authorities of the Contracting States shall endeavour to do so 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;
  - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources including timber or other forest produce;
  - (g) a place where agricultural or pastoral activity is carried on; and
  - (h) a building site or construction, installation or assembly project which exists for more than six months in any calendar year.
3. An enterprise shall be deemed to have a permanent establishment in one of the Contracting States and to carry on business through that permanent establishment if:
  - (a) it carries on supervisory activities in that State for more than six months in any calendar year in connection with a building site, or a construction, installation or assembly project which is being undertaken in that State; or
  - (b) substantial equipment is being used for the purpose of mining or petroleum exploration in that State by, for or under a contract with the Enterprise.
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 or display of goods or merchandise belonging to the enterprise;
  - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
  - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
  - (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
  - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in Sub-paragraphs (a) to (e) of this paragraph, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State, other than an agent of an independent status to whom Paragraph 7 applies, shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if:
  - (a) the person has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless the person's activities are limited to the mere purchase of goods or merchandise for the enterprise;
  - (b) the person has no such authority, but habitually maintains in that State a stock of goods or merchandise from which the person regularly delivers in that State goods or merchandise on behalf of the enterprise; or
  - (c) in so acting, the person manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise.
6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that 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.

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

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

## ARTICLE 6 .

### Income from Immovable Property .

1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other State.
2. For the purposes of this Agreement, the term "immovable property" shall 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, or the right to explore for, mineral deposits, oil or gas wells, quarries and other places of extraction of natural resources including timber and other forest produce; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of Paragraph 1 of this Article shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. Any interest or right referred to in Paragraph 2 shall be regarded as situated where the land, mineral deposits, sources and other natural resources, as the case may be, are situated or where the exploration may take place.
5. The provisions of Paragraphs 1 and 3 of this Article 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 directly or indirectly 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 including executive and general administrative expenses, which would be deductible if the permanent establishment were an independent enterprise, insofar as they are reasonably allocable to the permanent establishment, whether incurred in the State in which the permanent establishment is situated or elsewhere.
4. 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.
5. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person in cases where the information available to the competent Authority of that State is inadequate to determine the profits to be attributed to a permanent establishment, provided that law shall be applied, so far as the information available to the competent authority permits, consistently with the principles of this Article.

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. Nothing in this Article shall affect the operation of:
  - (a) the law of Papua New Guinea relating to the tax chargeable on that part, deemed to be taxable income, of an insurance premium paid to an enterprise of Malaysia, provided that the tax rate applied to such income shall not exceed the rate which would be imposed on the income of a corporation resident in Papua New Guinea and carrying on an insurance business;
  - (b) the law of Papua New Guinea relating to:
    - (i) the specific gains tax; or
    - (ii) the taxation of income derived by a foreign contractor from a prescribed contract within the meaning of that law, where, in accordance with this Agreement, that contractor is a resident of Malaysia with a permanent establishment in Papua New Guinea,

provided that if the relevant law in force in either Contracting State at the date of signature of this Agreement is varied (other than in minor respects so as not to affect its general character) the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

8. Where profits include items which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

## ARTICLE 8

### Shipping and Air Transport

1. Profits derived by an enterprise of a Contracting State from the operation of a ship or an 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 a resident of a Contracting State through participation in a pool, a joint business or an international operating agency.
3. Profits derived by an enterprise of a Contracting State from a contract which provides for the rental of a ship on a bareboat basis in the course of a business principally consisting of the operation of ships for the carriage of passengers, livestock, mail, goods or merchandise shall be taxable only in that state except where the profits are derived from a contract under which the ship is used wholly or mainly in the other Contracting State. If the contract so provides and the ship is so used the profits from that contract may be taxed in that State.

## 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. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that State is inadequate to determine the income to be attributed to an enterprise, provided that law shall be applied, so far as it is practicable to do so, consistently with the principles of this Article.

## ARTICLE 10

### Dividends

1. Dividends derived from a company which is a resident of a Contracting State by a resident of the other Contracting State may be taxed in that other State.
2. However, dividends derived from a company which is a resident of Papua New Guinea by a resident of Malaysia may be taxed in Papua New Guinea in accordance with the laws of Papua New Guinea but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.
3. Dividends derived from a company which is a resident of Malaysia by a resident of Papua New Guinea who is the beneficial owner thereof shall be exempt from any tax in Malaysia which is chargeable on dividends in addition to the tax chargeable in respect of the income of the company. Nothing in this paragraph shall affect the provisions of the Malaysian law under which the tax in respect of a dividend derived by a company which is a resident of Malaysia from which Malaysian tax has been, or has been deemed to be, deducted may be adjusted by reference to the rate of tax appropriate to the Malaysian year of assessment immediately following that in which the dividend was paid.

4. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.
5. The provisions of Paragraph 1, 2 and 3 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.
6. Where a company which is a resident of a Contracting State derives income or profits from the other Contracting State, that other State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of income or profits arising in 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 where the beneficial owner of such interest is a resident of the other Contracting State the tax so charged shall not exceed 15 per cent of the gross amount of the interest.
3. Notwithstanding the provisions of Paragraph 2, interest to which a resident of Papua New Guinea is beneficially entitled shall be exempt from Malaysian tax if the loan or other indebtedness in respect of which the interest is paid is an approved loan as defined in section 2(1) of the Income Tax Act, 1967 of Malaysia.
4. Notwithstanding the provisions of Paragraphs 2 and 3, the Government of a Contracting State shall be exempt from tax in the other Contracting State in respect of interest derived by the Government from that other State.
5. For the purposes of Paragraph 4, the term "Government":
  - (a) in the case of Malaysia means the Government of Malaysia and shall include:
    - (i) the governments of the States;
    - (ii) the local authorities;
    - (iii) the statutory bodies;

- (iv) the Bank Negara Malaysia; and
  - (v) such institutions, the capital of which is wholly owned by the Government of Malaysia or the governments of the States, or the local authorities or the statutory bodies thereof, as may be agreed upon from time to time between the competent authorities of the Contracting States;
- (a) in the case of Papua New Guinea means the Government of the Independent State of Papua New Guinea and shall include:
- (i) the Provincial Governments;
  - (ii) the local authorities;
  - (iii) the statutory bodies; and
  - (iv) such institutions, the capital of which is wholly owned by the Independent State of Papua New or Provincial Governments, local authorities or statutory bodies thereof as may be agreed upon from time to time between the competent authorities of the Contracting States.
6. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures.
7. The provisions of Paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State in which the interest arises, through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.
8. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.
9. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest paid 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 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.

10. The provisions of this Article shall not apply if the debt-claim in respect of which the interest is paid was created or assigned mainly for the purpose of taking advantage of this Article.

## 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 the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.
3. The term "royalties" in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:
  - (a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right;
  - (b) the use of, or the right to use, any industrial, commercial or scientific equipment;
  - (c) the supply of scientific, technical, industrial or commercial knowledge or information;
  - (d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in sub-paragraph (a), any such equipment as is mentioned in sub-paragraph (b) or any such knowledge or information as is mentioned in sub-paragraph (c);
  - (e) the use of or the right to use :
    - (i) motion picture films;
    - (ii) films or video tapes for use in connection with television; or
    - (iii) records, compact disks or tapes for use in connection with radio and television broadcasting; or
    - (iv) copyright of literary or artistic work;
  - (f) total or partial forbearance in respect of the use of supply of any property or right referred to in this paragraph.

4. The provisions of Paragraphs 1 and 2 of this Article 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 and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 or Article 14 of this Agreement, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State where the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid 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 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

### Technical Fees

1. Technical fees 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 technical fees may also be taxed in the Contracting State in which they arise and according to the law of that State; but where the beneficial owner of the technical fees is a resident of the other contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the technical fees.
3. The term "technical fees" as used in this Article means payments of any kind to any person, other than an employee of the person making the payment, in consideration for any services of a technical, managerial or consultancy nature.
4. The provisions of Paragraph 1 of this Article shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State, carries on business in the other Contracting State in which the technical fees arise, through a permanent establishment situated therein, and the technical fees are effectively connected with such permanent establishment. In such case the provisions of Article 7 of this Agreement, shall apply

5. The provision of Paragraph 1 also shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, performs in that other State independent personal services covered under Article 14. In such case the provisions of Article 14 of this Agreement shall apply.
6. Technical fees shall be deemed to arise in a Contracting State where the payer is that State itself, a political sub-division, a local authority or a statutory body thereof, or a resident of that State. Where, however, the person paying the technical fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by such permanent establishment, then such technical fees shall be deemed to arise in the Contracting State in which the permanent establishment 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 technical fees 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 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 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:
  - (a) his stay in that other Contracting State exceeds six months in any calendar year. In that case so much of the income as is derived from his activities in that other Contracting State may be taxed in that State; or
  - (b) the income is derived from a resident of that other Contracting State or a permanent establishment in the other Contracting State and exceeds an amount of 5000 United States Dollars or its equivalent in Malaysian Ringgit or Papua New Guinea Kina in any calendar year. In that case so much of the income as is derived from his activities in that other Contracting State may be taxed in that State.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

## ARTICLE 15

### Dependent Personal Services

1. Subject to the provisions of Articles 16, 18, 19 and 20 of this Agreement, salaries, wages, gratuities 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 of this Article, 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 six months in any calendar year; and
  - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
  - (c) the remuneration is not borne by a resident or a permanent establishment which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

## 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 resident of the other Contracting State may be taxed in that other State.

## ARTICLE 17

### Artistes and Athletes

1. Notwithstanding the provisions of Article 14 and Article 15 of this Agreement, 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 an athlete, 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 an athlete in his capacity as such accrues not to the entertainer or an athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15 of this Agreement, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.
3. The provisions of Paragraphs 1 and 2 shall not apply to remuneration or profits derived from activities exercised in a Contracting State if the visit to that state is directly or indirectly supported wholly or substantially from the public funds of the other Contracting State, a political subdivision, or a local authority.

## ARTICLE 18

### Pensions and Annuities

1. Subject to the provisions of Paragraph 2 of Article 19, any pensions and other similar remuneration for past employment or any annuity arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.
2. The term "annuity" includes a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

## ARTICLE 19

### Government Service

1. (a) Remuneration, other than a pension, paid by a Contracting State or 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 a local authority or statutory body thereof shall be taxable only in that State.  
  
(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the recipient is a resident of that other State who:
  - (i) is a national of that other State; or
  - (ii) did not become a resident of that other State solely for the purpose of performing the services.
2. Any pension paid by, or out of funds created by, a Contracting State, a political subdivision or a local authority or a Statutory body thereof to any individual in respect of services rendered to that State, political subdivision, local authority or statutory body thereof shall be taxable only in that State.

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

## ARTICLE 20

### Students and Trainees

1. An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in the other State solely:
- (a) as a student at a recognised university, college, school or other similar recognised educational institution in that other State;
  - (b) as a business or technical apprentice; or
  - (c) as a recipient of a grant, allowance or award for the primary purpose of study, research or training from the government of either State or from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the Government of either State,

shall be exempt from tax in that other State on:

- (i) all remittances from abroad for the purposes of his maintenance, education, study, research or training;
- (ii) the amount of such grant, allowance or award; and
- (iii) any remuneration not exceeding 2500 United States Dollars (or its equivalent in Malaysian Ringgit or Papua New Guinea Kina) per annum in respect of services in that other State provided the services are performed in connection with his study, research or training or are necessary for the purposes of his maintenance.

## ARTICLE 21

### Teachers and Researchers

1. An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State, and who, at the invitation of any university, college or other similar educational institution, visits that other State for a period not exceeding two years solely for the purpose of teaching or research or both at such educational institution shall be exempt from tax in that other State on any remuneration for such teaching or research which is subject to tax in the first-mentioned Contracting State.

2. This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

## ARTICLE 22

### Income not Expressly Mentioned

1. Items of income of a resident of one of the Contracting States which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that State.
2. However, any such income derived by a resident of one of the Contracting States from sources in the other Contracting State may also be taxed in that other State.

## ARTICLE 23

### 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, Papua New Guinea and in accordance with this Agreement by a resident of Malaysia in respect of income derived from Papua New Guinea 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 Papua New Guinea to a company which is a resident of Malaysia and which own not less than 15 per cent of the voting shares of the company paying the dividend, the credit shall take into account Papua New Guinea 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. For the purposes of Paragraph 1 of this Article, the term "Papua New Guinea tax payable" shall be deemed to include any amount which would have been payable as Papua New Guinea tax for any year but for an exemption or reduction of tax granted for that year on any part thereof under any of the following provisions of Papua New Guinea law:
  - (a) Sections 35(2) (a) and (c), 45B(1) or (2), 45L, 46B, 72A(3) or (4), 72C(4) or (5), 73(9), 79 or 97A of the Papua New Guinea Income Tax Act 1959 as amended, insofar as those provisions were in force on, 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; or
  - (b) Sections 18 and 21(4) of the Industrial Development (Incentives to Pioneer Industries) Act of 1990;

- (c) Any other provision which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.
3. Subject to the provisions of the law of Papua New Guinea from time to time in force which relate to the allowance of a credit against Papua New Guinea tax of tax paid in a country outside Papua New Guinea (which shall not affect the general principle hereof), tax paid under the law of Malaysia and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Papua New Guinea for the purposes of the law of Papua New Guinea relating to Papua New Guinea tax from sources in Malaysia (not including, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against Papua New Guinea tax payable in respect of that income.
4. For the purposes of Paragraph 3, the term "Malaysian tax payable" shall be deemed to include Malaysian tax which would, under the laws of Malaysia and in accordance with this Agreement, have been payable on:
- (a) any income derived from sources in Malaysia had the income not been tax at a reduced rate or exempted from Malaysian tax in accordance with:
- (i) sections 54A, 60A, 60B and Schedule 7A of the Income Tax Act 1967 of Malaysia; or
- (ii) sections 22, 23, 29, 35 and 37 of the Promotion of Investments Act 1986 of Malaysia, so far as they were in force on the date of signature of this Agreement; or
- (iii) any other provisions which may subsequently be introduced in Malaysia in modification of, or in addition, to, the investment incentives laws so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character; and
- (b) interest to which Paragraph 3 of Article 11 applies had that interest not been exempted from Malaysian tax in accordance with that paragraph.

## ARTICLE 24

### Limitation of Relief

1. Where under any provision 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 that other Contracting State and not by reference to the full 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 25

### Non-Discrimination

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.
3. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.
4. Nothing in this Article shall be construed as obliging:
  - (a) a Contracting State to grant to individuals who are resident of the other Contracting State any personal allowances, reliefs and reductions for tax purposes on account of civil status or family responsibilities which it grants to its own residents;
  - (b) Malaysia to grant to nationals of Papua New Guinea not resident in Malaysia those personal allowances, reliefs and reductions for tax purposes which are by law available on the date of signature of this Agreement only to nationals of Malaysia who are not resident in Malaysia.
5. Nothing in this Article shall be construed so as to prevent either Contracting State from limiting to its nationals the employment of tax incentives to promote economic development in that State.
6. In this Article, the term "taxation" means taxes to which this Agreement applies.

## ARTICLE 26

### Mutual Agreement Procedure

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the taxation laws of those States, present his case to the competent authority of the State of which he is a resident or, if his case comes under Paragraph 1 of Article 25, to that of the State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.

2. The competent authority shall endeavour, if the claim 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 not in accordance with this agreement.
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.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement on the preceding paragraphs.

## ARTICLE 27

### Exchange of Information

1. The competent authorities of the Contracting State shall exchange such information as is necessary for the carrying out of the provisions of this Agreement or for the prevention or detection of evasion or avoidance of taxes covered by this Agreement. Any information so exchanged shall be treated as secret and shall be disclosed only to persons or authorities (including a court or reviewing authority) concerned with the assessment, collection, enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of this Agreement.
2. In on case shall the provisions of Paragraph 1 of this Article be construed so as to impose on the competent authority of either Contracting State the obligation:
  - (a) to carry out administrative measures at variance with the laws and administrative practice prevailing in either Contracting State;
  - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of either Contracting State;
  - (c) to supply information which would disclose any trade, business industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

## ARTICLE 28

### Diplomatic and Consular Officers

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

## ARTICLE 29

### Entry into Force

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 Agreement. This Agreement shall enter into force on the date of the later of these notifications and shall thereupon have effect:
  - (a) in Malaysia in respects Malaysian tax for the year of assessment beginning on the first day of January 19.., and subsequent years of assessment;
  - (b) in Papua New Guinea:
    - (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 January in the calendar year next following that in which the later of these notifications is given;
    - (ii) in respect of other Papua New Guinea tax, in relation to income of any year of income beginning on or after 1 January in the calendar year next following that in which the later of these notifications is given.

## ARTICLE 30

### Termination

1. This Agreement shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate this Agreement by giving notice of termination, through the diplomatic channel, at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of this Agreement. In such event, this Agreement shall cease to have effect:
  - (a) in Malaysia, in respect of Malaysian tax for any year of assessment beginning on or after 1 January in the second calendar year following the year in which the notice is given.
  - (b) in Papua New Guinea:
    - (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 January in the calendar year next following that in which the notice is given;
    - (ii) in respect of other Papua New Guinea tax, in relation to income of any year of income beginning on or after 1 January in the calendar year next following that in which the notice is given.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

done in duplicate at .....this  
.....day of .....  
19..,

each in Bahasa Malaysia and the English language, the two texts being equally authentic. In the event of there being a dispute in the application of this Agreement, the English text shall prevail.

For the Government  
of Malaysia

For the Government of the  
Independent State of  
Papua New Guinea

I hereby certify that the above is a fair print of the *Income Tax (International Agreements) (Amendment) Act 1993* which has been made by the National Parliament.

Acting Clerk of the National Parliament.

I hereby certify that the *Income Tax (International Agreements) (Amendment) Act 1993* was made by the National Parliament on 25 November 1993.

Acting Speaker of the National Parliament.