Australian Government
Australian Taxation Office

SYNTHESISED TEXT OF THE MLI AND THE AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF MALAYSIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AS AMENDED BY THE FIRST AMENDING PROTOCOL, THE SECOND AMENDING PROTOCOL AND THE THIRD AMENDING PROTOCOL

If you follow the information in this document, and it turns out to be incorrect, or it is misleading and you make a mistake as a result, the ATO will take that into account when determining what action, if any, we should take.

General disclaimer on this synthesised text document

This document presents the synthesised text for the application of the *Agreement between the Government of Australia and the Government of Malaysia for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to Taxes on Income* signed on 20 August 1980 as amended by the First Amending Protocol signed on 2 August 1999, the Second Amending Protocol signed on 28 July 2002 and the Third Amending Protocol signed on 24 February 2010 (the "Agreement") as modified by the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (the "MLI") signed by Australia on 7 June 2017 and by Malaysia on 24 January 2018.

This document was prepared in consultation with the competent authority of Malaysia and represents our shared understanding of the modifications made to the Agreement by the MLI.

The document was prepared on the basis of the MLI position of Australia submitted to the Depositary upon ratification on 26 September 2018 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 sole purpose of this document is to facilitate the understanding of the application of the MLI to the Agreement and it does not constitute a source of law. 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

Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting [2019] ATS 1 (provides, in the case of Australia, the authentic legal text of the MLI).

Agreement between the Government of Australia and Government of Malaysia for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with respect to Taxes on Income [1981] ATS 15 (provides, in the case of Australia, the authentic legal text of the Agreement signed on 20 August 1980).

Protocol amending the Agreement between the Government of Australia and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income [2000] ATS 25 (provides, in the case of Australia, the authentic legal text of the First Amending Protocol signed on 2 August 1999).

Second Protocol amending the Agreement between the Government of Australia and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income as amended by the First Protocol of 2 August 1999 [2004] ATS 1 (provides, in the case of Australia, the authentic legal text of the Second Amending Protocol signed on 28 July 2002).

Third Protocol amending the Agreement between the Government of Australia and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income as amended by the First Protocol of 2 August 1999 and the Second Protocol of 28 July 2002 [2011] ATS 27 (provides, in the case of Australia, the authentic legal text of the Third Amending Protocol signed on 24 February 2010).

Signatories and parties to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (provides the MLI position of Australia submitted to the Depositary upon ratification on 26 September 2018 and the MLI position of Malaysia submitted to the Depositary upon ratification on 18 February 2021).

Entry into Effect of the MLI Provisions

The provisions of the MLI applicable to the 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 Australia and Malaysia in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval:

26 September 2018 for Australia and 18 February 2021 for Malaysia.

Entry into force of the MLI:

1 January 2019 for Australia and 1 June 2021 for Malaysia.

In accordance with paragraph 1 of Article 35 of the MLI, the provisions of the MLI have

effect with respect to this Agreement:

a) with respect to 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; and

b) with respect to all other taxes levied by each Contracting State, for taxes levied with respect to taxable periods beginning on or after 1 December 2021.

AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF MALAYSIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AS AMENDED BY THE FIRST AMENDING PROTOCOL, THE SECOND AMENDING PROTOCOL AND THE THIRD AMENDING PROTOCOL

THE GOVERNMENT OF AUSTRALIA 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,*

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 [*the 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

PERSONAL SCOPE

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 the 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 to which this Agreement shall apply are -

   a) in Australia: the Australian income tax, including the additional tax upon the undistributed amount of the distributable income of a private company;

   b) in Malaysia: income tax and excess profit tax; supplementary income taxes, that is, tin profits tax, development tax and timber profits tax; and petroleum income tax.

2. 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 existing taxes. The competent authority of each Contracting State shall notify the competent authority of the other Contracting State of any significant changes which have been made in the laws of its Contracting State relating to the taxes to which this Agreement applies.

Article 3

GENERAL DEFINITIONS

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

   a) the term “Australia”, when used in a geographical sense, excludes all external territories other than:

      (i) the Territory of Norfolk Island;

      (ii) the Territory of Christmas Island;

      (iii) the Territory of Cocos (Keeling) Islands;

      (iv) the Territory of Ashmore and Cartier Islands;

      (v) the Territory of Heard Island and McDonald Islands; and

      (vi) the Coral Sea Islands Territory,

      and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploitation of any of the natural resources of the seabed and subsoil of the continental shelf;[1]

   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;[2]

[1] As amended by Article 1(a) of the *Protocol amending the Agreement between the Government of Australia and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* (2000) ATS 25 (First Amending Protocol).
[2] As amended by Article 1(a) of the First Amending Protocol.

c) the terms “Contracting State”, “one of the Contracting States” and “other Contracting State” mean Australia or Malaysia, as the context requires;

d) the term “person” includes an individual, a company and such unincorporated bodies of persons as are treated as persons under the taxation laws of the respective Contracting States;

e) the term “company” means any body corporate or any entity which is treated as a company for tax purposes;

f) the terms “enterprise of one of the Contracting States” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of one of the Contracting States and an enterprise carried on by a resident of the other Contracting State;

g) the term “tax” means Australian tax or Malaysian tax, as the context requires;

h) the term “Australian tax” means tax imposed by Australia, being tax to which this Agreement applies by virtue of Article 2;

i) the term “Malaysian tax” means tax imposed by Malaysia, being tax to which this Agreement applies by virtue of Article 2;

j) the term “competent authority” means, in the case of Australia, the Commissioner of Taxation or his authorized representative, and in the case of Malaysia, the Minister of Finance or his authorized representative.

2. In this Agreement, the terms “Australian tax” and “Malaysian tax” do not include any penalty or interest imposed under the taxation laws of either Contracting State.

3. In the application of this Agreement by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the taxation laws of that Contracting State from time to time in force.[3]

Article 4

RESIDENCE

1. For the purposes of this Agreement, a person is a resident of one of the Contracting States -

a) in the case of Australia, if the person is a resident of Australia for the purposes of Australian tax; and

b) in the case of Malaysia, if the person is resident in Malaysia for the purposes of Malaysian tax.

[3] As amended by Article 1(b) of the First Amending Protocol.

2. Where by reason of the preceding provisions 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 solely of the Contracting State in which he has a permanent home available to him;

b) if he has a permanent home available to him in both Contracting States, or if he does not have a permanent home available to him in either of them, he shall be deemed to be a resident solely of the Contracting State in which he has an habitual abode;

c) if he has an habitual abode in both Contracting States, or if he does not have an habitual abode in either of them, he shall be deemed to be a resident solely of the Contracting State with which his personal and economic relations are the closer.

3. In determining for the purposes of paragraph 2 the Contracting State with which an individual's personal and economic relations are the closer, the matters to which regard may be had shall include the citizenship of the individual.

4. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident solely of the Contracting State in which its place of effective management is situated.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially -

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop;

f) a mine, oil or gas well, quarry or any other place of extraction of natural resources including timber or other forest produce;

g) an agricultural, pastoral or forestry property;

h) a building site or construction, installation or assembly project which exists for more than six months.

3. **[MODIFIED by paragraph 2 of Article 13 of the MLI]** *An enterprise shall not be deemed to have a permanent establishment merely by reason of -*

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 for collecting information, for the enterprise;*

e) *the maintenance of a fixed place of business solely for the purpose of activities which have a preparatory or auxiliary character for the enterprise, such as advertising or scientific research.*

The following paragraph 2 of Article 13 of the MLI modifies paragraph 3 of Article 5 of this Agreement:

ARTICLE 13 OF THE MLI – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH THE SPECIFIC ACTIVITY EXEMPTIONS (*Option A*)

Notwithstanding [*Article 5 of the Agreement*], the term "permanent establishment" shall be deemed not to include:

a) the activities specifically listed in [*paragraph 3 of Article 5 of the Agreement*] as activities deemed not to constitute a permanent establishment, whether or not that exception from permanent establishment status is contingent on the activity being of a preparatory or auxiliary character;

b) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in subparagraph a);

c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and b),

provided that such activity or, in the case of subparagraph c), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

The following paragraph 4 of Article 13 of the MLI applies to paragraph 3 of Article 5 of this Agreement as modified by paragraph 2 of Article 13 of the MLI:

[*Paragraph 3 of Article 5 of the Agreement, as modified by paragraph 2 of Article 13 of the MLI*] shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same [*Contracting State*] and:

a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of [*Article 5 of the Agreement*]; or

b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

4. An enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State and to carry on business through that permanent establishment if -

a) it carries on supervisory activities in that other State for more than six months in connection with a building site, or a construction, installation or assembly project which is being undertaken in that other State;[4]

b) substantial equipment is in that other State being used or installed by, for or under contract with, the enterprise; or[5]

c) it furnishes services, including consultancy services, in that other State through employees or other personnel engaged by the enterprise for such purpose, but only where those activities continue (for the same or a connected project) within the other State for a period or periods aggregating more than three months within any twelve-month period.[6]

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 6 applies) shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if -

a) he has, and habitually exercises in that first-mentioned State, an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or

b) there is maintained in that first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he habitually fills orders on behalf of the enterprise; or

c) in so acting, he manufactures or processes in that first-mentioned State for the enterprise goods or merchandise belonging to the enterprise.

6. An enterprise of one of the Contracting States 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 that person is acting in the ordinary course of his business as such a broker or agent.

7. The fact that a company which is a resident of one of the Contracting States 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 make either company a permanent establishment of the other.

The following paragraph 1 of Article 15 of the MLI applies to provisions of this Agreement:

ARTICLE 15 OF THE MLI – DEFINITION OF A PERSON CLOSELY RELATED TO AN ENTERPRISE

For the purposes of the provisions of [*Article 5 of the Convention*], a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another

[4] As amended by Article 2(a) of the First Amending Protocol.
[5] As amended by Article 2(b) of the First Amending Protocol.
[6] As amended by Article 2(c) of the First Amending Protocol.

person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.

Article 6

INCOME FROM LAND

1. Income from land may be taxed in the Contracting State in which the land is situated.

2. In this Article, the word "land" shall have the meaning which it has under the law of the Contracting State in which the land in question is situated; it shall include any estate or direct interest in land whether improved or not. A right to receive variable or fixed payments either as consideration for the exploitation of or the right to explore for or exploit, or in respect of the exploitation of, mineral deposits, oil or gas wells, quarries or other places of extraction or exploitation of natural resources or for the exploitation of, or the right to exploit or to fell any standing trees, plants or forest produce shall be deemed to be an estate or direct interest in land situated in the Contracting State in which the mineral deposits, oil or gas wells, quarries, natural resources, or standing trees, plants or forest produce, as the case may be, are situated or where the exploration may take place.[7]

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of land.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from land of an enterprise and to income from land used for the performance of professional services.

Article 7

BUSINESS INCOME OR PROFITS

1. The income or profits of an enterprise of one of the Contracting States 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 income or profits of the enterprise may be taxed in the other State, but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of one of the Contracting States 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 income or 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 at arm's length with the enterprise of which it is a permanent establishment or with other enterprises with which it deals.

3. In the determination of the income or profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise, being expenses (including executive and general administrative expenses) which are reasonably connected with the permanent establishment and which would be deductible if the permanent establishment were an independent entity that incurred those expenses, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

[7] As amended by Article 3 of the First Amending Protocol.

4. No income or 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. If the information available to the competent authority of a Contracting State is inadequate to determine the income or 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 that law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.

6. Where income or profits include any item of income or profits which is dealt with separately in another Article of this Agreement, the provisions of that other Article, (except where otherwise provided in that Article) shall not be affected by the provisions of this Article.

7. Nothing in this Article shall affect the operation of any taxation law:

a) in the case of Australia, relating to insurance with non-residents; and

b) in the case of Malaysia, relating to income or profits from an insurance business:

provided that if the relevant law in force in either Contracting State at the date of signature of this Agreement is varied (otherwise 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:

a) a resident of one of the Contracting States is beneficially entitled, whether directly or indirectly through one or more trusts, to a share of the business profits of an enterprise carried on in the other Contracting State by the trustee of a trust estate other than a trust estate which is treated as a company for tax purposes; and

b) in relation to that enterprise, that trustee has, in accordance with the principles of Article 5, a permanent establishment in that other State,

the enterprise carried on by the trustee shall be deemed to be a business carried on in that other State by that resident through a permanent establishment situated therein and the resident's share of business profits shall be attributed to that permanent establishment.[8]

Article 8

SHIPPING AND AIR TRANSPORT

1. Income or profits from the operation of ships or aircraft derived by a resident of one of the Contracting States shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, such income or profits may be taxed in the other Contracting State where they are income or profits from operations of ships or aircraft confined solely to places in that other State.

3. The provisions of paragraphs 1 and 2 shall apply in relation to the share of the income or profits from the operation of ships or aircraft derived by a resident of one of the Contracting States through participation in a pool service, in a joint transport operating organization or in an international operating agency.

[8] Inserted by Article 4 of the First Amending Protocol.

4. For the purposes of this Article, income or profits derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise shipped in a Contracting State for discharge at another place in that State shall be treated as income or profits from operations of ships or aircraft confined solely to places in that State.

5. Nothing in this Article shall affect the application of the law of a Contracting State relating to the determination of tax liability by the exercise of a discretion or the making of an estimate by the competent authority in determining the tax liability of a resident of the other Contracting State in respect of operations of ships or aircraft confined solely to places in the first-mentioned State.

Article 9

ASSOCIATED ENTERPRISES

1. Where -

   a) an enterprise of one of the Contracting States 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 one of the Contracting States and an enterprise of the other Contracting State,

and in either case conditions operate between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing at arm's length, then any income or profits which, but for those conditions, might have been expected to accrue to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the income or profits of that enterprise and taxed accordingly.

2. If the information available to the competent authority of a Contracting State is inadequate to determine the income or profits to be attributed to 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 that law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.

3. Where profits on which an enterprise of one of the Contracting States has been charged to tax in that State are also included, by virtue of the provisions of paragraph 1 or 2, in the profits of an enterprise of the other Contracting State and charged to tax in that other State, and the profits so included are profits which might reasonably have been expected to have accrued to that enterprise of the other State if the conditions operative between the enterprises had been those which might reasonably have been expected to have operated between independent enterprises dealing wholly independently with one another, then the firstmentioned State shall make an appropriate adjustment to the amount of tax charged on those profits in the firstmentioned State. In determining such an adjustment, due regard shall be had to the other provisions of this Agreement and for this purpose the competent authorities of the Contracting States shall if necessary consult each other.[9]

[9] Inserted by Article 1 of the *Second Protocol amending the Agreement between the Government of Australia and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income as amended by the First Protocol of 2 August 1999* (2004) ATS 1 (Second Amending Protocol).

Article 10[10]

DIVIDENDS

1. Dividends paid by a company which is a resident of one of the Contracting States for the purposes of its tax, being dividends to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. However, those dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State, but:

a) in Australia:

(i) no tax shall be charged on dividends to the extent to which those dividends have been "franked" in accordance with Australia's law relating to tax, if the person beneficially entitled to those dividends is a company (other than a partnership) which holds directly at least 10 per cent of the voting power in the company paying the dividends; and

(ii) tax charged shall not exceed 15 per cent of the gross amount of the dividends to the extent to which those dividends are not within subparagraph a)(i); and

b) in Malaysia: no tax shall be charged on dividends paid by a company which is resident in Malaysia for the purposes of Malaysian tax being dividends to which a resident of Australia is beneficially entitled, in addition to the tax chargeable in respect of the income or profits of the company paying the dividends.

3. For the purposes of paragraph 2, if the relevant law in either Contracting State at the date of signature of this Protocol is varied otherwise than in minor respects so as not to affect its general character, the Contracting States shall consult each other with a view to agreeing to any amendment of that paragraph that may be appropriate.

4. The term "dividends" as used in this Article means income from shares, as well as other amounts which are subjected to the same taxation treatment as income from shares by the law of the State of which the company making the distribution is a resident for the purposes of its tax.

5. The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the dividends, being a resident of one of the Contracting States, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated in that other State, and the holding in respect of which the dividends are paid is effectively connected with that permanent establishment. In that case the provisions of Article 7 shall apply.

6. Where a company which is a resident of one of the Contracting States derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company – being dividends to which a person who is not a resident of the other Contracting State is beneficially entitled – except insofar as the holding in respect of which, such dividends are paid is effectively connected with a permanent establishment situated in that other State, even if the dividends paid consist wholly or partly of profits or income arising in such other State. This paragraph shall not apply in relation to dividends paid by any company which is a resident of Australia for the purposes of Australian tax and which is also a resident of Malaysia for the purposes of Malaysian tax.

[10] As amended by Article 2 of the Second Amending Protocol.

7. Dividends paid by a company which is a resident of Malaysia shall include dividends paid by a company which is a resident of Singapore which for the purpose of those dividends has declared itself to be a resident of Malaysia, but shall not include dividends paid by a company which is a resident of Malaysia which for the purpose of those dividends has declared itself to be a resident of Singapore.

Article 11

INTEREST

1. Interest arising in one of the Contracting States, being interest to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. Such interest may be taxed in the Contracting State in which it arises, and according to the law of that State, but 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 Australia 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 (as amended).[11]

4. The provisions of paragraphs 1, 2 and 3 shall not apply if the person beneficially entitled to the interest, being a resident of one of the Contracting States, has in the other Contracting State in which the interest arises a permanent establishment with which the debt-claim in respect of which the interest is paid is effectively connected. In such a case the provisions of Article 7 shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself or a political sub-division, a local authority or statutory body thereof or a resident of that State for the purposes of its tax. Where, however, the person paying the interest, whether he is a resident of one of the Contracting States 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 Contracting State in which the permanent establishment is situated.

6. Where the payer is related to the person beneficially entitled to the interest and the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which might be expected to have been agreed upon by the payer and the person so entitled if they had not been related, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement. For the purposes of this paragraph, a person is related to another person if either person participates directly or indirectly in the management, control or capital of the other, or if any third person or persons participate directly or indirectly in the management, control or capital of both.

7. The term “interest” in this Article means interest from Government securities, or from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and from debt-claims of every kind as well as other income assimilated to interest from money lent by the taxation law of the Contracting State in which the income arises.

[11] As amended by Article 5(a) of the First Amending Protocol.

8. Notwithstanding the provisions of paragraph 2, interest derived from the investment of official reserve assets by the Government of a Contracting State or by a bank performing central banking functions in a Contracting State shall be exempt from tax in the other Contracting State.[12]

Article 12[13]

ROYALTIES

1. Royalties arising in one of the Contracting States, being royalties to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. Such royalties may 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 15 per cent of the gross amount of the royalties.

3. The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the royalties, being a resident of one of the Contracting States, has in the other Contracting State from which the royalties are derived a permanent establishment with which the right, property, knowledge, information or assistance giving rise to the royalties is effectively connected. In such a case the provisions of Article 7 shall apply.[14]

4. Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself or a political sub-division, a local authority or statutory body thereof or a resident of that State for the purposes of its tax. Where, however, the person paying the royalties, whether he is a resident of one of the Contracting States or not, has in a Contracting State a permanent establishment in connection with which the liability 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.

5. Where the payer is related to the person beneficially entitled to the royalties and the amount of the royalties paid or credited, having regard to the use, to the right to use, or to the knowledge, information or assistance, for which they are paid or credited, exceeds the amount which might be expected to have been agreed upon by the payer and the person so entitled if they had not been related, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the royalties paid or credited shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement. For the purposes of this paragraph, a person is related to another person if either person participates directly or indirectly in the management, control or capital of the other, or if any third person or persons participate directly or indirectly in the management, control or capital of both.

6. The term “royalties” in this Article means payments or credits of any kind to the extent to which they are made as consideration for -

a) the use of, or the right to use, any -

(i) copyright, patent, design or model, plan, secret formula or process, trade mark or other like property or right;

(ii) industrial, commercial or scientific equipment; or

(iii) motion picture film or tape for radio or television broadcasting;

[12] Inserted by Article 5(b) of the First Amending Protocol.
[13] As amended by Article 3(a) of the Second Amending Protocol.
[14] As amended by Article 3(b) of the Second Amending Protocol.

b) the supply of scientific, technical, industrial or commercial knowledge or information;

c) 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 right or property as is described in paragraph a)(i), any such equipment as is described in paragraph a)(ii), or any such knowledge or information as is described in paragraph b);[15]

d) the use in connection with television, radio or other broadcasting, or the right to use in connection with such broadcasting, visual images or sounds, or both, transmitted by:

(i) satellite; or

(ii) cable, optic fibre or similar technology;[16]

e) the use of, or the right to use, some or all of the part of the radiofrequency spectrum specified in a relevant licence; or[17]

f) total or partial forbearance in respect of the use of a property or right referred to in this paragraph.[18]

Article 13[19]

ALIENATION OF PROPERTY

1. Income, profits or gains derived by a resident of one of the Contracting States from the alienation of land as defined in Article 6 and, as provided in that Article, situated in the other Contracting State may be taxed in that other State.

2. Income, profits or gains from the alienation of property, other than land as defined in Article 6, that forms part of the business property of a permanent establishment which an enterprise of one of the Contracting States has in the other Contracting State, including income, profits or gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

3. Income, profits or gains from the alienation of ships or aircraft operated in international traffic, or of property other than land as defined in Article 6 pertaining to the operation of those ships or aircraft, shall be taxable only in the Contracting State of which the enterprise which operated those ships or aircraft is a resident.

4. Income, profits or gains derived by a resident of a Contracting State from the alienation of any shares or other interests in a company, or of an interest of any kind in a partnership, trust or other entity, where the value of the assets of such entity, whether they are held directly or indirectly (including through one or more interposed entities, such as, for example, through a chain of companies), is principally attributable to land as defined in Article 6 and, as referred to in that Article, situated in the other Contracting State, may be taxed in that other State.

5. Nothing in this Agreement affects the application of a law of a Contracting State relating to the taxation of profits or gains of a capital nature derived from the alienation of property other than that to which any of paragraphs 1, 2, 3 and 4 apply.

[15] As amended by Article 3(c) of the Second Amending Protocol.
[16] Inserted by Article 3(c) of the Second Amending Protocol.
[17] Inserted by Article 3(c) of the Second Amending Protocol.
[18] As amended by Article 3(c) of the Second Amending Protocol.
[19] As amended by Article 6 of the First Amending Protocol.

Article 14

PERSONAL SERVICES

1. Subject to Articles 15, 18, 19 and 20, remuneration (other than a pension) derived by an individual who is a resident of one of the Contracting States in respect of personal (including professional) services may be taxed only in that Contracting State unless the services are performed in the other Contracting State. If the services are so performed, such remuneration as is derived in respect thereof may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration (other than a pension) derived by an individual who is a resident of one of the Contracting States in respect of personal (including professional) services performed in the other Contracting State shall be taxable only in the first-mentioned State if -

a) the recipient is present in that other State for a period or periods not exceeding in the aggregate 183 days in the basis year or year of income, as the case may be, of that other State;

b) the remuneration is paid by, or on behalf of, a person who is not a resident of that other State; and

c) the remuneration is not deductible in determining taxable profits of a permanent establishment which that person has in that 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 a resident of one of the Contracting States may be taxed in that Contracting State.

Article 15

DIRECTORS' FEES

Notwithstanding the provisions of Article 14, directors' fees and similar payments derived by a resident of one of the Contracting States 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 16

ENTERTAINERS

1. Notwithstanding the provisions of Article 14, income derived by entertainers (such as theatrical, motion picture, radio or television artistes and musicians and athletes) from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

2. Where income in respect of the personal activities of an entertainer as such accrues not to that entertainer but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer 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 that are directly connected with a visit to that Contracting State that is arranged by and is directly or indirectly supported wholly or substantially from the public funds of the other Contracting State or a political sub-division, a local authority or statutory body thereof.

Article 17

PENSIONS AND ANNUITIES

1. Any pension (other than a pension of the kind referred to in Article 18) or other similar payment or any annuity paid to a resident of one of the Contracting States shall be taxable only in that Contracting State.

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

3. Any alimony or other maintenance payment arising in a Contracting State and paid to a resident of the other Contracting State, shall be taxable only in the first-mentioned State.

Article 18

GOVERNMENT SERVICE

1. Remuneration (other than a pension or annuity) paid by a Contracting State or a political sub-division or a local authority thereof to any individual in respect of services rendered in the discharge of governmental functions shall be taxable only in that State. 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:

a) is a citizen or national of that State; or

b) did not become a resident of that State solely for the purpose of performing the services.

2. Any pension paid by, or out of funds created by, a Contracting State or a political sub-division or a local authority thereof to any individual in respect of services rendered to that State or sub-division or local authority thereof shall be taxable in that State.

3. The provisions of paragraphs 1 and 2 shall not apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political sub-division or a local authority thereof. In such a case, the provisions of Articles 14, 15 and 17 shall apply.

Article 19

PROFESSORS AND TEACHERS

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

2. This Article shall not apply to remuneration which a professor or teacher receives for conducting research if the research is undertaken primarily for the private benefit of a specific person or persons.

Article 20

STUDENTS AND TRAINEES[20]

Where a student or a trainee, who is a resident of one of the Contracting States or who was a resident of that State immediately before visiting the other Contracting State and who is temporarily present in the other State solely for the purpose of his education or training, receives payments from sources outside the other State for the purpose of his maintenance, education or training, those payments shall be exempt from tax in the other State.[21]

Article 21[22]

OTHER INCOME

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

2. The provisions of paragraph 1 shall not apply to income, other than income from land as defined in paragraph 2 of Article 6, derived by a resident of one of the Contracting States where that income is effectively connected with a permanent establishment situated in the other Contracting State. In that case the provisions of Article 7 shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of one of the Contracting States not dealt with in the foregoing articles of this Agreement from sources in the other Contracting State may also be taxed in the other Contracting State.

Article 22

SOURCES OF INCOME AND GAINS[23]

Income or gains derived by a resident of one of the Contracting States which, under any one or more of Articles 6 to 8, 10 to 16 and 18 may be taxed in the other Contracting State, shall for the purpose of Article 23, and of the income tax law of that other State, be deemed to be income from sources in that other State.[24]

Article 23[25]

METHODS OF ELIMINATION OF DOUBLE TAXATION

1. The laws in force in each of the Contracting States shall continue to govern the taxation of income in that Contracting State except where provision to the contrary is made in this Agreement. Where income is subject to tax in both Contracting States, relief from double taxation shall be given in accordance with the following paragraphs.

2. In the case of Malaysia, subject to the law of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, the amount of Australian tax payable under the law of Australia and in accordance with the provisions of this Agreement, by a resident of Malaysia in respect of income from sources within Australia 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 Australia to a company which is a resident of Malaysia and which owns not less than 10 per cent of the voting shares

[20] As amended by Article 7(a) of the First Amending Protocol.
[21] As amended by Article 7(b) of the First Amending Protocol.
[22] As amended by Article 4 of the Second Amending Protocol.
[23] As amended by Article 8(a) of the First Amending Protocol.
[24] As amended by Article 8(b) of the First Amending Protocol.
[25] As amended by Article 9 of the First Amending Protocol.

of the company paying the dividend, the credit shall take into account Australian 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.

3.

a) Subject to the provisions of the law of Australia from time to time in force which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia (which shall not affect the general principle hereof), Malaysian 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 Australia from sources in Malaysia shall be allowed as a credit against Australian tax payable in respect of that income.

b) Where a company which is a resident of Malaysia and is not a resident of Australia for the purposes of Australian tax pays a dividend to a company which is a resident of Australia and which controls directly or indirectly not less than 10 per cent of the voting power of the first-mentioned company, the credit referred to in subparagraph (a) shall include the Malaysian tax paid by that first-mentioned company in respect of that portion of its profits out of which the dividend is paid.

4. For the purposes of paragraph 5, the term “Malaysian tax forgone” means an amount which, under the laws of Malaysia and in accordance with this Agreement, would have been payable as Malaysian tax on income had that income not been exempted either wholly or partly from Malaysian tax in accordance with Schedules 7A and 7B of the Income Tax Act 1967 of Malaysia or sections 22, 23, 29, 29A, 29B, 29C, 29D, 29E, 29F, 29G, 29H, 31E, 35, 37 and 41B of the Promotion of Investments Act 1986 of Malaysia and section 45 of that Act to the extent that it relates to sections 21, 22, 26, or 30Q of the Investment Incentives Act 1968, so far as the sections were in force on, and have not been modified since, the date of signature of the Protocol second amending the Agreement or have been modified only in minor respects so as not to affect their general character.[26]

5. Notwithstanding the operation of paragraph 4, Malaysian tax forgone shall not be deemed to have been paid in respect of income derived from:

a) banking, insurance, consulting, accounting, auditing or similar services; or

b) the operation of ships or aircraft, other than ships or aircraft operated principally from places in Malaysia and used solely in carrying on a business in Malaysia; or

c) any scheme entered into by an Australian resident with the purpose of using Malaysia as a conduit for income or as a location of property in order to evade or avoid Australian tax through the exploitation of the Australian foreign tax credit provisions or to confer a benefit on a person who is neither a resident of Australia, nor of Malaysia.[27]

6. For the purposes of subparagraph (a) or (b) of paragraph 3, Malaysian tax forgone which answers the description in paragraph 4 and is not of a type referred to in paragraph 5 shall be deemed to be Malaysian tax paid.[28]

7. Paragraphs 4, 5 and 6 shall not apply in relation to income derived in any year of income after the year of income that ends on 30 June 2003.[29]

[26] As amended by Article 5(a) of the Second Amending Protocol.
[27] As amended by Article 5(a) of the Second Amending Protocol.
[28] As amended by Article 5(a) of the Second Amending Protocol.
[29] As amended by Article 5(a) of the Second Amending Protocol.

8. If in an Agreement for the avoidance of double taxation that is subsequently made between Australia and a third State, Australia should agree -

a) in relation to dividends that are derived by a company which is a resident of Australia from a company which is a resident of the third State, to give credit for tax paid on the profits out of which the dividends are paid on the basis of a test of beneficial ownership by the first-mentioned company of less than 10 per cent of the paid-up share capital of the second-mentioned company; or

b) to give relief from Australian tax of the kind that is provided for in relation to Malaysia in paragraphs 4 and 6, on a basis that, other than in minor respects, is more favourable in relation to the third State than that so provided for,

the Government of Australia shall immediately inform the Government of Malaysia and shall enter into negotiations with the Government of Malaysia with a view to providing treatment in relation to Malaysia comparable with that provided in relation to that third State.[30]

9. Where gains derived by a resident of Australia are subject to real property gains tax in Malaysia, that tax shall, for the purposes of subparagraph 3(a), be deemed to be Malaysian tax.[31]

Article 24

MUTUAL AGREEMENT PROCEDURE

1. **[REPLACED by paragraph 1 of Article 16 of the MLI]** *Where a resident of one of the Contracting States considers that the actions of the competent authority 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 Contracting State of which he is a resident. The case must be presented within two years from the first notification of the action.*

The following paragraph 1 of Article 16 of the MLI replaces paragraph 1 of Article 24 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 [*the 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 [*the Agreement*].

2. **[The second sentence of paragraph 2 of Article 24 of this Agreement is REPLACED by the second sentence of paragraph 2 of Article 16 of the MLI]** The competent authority shall endeavour, if the taxpayer's claim appears to it to be justified and if it is not itself able to arrive at an appropriate 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. *If the claim is made within six years of the end of the year of assessment or year of tax, as the case may be, the solution*

[30] As amended by Article 5(b) of the Second Amending Protocol.
[31] As amended by Article 5(c) of the Second Amending Protocol.

so reached shall be implemented notwithstanding any time limits in the taxation laws of the Contracting States.

The following second sentence of paragraph 2 of Article 16 of the MLI replaces the second sentence of paragraph 2 of Article 24 of this Agreement:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

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 jointly endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement.*

The following second sentence of paragraph 3 of Article 16 of the MLI applies to this Agreement:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

They may also consult together for the elimination of double taxation in cases not provided for in [t*he Agreement*].

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Agreement.

5. For the purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Agreement may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 3 of this Article or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.[32]

Article 25[33]

EXCHANGE OF INFORMATION

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

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State

[32] Inserted by Article 6 of the Second Amending Protocol.

[33] As amended by Article 1 of the *Third Protocol amending the Agreement between the Government of Australia and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income as amended by the First Protocol of 2 August 1999 and the Second Protocol of 28 July 2002* (2011) ATS 27 (Third Amending Protocol).

and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

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

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

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

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

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

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

Article 26

DIPLOMATIC AND CONSULAR OFFICIALS

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

Article 27

LIMITATION OF RELIEF

1. Where this Agreement provides (with or without other conditions) that income from sources in a Contracting State shall be relieved wholly or partly from tax in that State, and under the laws in force in the other Contracting State the said income is subject to tax by reference to the amount thereof which is remitted to or received in that other State and not by reference to the full amount thereof, then the relief to be allowed under this Agreement in the first-mentioned State shall apply only to so much of the income as is remitted to or received in that other State;[34]

[34] As amended by Article 7 of the Second Amending Protocol.

Provided that where -

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

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

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

2. Persons entitled to a particular tax treatment under:

a) a law of one of the Contracting States which has been identified in an Exchange of Letters between the Contracting States; or

b) any law substantially similar to such an identified law which is subsequently enacted by the relevant Contracting State,

shall not be entitled to any benefit of this Agreement.[35]

3. In the event of either Contracting State becoming aware of a substantially similar law of the type referred to in subparagraph (b) of paragraph 2, the Contracting States shall consult each other with a view to identifying such law in an Exchange of Letters.[36]

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 […] 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*].

[35] Inserted by Article 7 of the Second Amending Protocol.
[36] Inserted by Article 7 of the Second Amending Protocol.

Article 28

ENTRY INTO FORCE

This Agreement shall come into force on the date on which the Government of Australia and the Government of Malaysia 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 Australia and in Malaysia, as the case may be, and thereupon this Agreement shall have effect -

a) in Australia -

   (i) in respect of withholding tax on income that is derived by a non-resident, in respect of income derived on or after 1 July 1979;

   (ii) in respect of other Australian tax, for any year of income beginning on or after 1 July 1979;

b) in Malaysia - in respect of Malaysian tax, for the year of assessment beginning on 1 January 1980, and subsequent years of assessment.

Article 29

TERMINATION

This Agreement shall continue in effect indefinitely, but the Government of Australia or the Government of Malaysia may on or before 30 June in any calendar year after the year 1982 give to the other Government through the diplomatic channel written notice of termination and, in that event this Agreement shall cease to be effective -

a) in Australia -

   (i) in respect of withholding tax on income that is derived by a non-resident, in respect of income derived on or after 1 July in the calendar year next following that in which the notice of termination is given;

   (ii) in respect of other Australian tax, for any year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given;

b) in Malaysia - in respect of Malaysian tax, for the year of assessment beginning on 1 January in the second calendar year next following that in which the notice of termination is given, and subsequent years of assessment.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Agreement.

DONE in duplicate in the English and the Bahasa Malaysia language, both texts being equally authentic, at Canberra this twentieth day of August One thousand nine hundred and eighty.

FOR THE GOVERNMENT OF AUSTRALIA:	FOR THE GOVERNMENT OF MALAYSIA:
JOHN HOWARD	AWANG BIN HASSAN