

**SYNTHESISED TEXT
OF THE MLI AND THE CONVENTION BETWEEN
THE GOVERNMENT OF MALAYSIA AND THE GOVERNMENT
OF THE ISLAMIC REPUBLIC OF PAKISTAN
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME**

General disclaimer on the Synthesised text document

This document presents the synthesised text for the application of the Convention between the Islamic Republic of Pakistan and Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed on 29 May 1982 (the “Convention”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the Islamic Republic of Pakistan on 7 June 2017 and by Malaysia on 24 January 2018 (the “MLI”).

The document was prepared on the basis of the MLI position of the Islamic Republic of Pakistan submitted to the Depositary upon ratification on 18 December 2020 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 this Convention.

The authentic legal texts of the Convention 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 Convention are included in boxes throughout the text of this document in the context of the relevant provisions of the Convention. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the 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 Convention (such as “Covered Tax Agreement” and “Convention”, “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made to parts of provisions of the MLI that describe existing provisions of the Convention: descriptive language has been replaced by legal references of the existing provisions to ease the readability.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 Convention or to the Convention must be understood as referring to the Convention as modified by the provisions of the MLI, provided such provisions of the MLI have taken effect.

References

The authentic legal texts of the MLI and the Convention can be found on the webpages of the Federal Board of Revenue (FBR) <https://fbr.gov.pk/dtaa/132245/132249>

The MLI position of the Islamic Republic of Pakistan submitted to the Depositary upon ratification on 18 December 2020 and of the MLI position of Malaysia submitted to the Depositary upon ratification on 18 February 2021 can be found on the MLI Depositary (OECD) webpage <http://www.oecd.org/tax/treaties/beps-mlt-signatories-and-parties.pdf>

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

Entry into Effect of the MLI Provisions

The provisions of the MLI applicable to this Convention do not take effect on the same dates as the original provisions of the Convention. 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 the Islamic Republic of Pakistan and Malaysia in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval: 18 December 2020 for the Islamic Republic of Pakistan and 18 February 2021 for Malaysia.

Entry into force of the MLI: 1 April 2021 for the Islamic Republic of Pakistan and 1 June 2021 for Malaysia.

Unless it is stated otherwise elsewhere in this document, the provisions of the MLI shall have effect in accordance with paragraph 1 and 2 of Article 35 of the MLI, in each Contracting State with respect to the Convention:

(i) in Pakistan:

- (aa) 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 the first day of the next taxable period that begins on or after June 1, 2021; and
- (bb) with respect to all other taxes levied by Pakistan, for taxes levied with respect to taxable periods beginning on or after December 1, 2021; and

(ii) in Malaysia:

- (aa) 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 January 1, 2022; and
- (bb) with respect to all other taxes levied by Malaysia, for taxes levied with respect to taxable periods beginning on or after December 1, 2021.

Article 16 (Mutual Agreement Procedure) of the MLI has effect with respect to the Convention for a case presented to the competent authority of a Contracting State on or after 1 April 2021 except for cases that were not eligible to be presented as of that date under the Convention prior to its modification by the MLI, without regard to the taxable period to which the case relates.

**AGREEMENT BETWEEN THE GOVERNMENT OF MALAYSIA
AND THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF
PAKISTAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND
THE PREVENTION OF FISCAL EVASION WITH RESPECT TO
TAXES ON INCOME**

The Government of Malaysia and the Government of the Islamic Republic of Pakistan,

[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 Convention:

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

Intending to eliminate double taxation with respect to the taxes covered by [*this Convention*] 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 [*this Convention*] 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.

Article 2

Taxes Covered

1. This Agreement shall apply to taxes on income imposed by each Contracting State, irrespective of the manner in which they are levied.

2. The existing taxes to which this Agreement shall apply are:

- (a) in the case of Malaysia:
 - i. income tax and excess profit tax;
 - ii. supplementary income taxes, that is, tin profits tax, development tax and timber profits tax; and
 - iii. petroleum income tax;
(hereinafter referred to as "Malaysian tax");

(b) in the case of Pakistan:

- i. the income tax;
- ii. the super tax; and
- iii. surcharge;
(hereinafter referred to as "Pakistan tax").

3. The Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes by either Contracting State. The competent authorities of the Contracting States shall notify to each other any significant changes which have been made in their respective taxation laws.

Article 3

Definitions

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

- (a) the term "Malaysia" means the Federation of Malaysia and includes any area adjacent to the territorial waters of Malaysia which, in accordance with international law, has been or may hereafter be designated under the laws of Malaysia as an area within which the rights of Malaysia with respect to the sea bed and sub-soil and their natural resources may be exercised;
- (b) the term "Pakistan" means Pakistan as defined in the Constitution of the Islamic Republic of Pakistan and includes any area outside the territorial waters of Pakistan which under the laws of Pakistan is an area within which the rights of Pakistan with respect to the sea bed and sub-soil and their natural resources may be exercised;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Malaysia or Pakistan 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 term "tax" means Malaysian tax or Pakistan tax, as the context requires;
- (g) 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;
- (h) the term "national" means:

- (i) any individual possessing the nationality or citizenship of a Contracting State;
- (ii) any legal person, partnership, association and any other entity deriving its status as such from the law in force in a Contracting State;
- (i) the term "competent authority" means:
 - in Malaysia, the Minister of Finance or his authorised representative;
 - in Pakistan, the Central Board of Revenue;
- (j) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

2. As regards 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 laws of that State relating to the taxes which are the subject of this Agreement.

Article 4

Residence

1. For the purposes of this Agreement, a person is a resident of a Contracting State:
 - (a) in the case of Malaysia, if the person is resident in Malaysia for the purposes of Malaysian tax; and
 - (b) in the case of Pakistan, if the person is a resident of Pakistan for the purposes of Pakistan tax.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, his status shall be determined in accordance with the following rules:
 - (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);
 - (b) if the Contracting State in which he has his centre of vital interests cannot be determined or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
 - (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
 - (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question and to determine the mode of application of this Agreement to such person.

Article 5

Permanent Establishment

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business in which the business of the 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 warehouse;
- (g) a mine, oil or gas well, quarry or other place of extraction of natural resources;
- (h) a farm or plantation;
- (i) a place of extraction of timber or forest produce;
- (j) a building site or construction or assembly project which exists for a period of more than 6 months.

[MODIFIED by paragraph 2 and paragraph 4 of Article13 of the MLI]

3. [The term "permanent establishment" shall not be deemed to include:

- (a) the use of facilities solely for the purpose of storage or the maintenance of a stock of goods or merchandise, whether in a warehouse or not, solely for the convenience of delivery of the goods or merchandise belonging to the enterprise, unless paragraph 5 applies;
- (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 for collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.]

The following paragraph 2 of Article 13 of the MLI of applies with respect to-paragraph 3 of Article 5 of this Convention:

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

Notwithstanding [Article 5 of the Convention], the term “permanent establishment” shall be deemed not to include:

- a) the activities specifically listed in [paragraph 3 of Article 5 of the Convention] 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 Convention:

[Paragraph 3 of Article 5 of this Convention, {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 this Convention]; 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 a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if:

- (a) it carries on supervisory activities in that other State for a period of more than 6 months in connection with the construction, installation or assembly project which is being undertaken in that other State; or

- (b) it furnishes services (including consultancy services) in that other State where the activities in connection with a project continue for a period of more than 6 months; or
- (c) substantial equipment (other than that used for activities referred to in paragraph 2(j)) is in the other State being used or installed by, for or under contract with, the enterprise.

5. A person acting in a Contracting State 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 in the first-mentioned State, if:

[REPLACED by paragraph 1 of Article 12 of the MLI]

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

The following paragraph 1 of Article 12 of the MLI replaces subparagraph a) of paragraph 5 of Article 5 of this Convention:

**ARTICLE 12 OF THE MLI - ARTIFICIAL AVOIDANCE OF PERMANENT
ESTABLISHMENT STATUS THROUGH COMMISSIONNAIRE
ARRANGEMENTS AND SIMILAR STRATEGIES**

Notwithstanding [Article 5 of this Convention], but subject to [paragraph 2 of Article 12 of the MLI], where a person is acting in a [Contracting State] on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are:

- a) in the name of the enterprise; or
- b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use; or
- c) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that [Contracting State] in respect of any activities which that person undertakes for the enterprise unless these activities, if they were exercised by the enterprise through a fixed place of business of that enterprise situated in that [Contracting State], would not cause that fixed place of business to be deemed to constitute a permanent establishment under the definition of permanent establishment included in the provisions of [Article 5 of this Convention].

- (b) he has no such authority, but maintains in the first-mentioned State a stock of goods or merchandise from which he regularly fills orders on behalf of the enterprise.

[REPLACED by paragraph 2 of Article 12 of the MLI]

6. [An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that

other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of business, except where such an agent carries on business wholly or almost wholly for that enterprise itself or for that enterprise and other enterprises which are controlled by it or have a controlling interest in it.]

The following paragraph 2 of Article 12 of the MLI replaces paragraph 6 of Article 5 of this Convention:

**ARTICLE 12 OF THE MLI - ARTIFICIAL AVOIDANCE OF PERMANENT
ESTABLISHMENT STATUS THROUGH COMMISSIONNAIRE
ARRANGEMENTS AND SIMILAR STRATEGIES**

[*Paragraph 1 of Article 12 of the MLI*] shall not apply where the person acting in a [*Contracting State*] on behalf of an enterprise of the other [*Contracting State*] carries on business in the first-mentioned [*Contracting State*] as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

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.

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

**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 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 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. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, oil or gas wells, quarries and other places of extraction of natural resources or of timber or other forest produce. Ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent professional services.

Article 7

Business Income or 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 attributable to:
 - (a) that permanent establishment; or
 - (b) sales within that other State of goods or merchandise of the same or similar kind as those sold, or from other business activities of the same or similar kind as those affected, through 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 income or profits which it might be expected to make if it were 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 the determination of the income or profits of a permanent establishment, there shall be allowed as deduction all expenses, including executive and general administrative expenses, which would be deductible if the permanent establishment were an independent enterprise, in so far as they are reasonably allocable to the permanent establishment, whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. In so far as it has been customary in a Contracting State to determine the income or profits to be attributed to a permanent establishment on the basis of an apportionment of the total income or profits of the enterprise to its various parts, nothing in paragraph 2 or paragraph 3 of this Article shall preclude such Contracting State from determining the income or profits to be taxed by such apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles laid down in this Article.

5. 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.

6. For the purpose of the preceding paragraphs, the income or 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. Where income or profits include items of income or profits which are dealt with separately in other Articles of this Agreement, 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 ships or aircraft in international traffic shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1 of Article 7, profits derived from the operation of ships or aircraft solely between places in a Contracting State may be taxed in that State.

3. The provisions of paragraphs 1 and 2 shall also apply to profits derived by an enterprise of a Contracting State from its participation in a pool, a joint business or in an international operating agency.

Article 9

Associated Enterprises

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.

The following paragraph 1 of Article 17 of the MLI applies and supersedes the provisions of this Convention:

ARTICLE 17 OF THE MLI – CORRESPONDING ADJUSTMENTS

Where a [Contracting State] includes in the profits of an enterprise of that [Contracting State] - and taxes accordingly - profits on which an enterprise of the other [Contracting State] has been charged to tax in that other [Contracting State] and the profits so included are profits which would have accrued to the enterprise of the first-mentioned [Contracting State] if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other [Contracting State] shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of [the Convention] and the competent authorities of the [Contracting States] shall if necessary consult each other.

Article 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. Dividends paid by a company which is a resident of Pakistan to a resident of Malaysia may be taxed in Pakistan according to the laws of Pakistan, but if the recipient company is the beneficial owner of the dividends the tax so charged shall not exceed:

(a) 15% of the gross amount of the dividends, if the recipient company holds directly at least 20% of the capital of the company paying the dividends and the latter company is engaged in an industrial undertaking;

(b) 20% of the gross amount of the dividends in all other cases.

3. Dividends paid by a company resident in Malaysia to a resident of Pakistan who is subject to Pakistan tax in respect 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:

Provided that nothing in this paragraph shall affect the provisions of the Malaysian law under which the tax in respect of a dividend paid by a company resident in 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.

(a) The term "dividends" as used in this Article means income from shares or right, not being debt-claims, participating in profits or income, as well as income from other corporate rights assimilated to income from shares by the taxation laws of the Contracting State of which the company making the distribution is a resident.

- (b) The term "industrial undertaking" as used in this Article means an undertaking engaged in—
- (i) the manufacture of goods or materials or the subjection of goods or materials to any process which results in substantially changing their original condition;
 - (ii) ship-building;
 - (iii) electricity, hydraulic power, gas and water supply;
 - (iv) mining including working of an oil or gas well or the source of any mineral deposit; and
 - (v) any other undertaking, which may be agreed to by the competent authorities to be an industrial undertaking for the purposes of this Article.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient 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.

7. The provisions of this Article shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

Article 11

Interest

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

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 15 per cent of the gross amount.

3. Notwithstanding the provisions of paragraphs 1 and 2, interest derived from a Contracting State by a resident of the other Contracting State who is the beneficial owner thereof shall be exempt from tax in the first-mentioned State if the loan or other indebtedness in respect of which the interest is paid is either approved for the purposes of such exemption or the exemption is otherwise available under the tax laws of the first-mentioned State.

4. The Government of a Contracting State shall be exempt from tax in the other Contracting State with respect to interest derived by such Government from that other State. For the purposes of this paragraph, the term "Government" means:

(a) in the case of Malaysia, the Government of Malaysia and shall include—

- (i) the Governments of the States;
- (ii) the local authorities;
- (iii) the Bank Negara Malaysia; and
- (iv) such institutions, the capital of which is wholly owned by the Government of Malaysia or the Government of the States or the local authorities, as may be agreed from time to time between the two competent authorities;

(b) in the case of Pakistan, the Government of Pakistan and shall include—

- (i) Governments of the Provinces;
- (ii) the local authorities;
- (iii) the State Bank of Pakistan; and
- (iv) such institutions, the capital of which is wholly owned by the Government of Pakistan or the Governments of the Provinces or the local authorities, as may be agreed from time to time between the two competent authorities.

5. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein 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.

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, including premiums and prizes attaching to such bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purposes of this Article.

7. 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.

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

Article 12

Royalties

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

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 15% of the gross amount of the royalties.

3. Notwithstanding the provisions of paragraph 2, approved industrial royalties derived from Malaysia by a resident of Pakistan shall be exempt from Malaysian tax.

4. The term "royalties" as used in this Article means payments of any kind received as consideration for:

(a) the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, any copyright of literary, artistic or scientific work, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience;

(b) the use of, or the right to use, cinematograph films, or tapes for television or broadcasting.

5. The term "approved industrial royalties" means royalties as defined in sub-paragraph 4(a) which are approved and certified by the competent authority of Malaysia as payable for the purpose of promoting industrial development in Malaysia and which are payable by an enterprise which is wholly or mainly engaged in activities falling within one of the following classes:

(a) manufacturing, assembling or processing;

(b) construction, civil engineering or ship-building; or

(c) electricity, hydraulic power, gas or water supply.

6. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient 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 and the

right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

7. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority or statutory body thereof 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 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.

8. Where, owing to 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, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13

Capital Gains

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6, may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of moveable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such permanent establishment (alone or together with the whole enterprise) may be taxed in the other State. However, gains from the alienation of ships and aircraft operated by an enterprise of a Contracting State in international traffic and moveable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.

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

Article 14

Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State. However, in the following circumstances such income may be taxed in the other Contracting State, that is to say:

- (a) if his stay in the other State is for a period or periods amounting to or exceeding in the aggregate 183 days in the fiscal year; or
- (b) if the remuneration for his services in the other State is either derived from residents of that State or is borne by a permanent establishment which a person not resident in that

State has in that State and which, in either case exceeds US\$3,000 in the fiscal year, notwithstanding that his stay in that State is for a period or periods amounting to less than 183 days during the fiscal year.

2. The term "professional services" includes 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, 17, 18 and 19 salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State in any fiscal year shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned;
- (b) the services or activities are exercised or performed for or on behalf of an employer who is not a resident of the other State; and
- (c) the remuneration is not directly deductible from the income of a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, the 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

1. Directors's fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the Board of Directors or a similar organ of a company which is a resident of the other Contracting State, shall be taxable only in that other State.

2. The provisions of paragraph 1 shall likewise apply to officials of a company in top level managerial positions in respect of payments received in that capacity from the company.

Article 17

Artistes and Athletes

1. Notwithstanding the provisions of Article 14, income derived by public entertainers (such as theatre, motion picture, radio or television artistes and musicians) or athletes (such as wrestlers or boxers), from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.
2. Notwithstanding the provisions of Article 7, where the personal activities referred to in paragraph 1 are provided in a Contracting State by an enterprise of the other State, the profits derived from providing these activities by such an enterprise may be taxed in the first-mentioned State.
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 State, or a political sub-division, a local authority or statutory body thereof.

Article 18

Pensions

1. Subject to the provisions of paragraph 2 of Article 19, pensions, annuities and other similar remuneration paid to a resident of a Contracting State shall be taxable only in that State.
2. The term "pensions, annuities and other similar remuneration", as used in this Article, means periodic payments made after retirement in consideration of past employment or by way of compensation for injuries received in connection with past employment.

Article 19

Government Service

1.
 - (a) Remuneration, other than a pension, paid by a Contracting State or a political sub-division or a local authority to an individual in respect of services rendered to that State or sub-division or local authority 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 State and the recipient is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering 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 an individual in respect of services rendered in that State or sub-division or local authority thereof shall be taxable only in that State.

3. The provisions of Articles 14, 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political sub-division, or a local authority thereof.

Article 20

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 State for a period not exceeding 2 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 State on any remuneration for such teaching or research.

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 21

Students and Apprentices

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 as a student at a recognised university, college, school or other similar recognised educational institution in that other State or as a business or technical apprentice therein, for a period not exceeding 5 years from the date of his first arrival in that other State in connection with that visit, shall be exempt from tax in that other State on:

- (a) all remittances from abroad for the purposes of his maintenance, education or training; and
- (b) any remuneration not exceeding US\$2,500 for personal services rendered in that other State with a view to supplementing the resources available to him for such purposes.

2. 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 for the purposes of study, research or training solely as a recipient of a grant, allowance or award from the Government of either State or from a scientific, educational, religious or charitable organization or under a technical assistance programme entered into by the Government of either State for a period not exceeding 5 years from the date of his first arrival in that other State in connection with that visit shall be exempt from tax in that other State on:

- (a) the amount of such grant, allowance or award;
- (b) all remittances from abroad for the purposes of his maintenance, education or training; and
- (c) any remuneration not exceeding US\$2,500 in respect of services in that other State provided the services are performed in connection with his study, research or training or are incidental thereto.

3. 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 as an employee of, or under contract with, the Government or an enterprise of the first-mentioned State solely for the purpose of acquiring technical, professional or business experience for a period not exceeding 12 months from the date of his arrival in the other State in connection with that visit shall be exempt from tax in that other State on:

(a) all remittances from abroad for the purposes of his maintenance, education or training; and

(b) any remuneration not exceeding US\$2,500 for personal services rendered in that other State provided such services are in connection with his studies or training or are incidental thereto.

4. For the purposes of this Article the term "Government" shall have the same meaning as in paragraph 4 of Article 11.

Article 22

Income Not Expressly Mentioned

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles shall be taxable only in that State except that if such income is derived from sources in the other Contracting State, it may also be taxed in that other State.

Article 23

Elimination of Double Taxation

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

2. In the case of Pakistan, subject to the provisions of the laws of Pakistan regarding the allowance as a credit against Pakistan tax, the amount of Malaysian tax payable, under the laws of Malaysia and in accordance with the provisions of this Agreement, whether directly or by deduction, by a resident of Pakistan, in respect of income from sources within Malaysia which has been subjected to tax both in Pakistan and Malaysia, shall be allowed as a credit against the Pakistan tax payable in respect of such income but in an amount not exceeding that proportion of Pakistan tax which such income bears to the entire income chargeable to Pakistan tax.

3. In the case of Malaysia, subject to the provisions of the laws of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, Pakistan tax payable (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) under the laws of Pakistan and in accordance with the provisions of this Agreement, whether directly or by deduction, by a resident of Malaysia in respect of income from sources within Pakistan which has been subjected to tax both in Pakistan and Malaysia shall be allowed as a credit against

Malaysian tax payable in respect of such income but in an amount not exceeding that proportion of Malaysian tax which such income bears to the entire income chargeable to Malaysian tax.

4. For the purposes of allowance as a credit against the tax payable in Malaysia or Pakistan, as the context requires, the tax payable in a Contracting State shall be deemed to include the tax which is otherwise payable in that State but has been reduced or exempted by that State in pursuance of its tax incentive programme.

Article 24

Limitation of Relief

Where this Agreement provides (with or without other conditions) that income from sources in a Contracting State shall be exempt from tax, or taxed at a reduced rate, 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 exemption or reduction of tax to be allowed under this Agreement in the first-mentioned State shall apply to so much of the income as is remitted to or received in that other State:

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 hereby 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 in this Agreement.

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 requirements 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 and under the same conditions 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 in the same circumstances and under the same conditions.

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 any requirement

connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected in the same circumstances and under the same conditions.

4. Nothing in this Article shall be construed as obliging a Contracting State to grant to nationals of the other Contracting State not resident in the first-mentioned State those personal allowances, reliefs, rebates and reductions for taxation purposes which are by law available only to nationals of the first-mentioned State or to such other persons as may be specified in such law who are not resident in that first-mentioned State.

5. In this Article, the term "taxation" means taxes which are the subject of this Agreement.

Article 26

Mutual Agreement Procedure

[REPLACED by paragraph 1 of Article 16 of the MLI]

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 the provisions of this Agreement, he may, irrespective of 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 or, if his case comes under paragraph 1 of Article 25 to that Contracting State of which he is a national. An application must be presented in writing stating the grounds for claiming the revision of such taxation within two years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.]

The following first sentence of paragraph 1 of Article 16 of the MLI replaces the first sentence of paragraph 1 of Article 26 of the Convention:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

Where a person considers that the actions of one or both of the [*Contracting States*] result or will result for that person in taxation not in accordance with the provisions of [*this Convention*], 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 following second sentence of paragraph 1 of Article 16 of the MLI replaces the second sentence of paragraph 1 of Article 26 of this Convention:

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 Convention*].

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at 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 which is not in accordance with this Agreement.

The following second sentence of paragraph 2 of Article 16 of the MLI applies to this Convention:

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 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 Convention:

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 [the Convention].

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.

Article 27

Exchange of Information

1. The competent authorities shall exchange such information (being information available under the respective taxation laws of the Contracting State) as is necessary for carrying out the provisions of this Agreement or for the prevention of fraud or for the administration of statutory provisions against avoidance of the taxes to which this Agreement applies by virtue of Article 2.

2. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those (including a Court or reviewing authority) concerned with the assessment or collection of the taxes to which this Agreement applies by virtue of Article 2 or the determination of appeals in relation thereto.

3. No information shall be exchanged which would disclose any trade secret or trade process, or which would be contrary to public policy.

Article 28

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.

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

ARTICLE 7 OF THE MLI - PREVENTION OF TREATY ABUSE (Principal purposes test provision)

Notwithstanding any provisions of [*this Convention*], a benefit under [*this Convention*] 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 [*this Convention*].

Article 29

Territorial Extension

1. This Agreement may be extended, either in its entirety or with any necessary modifications, to any State or territory for whose international relations either of the Contracting States is responsible and which imposes taxes substantially similar in character to those to which this Agreement applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Contracting States in Notes to be exchanged through diplomatic channels.

2. Unless otherwise agreed by both Contracting States, the termination of this Agreement by one of them under Article 31 shall terminate, in the manner provided for in that Article, the application of this Agreement to any State or territory to which it has been extended under this Article.

Article 30

Entry Into Force

1. This Agreement shall be ratified and the instruments of ratification shall be exchanged at Kuala Lumpur as soon as possible.

2. The Agreement shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect in respect of the income arising on or after the first day of January 1980.

Article 31

Termination

This Agreement shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the first day of January 1980, give to the other Contracting State, through diplomatic channels, written notice of termination and, in such event, the Agreement shall cease to have effect in respect of the income arising on or after the first day of January of the calendar year following the year in which the notice of termination is given.

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

Done in duplicate at Islamabad, this 29th day of May 1982, each in Bahasa Malaysia and in the English language, the two texts being equally authentic.

FOR THE GOVERNMENT OF MALAYSIA

FOR THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF PAKISTAN

Final Protocol

At the time of signing the Agreement between the Government of Malaysia and the Government of the Islamic Republic of Pakistan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed that the following provisions shall form an integral part of the Agreement.

2. In connection with Article 10 "Dividends":

Where, for the purposes of Article VII of the Agreement between the Government of Malaysia and the Government of the Republic of Singapore for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed in Singapore on 26th December, 1968--

(a) a dividend was paid by a company—

- (i) which was resident in both Malaysia and Singapore and the meeting at which the dividend was declared was held in Malaysia; or
- (ii) which was resident in Singapore and at the time of payment of that dividend the company declared itself to be a resident of Malaysia,

the dividend shall be deemed to have been paid by a company resident in Malaysia;

(b) a dividend was paid by a company—

- (i) which was resident in both Malaysia and Singapore and the meeting at which the dividend was declared was held in Singapore; or
- (ii) which was resident in Malaysia and at the time of payment of that dividend the company declared itself to be a resident of Singapore,

the dividend shall be deemed to have been paid by a company resident in Malaysia.

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

Done in duplicate at Islamabad, this 29th day of May 1982, each in Bahasa Malaysia and in the English language, the two texts being equally authentic.

FOR THE GOVERNMENT OF MALAYSIA

FOR THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF PAKISTAN
