

## MALAYSIA

### ANNOUNCEMENT IN TERMS OF ARTICLE 32(8) OF THE NAMIBIAN CONSTITUTION OF AN AGREEMENT ENTERED INTO BY THE GOVERNMENT OF THE REPUBLIC OF NAMIBIA AND THE GOVERNMENT OF MALAYSIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

(GN 46 *Government Gazette* 3284 of 24 September 2004)

In terms of Article 32(8) of the Namibian Constitution, read with section 100(1) of the Income Tax Act, 1981 (Act No. 24 of 1981), I announce that the Government of the Republic of Namibia has on 28 July 1998 entered into an agreement with the Government of Malaysia providing for arrangements with a view to the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

A copy of the agreement, containing the arrangements made, is set out in the Schedule to this Proclamation.

Given under my Hand and the Seal of the Republic of Namibia at Windhoek this 10th day of August, Two Thousand and Four.

S. Nujoma

President

By order of the President-in-Cabinet

#### SCHEDULE

Agreement between the Government of the Republic of Namibia and the Government of Malaysia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

The Government of the Republic of Namibia and the Government of Malaysia desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

#### ARTICLE 1

##### *Personal Scope*

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

#### ARTICLE 2

##### *Taxes Covered*

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

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

(a) in Namibia:

- (i) the income tax;
  - (ii) the non-resident shareholders' tax; and
  - (iii) the petroleum income tax;
- (hereinafter referred to as "Namibian tax").

(b) in Malaysia:

- (i) the income tax; and
  - (ii) the petroleum income tax;
- (hereinafter referred to as "Malaysian tax");

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3. This Agreement shall apply also 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 taxes referred to in paragraph 2. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

### ARTICLE 3

#### *General Definitions*

1. For the purposes of this Agreement, unless the context otherwise requires:
  - (a) the term "Namibia" means the Republic of Namibia and when used in a geographical sense, includes the territorial sea as well as the exclusive economic zone and the continental shelf, over which Namibia exercises sovereign rights in accordance with its internal law and subject to international law, concerning the exploration and exploitation of the natural resources of the sea-bed and its subsoil and the superjacent waters;
  - (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 be hereafter be designated under the laws of Malaysia as in accordance with international law as an area over which Malaysia has sovereign rights for the purposes of exploring and exploiting the natural resources, whether living or non-living;
  - (c) the terms "a Contracting State" and "the other Contracting State" mean Malaysia or Namibia, as the context requires;
  - (d) the term "person" includes an individual, a company and any other body of persons which is treated as a person for tax purposes;
  - (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
  - (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
  - (g) the term "international traffic" means any transport by ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
  - (h) the term "national" means:
    - (i) (aa) in the case of Namibia, any individual possessing the nationality of Namibia; and  
(ab) in the case of Malaysia, any individual possessing the citizenship of Malaysia;
    - (ii) any legal person, partnership and association deriving its status as such from the law in force in a Contracting State;
  - (i) the term "competent authority" means:
    - (i) in the case of Namibia, the Minister of Finance or his or her authorised representative;
    - (ii) in the case of Malaysia, the Minister of finance or his authorised representative;
  - (j) the term "tax" means Namibian tax or Malaysian tax, as the context requires.
3. As regards the application of this Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which this Agreement applies.

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### ARTICLE 4

#### *Resident*

1. For the purposes of this Agreement, the term "resident of a Contracting State" means:
  - (a) in the case of Namibia, any individual who is ordinarily resident in Namibia and any legal person which has its place of management in Namibia; and
  - (b) in the case of Malaysia, a person who is resident in Malaysia for the purposes of Malaysian tax.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his or her status shall be determined as follows:
  - (a) he or she shall be deemed to be a resident of the State in which he or she has a permanent home available to him or her; if he or she has a permanent home available to him or her in both States, he or she shall be deemed to be a resident of the State with which his or her personal and economic relations are closer (centre of vital interests);
  - (b) if the State in which he or she has his or her centre of vital interests cannot be determined, or if he or she has not a permanent home available to him or her in either State, he or she shall be deemed to be a resident of the State in which he or she has an habitual abode;
  - (c) if he or she has an habitual abode in both States or in neither of them, he or she shall be deemed to be a resident of the State of which he or she is a national;
  - (d) if he or she is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated. In case of doubt the competent authorities of the Contracting States shall settle the question by mutual agreement.

### ARTICLE 5

#### *Permanent Establishment*

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
  - (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop;
  - (f) a farm or plantation;
  - (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources including timber or other forest produce;
  - (h) an installation or structure used for the exploration of natural resources, provided that the installation or structure continues for a period of not less than 9 months;
  - (i) a warehouse, in relation to a person providing storage facilities for others;
  - (j) a guest farm or other operation of a similar nature; and
  - (k) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activity continues for a period of more than 9 months.
3. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
  - (a) the use of facilities solely for the purpose of delivery, storage or display of goods or merchandise belonging to the enterprise;

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- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of delivery, storage or display;
  - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
  - (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
  - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
4. Notwithstanding the provisions of paragraphs 1 and 2 where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such person:
- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
  - (b) manufactures or processes in the first-mentioned State for the enterprise goods or merchandise belonging to the enterprise.
5. 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, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he or she will not be considered an agent of an independent status within the meaning of this paragraph.
6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise) shall not of itself constitute either company a permanent establishment of the other.

### ARTICLE 6

#### *Income from Immovable Property*

1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other State.
2. The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, buildings, 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 extracting of natural resources including 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.

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4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

5. Where the ownership of shares or other rights in a company or legal person entitles the owner to the enjoyment of immovable property situated in a Contracting State and held by that company or legal person, income derived by the owner from the letting or use in any other form of his or her right of enjoyment may be taxed in that State. The provisions of this paragraph shall apply notwithstanding the provisions of Articles 7 and 14.

### ARTICLE 7

#### *Business Profits*

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses including executive and general administrative expenses, which would be deductible if the permanent establishment were an independent enterprise, insofar as they are reasonably allocable to the permanent establishment, whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. If the information available to the competent authority is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person by the exercise of a discretion or the making of an estimate by the competent authority, provided that the law shall be applied, so far as the information available to the competent authority permits, in accordance with the principle of this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good reason to the contrary.

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

### ARTICLE 8

#### *Shipping and Air Transport*

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic, including profits from the rental of ships, aircraft, containers and related equipment which is incidental to the operation of ships or aircraft, shall be taxable only in that State.

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2. Paragraph 1 shall also apply to the share of the profits from the operation of ships or aircraft derived by an enterprise of a Contracting State through participation in a pool, a joint business or an international operating agency.

### ARTICLE 9

#### *Associated Enterprises*

1. Where:
  - (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
  - (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.
2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State may 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 this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

### ARTICLE 10

#### *Dividends*

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:
  - (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the share capital of the company paying the dividends;
  - (b) 10 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.



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5. Where a company which is a resident of a Contracting State derives income or profits from the other Contracting State, that other State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of income or profits arising in such other State.

### ARTICLE 11

#### *Interest*

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, the Government of a Contracting State shall be exempt from tax in the other Contracting State in respect of interest derived by the Government from that other State.

4. For the purposes of paragraph 3, the term "Government" means:

- (a) in the case of Namibia, the Government of Namibia and shall include:
  - (i) the regional authorities;
  - (ii) the local authorities;
  - (iii) the statutory bodies; and
  - (iv) the Bank of Namibia.
- (b) in the case of Malaysia, the Government of Malaysia and shall include:
  - (i) the governments of the States;
  - (ii) the local authorities;
  - (iii) the statutory bodies; and
  - (iv) the Bank Negara Malaysia.

5. 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 attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a statutory body thereof, or a resident of that State. Where, however, the person paying the interest, whether he or she 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, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

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### ARTICLE 12

#### *Royalties*

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of or the right to use industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a statutory body thereof, or a resident of that State. Where, however, the person paying the royalties, whether he or she 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 State in which the permanent establishment is situated.

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

### ARTICLE 13

#### *Technical Fees*

1. Technical fees derived from one of the Contracting States by a resident of the other Contracting State who is the beneficial owner thereof and is subject to tax in that other State in respect thereof may be taxed in the first-mentioned Contracting State at a rate not exceeding 5 per cent of the gross amount of the technical fees.

2. The term "technical fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration of any services of a technical, managerial or consultancy nature.

3. The provisions of paragraph (1) of this Article shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise through a permanent establishment situated therein, or performs in that other State independent personal services, and the technical fees are effectively connected with such permanent establishment or such services. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.



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4. Technical fees shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a statutory body thereof, or a resident of that State. Where, however, the person paying the technical fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by such permanent establishment, then such technical fees shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

5. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the technical fees paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

## ARTICLE 14

### *Independent Personal Services*

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State. Such income may also be taxed in the other Contracting State if:

- (a) the individual is present in that other State for a period or periods exceeding in the aggregate 183 days within any twelve month period, but only so much thereof as is attributable to services performed in that State.
- (b) the remuneration for his services in the other State is either derived from residents of that State or borne by a permanent establishment which a person not resident in that State has in that State and which, in either case exceeds 10,000 US dollars in any twelve month period, notwithstanding that his stay in that State is for a period or periods amounting to less than 183 days during that twelve month period.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

## ARTICLE 15

### *Dependent Personal Services*

1. Subject to the provisions of Articles 16, 18, 19 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days within any twelve month period commencing or ending in the fiscal year concerned; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

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3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

### ARTICLE 16

#### *Directors' Fees*

Directors' fees and other similar payments derived by a resident of a Contracting State in his or her 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 17

#### *Artistes and Athletes*

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his or her personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his or her capacity as such accrues not to the entertainer or athlete but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to remuneration or profits derived from activities exercised in a Contracting State if the visit to that State is directly or indirectly supported wholly or substantially from the public funds of the other Contracting State, a political subdivision, a local authority or a statutory body thereof.

### ARTICLE 18

#### *Pensions, Annuities and Similar Payments*

1. Subject to the provisions of paragraph 2 of Article 19, any pension and other similar remuneration for past employment or any annuity arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

2. The term "annuity" 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. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political subdivision or a local authority thereof shall be taxable only in that State.

### ARTICLE 19

#### *Government Service*

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority or a statutory body thereof to any individual in respect of services rendered to that State or political subdivision or a local authority or statutory body thereof shall be taxable only in that State.

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(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the recipient is a resident of that other State who:

- (i) is a national of that other State, or
- (ii) did not become a resident of that other State solely for the purpose of performing the services.

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

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

## ARTICLE 20

### *Students*

An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in the other State solely:

- (a) as a student at a recognised university, college, school, or other similar recognised educational institution in that other State;
- (b) as a business or technical apprentice; or
- (c) as a recipient of a grant, allowance or award for the primary purpose of study, research or training from the government of either State or from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the Government of either State;

shall be exempt from tax in that other State on:

- (i) all remittances from abroad for the purpose of his maintenance, education, study, research or training; and
- (ii) the amount of such grant, allowance or award.

## ARTICLE 21

### *Teachers and Researchers*

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

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

## 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 of this Agreement shall be taxable only in that Contracting State except that if such income is derived from sources in that other Contracting State, it may also be taxed in that other State.

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### ARTICLE 23

#### *Elimination of Double Taxation*

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

2. For the purposes of paragraph 1, the term "Namibian tax payable" shall be deemed to include Namibian tax which would, under the laws of Namibia and in accordance with this Agreement, have been payable on any income derived from sources in Namibia had the income not been taxed at a reduced rate or exempted from Namibian tax in accordance with the provisions of this Agreement and the special incentives under the Namibian laws for the promotion of economic development of Namibia or any other provisions which may subsequently be introduced in Namibia in modification of, or in addition to, those laws so far as they are agreed by the competent authorities of the Contracting State to be substantially similar character.

3. In Namibia, double taxation shall be eliminated as follows:

- (a) Where a resident of Namibia derives income from Malaysia the amount of tax on that income payable in Malaysia in accordance with the provisions of this Agreement, may be credited against the Namibian tax imposed on that resident.
- (b) Where the income derived from Malaysia is a dividend paid by a company which is a resident of Malaysia to a company which is a resident of Namibia, the credit shall also take into account the tax paid in Malaysia by the company paying the dividend in respect of the profits out of which the dividend is paid.
- (c) The amount of credit, however, shall not exceed the amount of the Namibian tax on that income computed in accordance with the taxation laws and regulations of Namibia.

4. For the purposes of paragraph 3, the term "Malaysia tax payable" shall be deemed to include Malaysian tax which would, under the laws of Malaysia and in accordance with this Agreement, have been payable on any income derived from sources in Malaysia had the income not been taxed at a reduced rate or exempted from Malaysian tax in accordance with the provisions of this Agreement and the special incentives under the Malaysian laws for the promotion of economic development of Malaysia or any other provisions which may subsequently be introduced in Malaysia in modification of, or in addition to, those laws so far as they are agreed by the competent authorities of the Contracting State to be substantially similar character.

### ARTICLE 24

#### *Non-discrimination*

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

## MALAYSIA

3. Except where the provisions of paragraph 1 of Article 9, paragraph 8 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Provided that in such cases the conditions of the domestic laws of the first-mentioned State are fulfilled.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. Nothing in this Article shall be construed as obliging:

- (a) a Contracting State to grant to individuals who are residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents;
- (b) a Contracting State to grant to nationals of the other Contracting State not resident in the first-mentioned State those personal allowances, reliefs and reductions for tax purposes which are by law available only to nationals of the first-mentioned State who are not resident in that State.

6. Nothing in this Article shall be construed so as to prevent either Contracting State from limiting to its nationals the enjoyment of tax incentives designed to promote economic development in that State.

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

## ARTICLE 25

### *Mutual Agreement Procedure*

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him or her in taxation not in accordance with the provisions of this Agreement, he or she may, irrespective of the remedies provided by the taxation laws of those States, present his or her case to the competent authority of the Contracting State of which he or she is a resident or, if his or her case comes under paragraph 1 of Article 24, to that of the Contracting State of which he or she is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavour, if this objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic laws 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 the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

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



## DOUBLE TAXATION AGREEMENT

### ARTICLE 26

#### *Exchange of Information*

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or for the prevention or detection of evasion or avoidance of taxes covered by this Agreement. Any information so exchanged shall be treated as secret and shall be disclosed only to persons or authorities (including a court or reviewing authority) concerned with the assessment, collection, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are subject to this Agreement.

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

- (a) to carry out administrative measures at variance with the laws and 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.

### ARTICLE 27

#### *Diplomatic Agents and Consular Officers*

Nothing in this Agreement shall affect any fiscal privileges accorded to members of diplomatic or permanent missions or consular posts under the general rules of international law or under the provisions of special agreements.

### ARTICLE 28

#### *Entry into Force*

Each of the Contracting States shall notify to the other through diplomatic channels the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the latter of these notifications and shall thereupon have effect:

- (a) in Namibia:
  - (i) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of March in the calendar year next following that in which the Agreement enters into force; and
  - (ii) in respect of other taxes, for any year of assessment beginning on or after the first day of March in the calendar year next following that in which the Agreement enters into force;
- (b) in Malaysia:
  - (i) in respect of taxes withheld at source, to income derived on or after the first day of January in the calendar year following the year in which this Agreement enters into force;
  - (ii) in respect of other taxes on income, to taxes chargeable for any year of assessment beginning on or after the first day of January of the second calendar year following the year in which this Agreement enters into force and subsequent years of assessment.

MALAYSIA

ARTICLE 29

*Termination*

This Agreement shall remain in effect indefinitely, but either Contracting States may terminate the Agreement, through diplomatic channels, by giving to the other Contracting State written notice of termination on or before June 30th in any calendar year after the period of five years from the date on which this Agreement enters into force. In such an event this Agreement shall cease to have effect:

- (a) in Namibia:
  - (i) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of March in the calendar year next following that in which the notice is given; and
  - (ii) in respect of other taxes, for any year of assessment beginning on or after the first day of March in the calendar year next following that in which the notice is given;
- (b) in Malaysia:
  - (i) in respect of taxes withheld at source, to income derived on or after the first day of January in the calendar year following the year in which the notice is given; and
  - (ii) in respect of other taxes on income, to taxes chargeable for any year of assessment beginning on or after the first day of January of the second calendar year following the year in which the notice is given;

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

Done in duplicate at Swakopmund this 28th day of July 1998, each in the Malay and English languages, the two texts being equally authentic. In the event of there being a dispute in the interpretation and the application of this Agreement, the English text shall prevail.

.....  
FOR THE GOVERNMENT OF THE  
REPUBLIC OF NAMIBIA

.....  
FOR THE GOVERNMENT OF MALAYSIA

PROTOCOL

At the time of signing the Agreement between the Government of Malaysia and the Government of the Republic of Namibia for the Avoidance of Double taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, both Governments have agreed that the following provisions shall form an integral part of the said Agreement:

- (a) With regard to the definition of "Royalty" in paragraph 3 of Article 12, the term "scientific work" includes any computer software and programme.
- (b) With regard to Article 13, it is understood that the said provisions shall apply —
  - (i) to an individual receiving income from a Contracting State but such individual is not physically present in that State; or
  - (ii) to any person receiving income from a Contracting State not through a permanent establishment situated therein.
- (c) With regard to Article 14, it is understood that the said provisions shall only apply where the individual is physically present in the Contracting State for the purpose of performing his or her activities.

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

Done in duplicate at Swakopmund, this 28th day of July 1998, in the Malay and English languages, the two texts being equally authentic. In the case of divergence of interpretation the English text shall prevail.

.....  
FOR THE GOVERNMENT OF  
REPUBLIC OF NAMIBIA

.....  
FOR THE GOVERNMENT OF MALAYSIA

