

DOUBLE TAXATION RELIEF (THE GOVERNMENT OF THE KINGDOM OF CAMBODIA) ORDER 2019

PU (A) 377

30 December 2019

IN exercise of the powers conferred by subsection 132(1) of the Income Tax Act 1967 [Act 53] and subsection 65A(1) of the Petroleum (Income Tax) Act 1967 [Act 543], the Minister makes the following order:

Citation and commencement

- 1(1) This order may be cited as the **Double Taxation Relief (The Government of the Kingdom of Cambodia) Order 2019**.
- 1(2) This Order comes into operation on 1 January 2020.

Double taxation relief

- 2 It is declared that the arrangements specified in the Schedule have been made by the Government of Malaysia with the Government of the Kingdom of Cambodia with a view to affording relief from double taxation in relation to Malaysian tax and Cambodian tax (as defined in each case in the arrangements) and that it is expedient that those arrangements shall have effect.

SCHEDULE

(Paragraph 2)

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF CAMBODIA AND THE GOVERNMENT OF MALAYSIA FOR THE ELIMINATION OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND THE PREVENTION OF TAX EVASION AND AVOIDANCE

THE GOVERNMENT OF THE KINGDOM OF CAMBODIA

AND

THE GOVERNMENT OF MALAYSIA

[Preliminary information]

INTENDING to conclude an Agreement for the elimination of double taxation with respect to taxes on income 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 Agreement for the indirect benefits of residents of third States), have agreed as follows:

ARTICLE 1 PERSONS COVERED

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

ARTICLE 2 TAXES COVERED

- 1 This Agreement shall apply to taxes on income imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.
- 2 There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises.
- 3 The existing taxes which are the subject of this Agreement are:
 - (a) in Malaysia:
 - (i) the income tax; and
 - (ii) the petroleum income tax;(hereinafter referred to as "Malaysian tax");
 - (b) in Cambodia:
 - (i) Tax on Profit including Withholding Tax, Minimum Tax, Additional Profit Tax on Dividend Distribution and Capital Gains Tax;
 - (ii) Tax on Salary;Nothing in this Agreement shall prevent the application of the Minimum Tax.
(hereinafter referred to as "Cambodian tax").
- 4 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 existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes made in their taxation laws.

ARTICLE 3 GENERAL DEFINITIONS

- 1 For the purposes of this Agreement, unless the context otherwise requires:
 - (a) the term "**Cambodia**" means the territory of the Kingdom of Cambodia, as well as those maritime areas, including the seabed and subsoil adjacent to the outer limits of the territorial sea and airspace over which the Kingdom of Cambodia exercises, in accordance with international law, sovereign rights or jurisdiction;
 - (b) the term "**Malaysia**" means the territories of the Federation of Malaysia, the territorial sea of Malaysia and the seabed and subsoil of the territorial sea, and the airspace above such areas, and includes any area extending beyond the limits of the territorial sea of Malaysia, and the seabed and subsoil of any such area, which has been or may hereafter be designated under the laws of Malaysia and in accordance with international law as an area over which Malaysia has sovereign rights or jurisdiction 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 Cambodia, as the context requires;
 - (d) the term "**person**" includes an individual, a company and any other body of persons;

- (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 "**national**" means:
 - (i) any individual possessing the nationality or citizenship of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
- (h) 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;
- (i) the term "competent authority" means:
 - (i) in the case of Malaysia, the Minister of Finance or his authorized representative; and
 - (ii) in the case of Cambodia, the Minister of Economy and Finance or his authorized representative.

- 2 As regards the application of this Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4 RESIDENT

- 1 For the purposes of this Agreement, the term "**resident of a Contracting State**" means any person who, under the laws of the State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management, principle place of business or any other criterion of a similar nature, and also includes that State, local authority or a statutory body thereof or, in addition for Malaysia, its political subdivision.
- 2 Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
- (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
 - (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
 - (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
 - (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

- 3 Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5 PERMANENT ESTABLISHMENT

- 1 For the purposes of this Agreement, the term "**permanent establishment**" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
- 2 The term "**permanent establishment**" includes especially:
- (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop;
 - (f) a warehouse;
 - (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
 - (h) a farm or plantation.
- 3 The term "**permanent establishment**" also encompasses:
- (a) a building site, a construction, installation or assembly project or supervisory activities in connection therewith, but only if such site, project or activities last more than nine (9) months;
 - (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than 183 days within any twelve (12) month period;
 - (c) the carrying on of activities (including the operation of substantial equipment) in the other Contracting State for the exploration or for exploitation of natural resources for a period or periods exceeding in the aggregate 183 days in any twelve (12) month; and
 - (d) the operation of substantial equipment within a Contracting State (other than equipment to which subparagraph (c) applies) for a period or periods aggregating more than 183 days within any twelve (12) month.
- 4 Notwithstanding the preceding provisions of this Article, the term "**permanent establishment**" shall be deemed not to include:
- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or

merchandise or of collecting information, for the enterprise;

- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5 Notwithstanding the provisions of paragraphs 1 and 2, where a person — other than an agent of an independent status to whom paragraph 7 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 a 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 4 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) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise; or
- (c) manufactures or processes goods belonging to the enterprise in the first-mentioned State.

6 Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7 An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, 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, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.

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

ARTICLE 6 INCOME FROM IMMOVABLE PROPERTY

1 Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2 The term “**immovable property**” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

- 3 The provisions of paragraph 1 shall also apply to income derived from the direct use, letting, or use in any other form of immovable property.
- 4 The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7 BUSINESS PROFITS

- 1 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 which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred whether in the State in which the permanent establishment is situated or elsewhere.
- 4 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 making of an estimate by the competent authority, provided that the law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.
- 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 and sufficient reason to the contrary.
- 7 Nothing in this Article shall affect the application of any law of a Contracting State relating to tax imposed on income from insurance, other than re-insurance, of non-resident insurers with a permanent establishment in the Contracting State.
- 8 Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8 SHIPPING AND AIR TRANSPORT

- 1 Profits of an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in that State.
- 2 Profits derived by an enterprise of a Contracting State from the operation of ships in international traffic may be taxed in the other Contracting State, but the tax imposed in that other State shall be reduced by an amount equal to fifty (50) per cent thereof.
- 3 The provisions of paragraph 1 and 2 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 not for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

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

ARTICLE 10 DIVIDENDS

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

2 However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed ten (10) per cent of the gross amount of the dividends. 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, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5 Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11 INTEREST

- 1 Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
- 2 However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed ten (10) per cent of the gross amount of the interest.
- 3 Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to the Government of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State.

For the purposes of this paragraph, the term "**Government**"

(a) in the case of Malaysia, shall include:

- (i) the Government of Malaysia;
- (ii) the Governments of the states;
- (iii) the local authorities;
- (iv) the statutory bodies wholly owned by the Government;
- (v) the Bank Negara Malaysia;
- (vi) the Export-Import Bank of Malaysia Berhad (EXIM Bank); and
- (vii) any institution as may be agreed from time to time between the competent authorities of the Contracting States.

(b) in the case of Cambodia, shall include:

- (i) the Government of Cambodia;
- (ii) the Central Bank or any local authority;
- (iii) the National Social Security Fund;
- (iv) the statutory bodies wholly owned by the government; and
- (v) any institution as may be agreed from time to time between the competent authorities of the Contracting States.

- 4 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 as well as income which is subjected to the same taxation treatment as income from money lent by the laws of the Contracting State in which the income arises. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
- 5 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, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base.

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

- 6 Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
- 7 Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 12 ROYALTIES

- 1 Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
- 2 However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed ten (10) 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, or 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, know-how or 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, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.
- 5 Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying such royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
- 6 Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 13 FEES FOR TECHNICAL SERVICES

- 1 Fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
- 2 However, such fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the fees for technical services is a resident of the other Contracting State the tax so charged shall not exceed ten (10) per cent of the gross amount of the fees for technical services.
- 3 The term “**fees for technical services**” as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature, but does not include payments for services to which Article 15 of this Agreement applies.
- 4 The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services arise through a permanent establishment situated therein or performs in that other State independent personnel services from a fixed base situated therein, and the fees for technical services are effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 15, as the case may be, shall apply.
- 5 Fees for technical services shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the fees for technical services was incurred, and such fees for technical services are borne by such permanent establishment or fixed base, then such fees for technical services shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.
- 6 Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the fees for technical services paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 14 CAPITAL GAINS

- 1 Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
- 2 Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
- 3 Gains from the alienation of ships or aircraft operated in international traffic by an enterprise of a Contracting State or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State.
- 4 Gains derived by a resident of a Contracting State from the alienation of shares deriving more than fifty (50) per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.
- 5 Gains from the alienation of any property, other than that referred to in paragraphs 1 to 4, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15 INDEPENDENT PERSONAL SERVICES

- 1 Subject to the provisions of Article 13, 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 except in the following circumstances, when such income may also be taxed in the other Contracting State if:
 - (a) he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
 - (b) his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve (12) month period; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.
- 2 The term “**professional services**” includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 16 DEPENDENT PERSONAL SERVICES

- 1 Subject to the provisions of Articles 17, 19 and 20, 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 in any twelve (12) month period commencing or ending in the fiscal year concerned; and
 - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
 - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
- 3 Notwithstanding the preceding provisions of this Article, remuneration derived 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 17 DIRECTORS' FEES AND REMUNERATION OF TOP-LEVEL MANAGERIAL OFFICIALS

- 1 Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.
- 2 Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 18 ENTERTAINERS AND SPORTSPERSONS

- 1 Notwithstanding the provisions of Articles 15 and 16, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that person's personal activities as such exercised in the other Contracting State, may be taxed in that other State.
- 2 Where income in respect of personal activities exercised by an entertainer or a sportsperson in that person's capacity as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
- 3 Notwithstanding the provisions of paragraphs 1 and 2, income derived from activities referred to in paragraph 1 performed under an arrangement between the Contracting States shall not be taxed in the Contracting State in which the activities are exercised if the visit to that State is wholly or substantially supported by funds of either Contracting State, a local authority, a statutory body or public institution of that other State or, in addition for Malaysia, its political subdivision.

ARTICLE 19 PENSIONS

- 1 Subject to the provisions of paragraph 2 of Article 20, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.
- 2 Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme or a scheme which is part of the social security system of a Contracting State or a local authority or a statutory body thereof or, in addition for Malaysia, its political subdivision shall be taxable only in that State.

ARTICLE 20 GOVERNMENT SERVICE

- 1
 - (a) Salaries, wages and other similar remuneration paid by a Contracting State or a local authority or a statutory body thereof or, in addition for Malaysia, its political subdivision to an individual in respect of services rendered to that State or a local authority or a statutory body thereof or, in addition for Malaysia, its political subdivision shall be taxable only in that State.
 - (b) However, such salaries, wages and other similar remuneration, shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual 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
 - (a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a local authority or a statutory body thereof or, in addition for Malaysia, its political subdivision, to an individual in respect of services rendered to that State or a local authority or a statutory body or, in addition for Malaysia, its political subdivision, shall be taxable only in that State.
 - (b) However, such pension and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other State.

- 3 The provisions of Articles 16, 17, 18 and 19 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a local authority or a statutory body thereof or, in addition for Malaysia, its political subdivision.

ARTICLE 21 STUDENTS AND TRAINEES

Payments which a student or business trainee or apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

ARTICLE 22 OTHER INCOME

- 1 Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.
- 2 The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.
- 3 Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may also be taxed in that other State.

ARTICLE 23 ELIMINATION OF DOUBLE TAXATION

Double taxation shall be eliminated as follows:

- (a) in the case of Malaysia:
- (i) subject to the laws of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, the Cambodian tax payable under the laws of Cambodia and in accordance with this Agreement by a resident of Malaysia in respect of income derived from Cambodia shall be allowed as credit against Malaysian tax payable in respect of that income. 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.
 - (ii) for the purpose of subparagraph (a)(i) above, the term "Cambodian tax payable" shall be deemed to include the amount of Cambodian tax which, under the laws of Cambodia and in accordance with this Agreement, would have been paid had the Cambodian tax not been exempted or reduced in accordance with the laws of Cambodia and connected regulations or any other special incentive measures designed to promote economic development in Cambodia.
- (b) in case of Cambodia:
- (i) where a resident of Cambodia derives income which, in accordance with the provisions of this Agreement, may be taxed in Malaysia, Cambodia shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Malaysia. Such deduction shall not, however, exceed that part of the Cambodian tax, as computed before the deduction is given, which is attributable to that income.

- (ii) for the purpose of subparagraph (b)(i) above, the term “**tax paid in Malaysia**” 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 if the income not been taxed at a reduced rate or exempted from Malaysian tax in accordance with the special incentives under the Malaysian laws for the promotion of economic development of Malaysia which were in force on the date of signature of this Agreement 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 States to be of a 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 in particular with respect to residence, are or may be subjected.
- 2 The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for tax purposes on account of civil status or family responsibilities which it grants to its own residents.
- 3 Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, paragraph 6 of Article 12 or paragraph 6 of Article 13 apply, interest, royalties, technical fees 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.
- 4 Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.
- 5 In this Article, the term “**taxation**” means taxes to which this Agreement applies.

ARTICLE 25 MUTUAL AGREEMENT PROCEDURE

- 1 Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of either Contracting State. The case must be presented within three (3) years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.
- 2 The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
- 3 The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

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

ARTICLE 26 EXCHANGE OF INFORMATION

- 1 The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes covered by this Agreement, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1.
- 2 Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.³ 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.
- 3 In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
 - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).
- 4 If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
- 5 In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

ARTICLE 27 MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

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

ARTICLE 28 ENTITLEMENT TO BENEFITS

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

ARTICLE 29 ENTRY INTO FORCE

- 1 The Contracting States shall notify each other, by exchange of notes through the diplomatic channel the completion of the procedures required by its domestic law or legislation for the bringing into force of this Agreement. This Agreement shall enter into force on the date of receipt of the later of the notification.
- 2 This Agreement shall have effect:
 - (a) in Malaysia, in respect of Malaysian tax, to tax chargeable for any year of assessment beginning on or after the first day of January in the calendar year following the year in which this Agreement enters into force;
 - (b) in Cambodia:
 - (i) in respect of taxes withheld at source, in relation to taxable amount as derived on or after the first day of January following the calendar year in which the Agreement enters into force and in subsequent calendar years; and
 - (ii) in respect of other taxes, in relation to income arising on or after the first day of January following the calendar year in which the Agreement enters into force, and in subsequent calendar years.

ARTICLE 30 TERMINATION

- 1 This Agreement shall remain in effect indefinitely, but either Contracting State may terminate this Agreement, through diplomatic channel, by giving to the other Contracting State written notice of termination on or before June 30th in any calendar year after the period of five (5) years from the date on which this Agreement enters into force.
- 2 This agreement shall cease to have effect:
 - (a) in Malaysia, in respect of Malaysian tax, to tax chargeable for any year of assessment beginning on or after the first day of January in the calendar year following the year in which the notice is given;
 - (b) in Cambodia:
 - (i) in respect of taxes withheld at source, in relation to taxable amount as derived on or after the first day of January following the calendar year in which the notice of termination is given; and
 - (ii) in respect of other taxes, in relation to income arising on or after the first day of January following the calendar year in which the notice of termination is given.

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

DONE in duplicate at Phnom Penh this 3 day September of 2019, each in the Malay, Khmer and English languages, the three (3) texts being equally authentic. In case of any divergence in the interpretation and the application of this Agreement, the English text shall prevail.

**FOR THE GOVERNMENT OF
THE KINGDOM OF CAMBODIA**

**FOR THE GOVERNMENT OF
MALAYSIA**

Made 9 December 2019

[Perb: 0.6869/77 JLD.2; PN(PU2)80 /XLVII(2)]