

Seychelles

Business Tax Act, 2009

## Business Tax (Double Taxation Agreement) (No. 3) Regulations, 2004 Statutory Instrument 34 of 2004

Legislation as at 8 November 2017

FRBR URI: /akn/sc/act/si/2004/34/eng@2017-11-08

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PDF created on 21 February 2024 at 18:07.

*Collection last checked for updates: 30 June 2014.*

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Business Tax (Double Taxation Agreement) (No. 3) Regulations, 2004  
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# Seychelles

## Business Tax Act, 2009

### **Business Tax (Double Taxation Agreement) (No. 3) Regulations, 2004** **Statutory Instrument 34 of 2004**

Commenced on 10 July 2006

*[This is the version of this document at 8 November 2017.]*

*[SI 34 of 2004; 17 of 2012]*

#### **1. Citation**

These Regulations may be cited as the Business Tax (Double Taxation Agreement) (No. 3) Regulations, 2004.

#### **2. Declaration and effect of Agreement**

It is hereby declared that the Government of the Republic of Seychelles and the Government of Malaysia have entered into the agreement specified in the Schedule for the purposes of avoidance of double taxation and prevention of fiscal evasion and that the agreement shall have effect in relation to the tax imposed under this Act.

### **Schedule**

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

The Government of Malaysia and the Government of the Republic of Seychelles 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 – 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.
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 Republic of Seychelles—
    - (i) the business tax; and
    - (ii) the petroleum income tax
      - (hereinafter referred to as “Seychelles 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 substantial changes that have been made in their respective taxation laws.

### Article 3 – General definitions

For the purposes of this Agreement, unless the context otherwise requires—

- (a) the term “**Malaysia**” means the territories of the Federation of Malaysia, the territorial waters of Malaysia and the sea-bed and subsoil of the territorial waters, and includes any area extending beyond limits of the territorial waters of Malaysia, and the sea-bed and subsoil of any such area, which has been or may hereafter be designated under the laws of Malaysia and in accordance with international law as an area over which Malaysia has sovereign rights for the purposes of exploring and exploiting the natural resources, whether living or non-living;
  - (b) the term “**Seychelles**” means the territory of the Republic of Seychelles including its exclusive economic zone and continental shelf where Seychelles exercises sovereign rights and jurisdiction in conformity with the provisions of the United Nations Convention on the Law of the Sea;
  - (c) the term “**person**” includes an individual, a company, a trust, a fund and any other body of persons;
  - (d) the term “**company**” means any body corporate or any entity which is treated as a body corporate for tax purposes;
  - (e) 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;
  - (f) the term “**national**” means—
    - (i) any individual possessing the nationality or citizenship of a Contracting State;
    - (ii) any legal person, partnership, association deriving its status as such from the laws in force in that Contracting State.
  - (g) 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;
  - (h) the term “**competent authority**” means—
    - (i) in the case of Malaysia, the Minister of Finance or his authorized representative;
    - (ii) in the case of Seychelles, the Minister of 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 which 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 purpose of this Agreement, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State, any political subdivision, local authority or a statutory body thereof.
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 (center of vital interests);
  - (b) if the State in which he has his center 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 mine, an oil or gas well, quarry or any other place of exploration for, or extraction or exploitation of natural resources or drilling rig.
3. The term “permanent establishment” likewise encompasses a building site, a construction, assembly or installation project, or any supervisory activity in connection therewith, but only where such site, project or activity continues for a period of more than 6 months.
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, display or delivery of goods or merchandise belonging to the enterprise;

- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of a 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.

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 one of the State on behalf of an enterprise of the other State, that enterprise shall be deemed to have a permanent establishment in the first mentioned State in respect of any activities which that person undertakes for the enterprise if the person—

- (a) has, and habitually exercises in the first-mentioned 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 belonging to the enterprise from which he regularly fills orders on behalf of the enterprise.

*[Note: Paragraph 5 was absent in the Gazette.]*

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

## **Article 6 – Income from immovable property**

1. Income derived by a resident of a Contracting State from immovable property, (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 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. 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 thereof 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 a 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 determine of the tax liability of a person by the exercise if 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 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 purpose of the preceding paragraphs of this Article, 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. 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 from the Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.
2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include—
  - (a) income from the rental on a bare boat basis of ships or aircraft; and
  - (b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise,where such rental or such use, maintenance or rental, as the case may be, is in the course of a business incidental to the operation of ships or aircraft in international traffic.
3. 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 other the 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 10 per cent of the gross amount of the dividends.
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, 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 14, 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 in so far as such dividends are paid to a resident of that other State or in so far 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 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 the tax in 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”—
  - (a) in the case of Malaysia means the Government of Malaysia and shall include—
    - (i) the governments of the states;
    - (ii) the Bank Negara Malaysia;
    - (iii) the local authorities;
    - (iv) the statutory bodies; and
    - (v) the Export-Import Bank of Malaysia Berhad (EXIM Bank)
  - (b) in the case of Seychelles means the Government of the Republic of Seychelles and shall include—
    - (i) the Central Bank of Seychelles; and
    - (ii) the statutory bodies.
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 of this Article 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 14, as the case may be, 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 is a resident of a Contracting State or not, has in 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.
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 a 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 only 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 10 percent 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, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.
4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services 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 14, as the case may be, 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 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 are borne by such permanent establishment or fixed base, then such royalties was incurred, and 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 where the beneficial owner of the fees for technical services is a resident of the other Contracting State the tax so charged shall not exceed 10 percent of the gross amount of the fees for technical services.
3. The term “fees for technical services” as used in this Article means payment 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.
4. The provision of paragraphs 1 and 2 of this Article 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 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 14, 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 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 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 – Independent personal services**

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributed to that fixed base.
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, 20 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 there from 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 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 in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

### **Article 16 – Directors' fees**

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State, may be taxed in that other State.

### **Article 17 – Artistes and sportsmen**

1. Notwithstanding the provisions of Articles 14 and 15 income derived by a resident of a Contracting State as an entertainer, such as a theater, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself 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 sportsman 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 wholly or mainly supported by public funds or the other Contracting State, a political subdivision, a local authority or a statutory body thereof. In such a case, the remuneration or profits is taxable only in the Contracting State in which the artiste or the sportsman is a resident.

### **Article 18 – Pensions and annuities**

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration and annuities paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that 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.

### **Article 19 – Government service**

1. (a) Salaries, wages, and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority or a statutory body thereof to an individual in respect of services rendered to that State or political subdivision or local authority or statutory body thereof 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 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) Any pension paid by, or out of funds created 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 local authority or statutory body shall be taxable only in that State.  
(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. The provisions of Articles 15, 16 and 18 shall apply to salaries, wages and other similar remuneration or pensions in respect of services rendered in connection with any business carried on by a Contracting State or a political subdivision or a local authority or a statutory body thereof.

## Article 20 – Students and trainees

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 recognized university, college, school or other similar recognized 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 organization or under a technical assistance programme entered into by the Government of either State,

shall be exempt from tax in that other State on—

- (i) all remittances from abroad for the purposes of his maintenance, education, study, research or training;
- (ii) the amount of such grant, allowance or award; and
- (iii) any remuneration not exceeding 2,500 US dollars *per annum* in respect of services in that other State provided the services are performed in connection with his study, research or training or are necessary for the purposes of his maintenance.

## Article 21 – Lecturers and researchers

1. An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State, and who, at the invitation of any public university, college, institution primarily for research purposes or other similar public institutions, 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.
2. This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.

## Article 22 – Other income

1. Items of income beneficially owned by 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 beneficial owner of the 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 income is attributable to such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, 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

1. Subject to the laws of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, the Seychelles tax payable under the laws of Seychelles and in accordance with this Agreement by a resident of Malaysia in respect of income derived from Seychelles

- 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 Seychelles to a company which is a resident of Malaysia and which owns not less than 10 percent of the voting shares of the company paying the dividend, the credit shall take into account Seychelles 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 “Seychelles Tax Payable” shall be deemed to include Seychelles tax which would, under the laws of Seychelles and in accordance with this Agreement, have been payable on any income derived from sources in Seychelles had the income not been taxed at a reduced rate or exempted from Seychelles tax in accordance with the provisions of this Agreement and the special incentives under the Seychelles laws for the promotion of economic development of Seychelles which were in force on the date of signature of this Agreement or any other provisions which may subsequently be introduced in Seychelles 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.
  3. Subject to the laws of Seychelles regarding the allowance as a credit against Seychelles tax of tax payable in any country other than Seychelles, the Malaysian tax paid under the laws of Malaysia and in accordance with this Agreement by a resident of Seychelles in respect of income derived from Malaysia shall be allowed as a credit against Seychelles tax payable in respect of that income. Where such income is a dividend paid by a company which is a resident of Malaysia to a company which is a resident of Seychelles and which owns not less than 10 per cent of the voting shares of the company paying the dividend, the credit shall take into account Malaysian tax paid 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 Seychelles tax, as computed before the credit is given, which is appropriate to such item of income.

### **Article 24 – Non-discrimination**

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.
2. The taxation on a permanent establishment which and enterprise of a Contracting State has in the other Contracting State shall not be less favorably 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, relief and reductions for tax purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Enterprises of a Contracting State, the capital of which 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.
4. Nothing in this Article shall be construed so as to prevent either Contracting State from limiting to its nationals the enjoyment of tax incentive designed to promote economic development in that State.
5. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12 apply, interest, royalty and other disbursements paid by a 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 always that the provisions of its domestic laws have been complied.
6. 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 in taxation not in accordance with the provisions of this Agreement, he may, notwithstanding the remedies provided by the domestic laws of those States, present his case to the competent authority of the State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.
2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Agreement.
3. The competent authorities of the Contracting States shall endeavor 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. The competent authorities, through consultations, shall develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article.

## 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 in so far 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. 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.
6. Banking records will be exchanged only upon request. If the request does not identify both a specific taxpayer and a specific bank or financial institution, the competent authority of the requested State may decline to obtain any information that it does not already possess.
7. The competent authorities of the Contracting States shall agree upon the mode of application of this Article.

*[article 26 repealed and substituted by article 1 of [SI 17 of 2012](#) w.e.f. 9 April 2012]*

*[Note: Provisions shall have effect for taxable periods beginning on or after 1 January 2010 as per Schedule Article 2 of [SI 17 of 2012](#).]*

### **Article 27 – Members of diplomatic missions and consular posts**

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

### **Article 28 – Entry into force**

This Agreement shall enter into force on the date on which the Contracting States exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give this Agreement the force of law in Malaysia and Seychelles, as the case may be, and thereupon this Agreement shall have effect—

- (a) in Malaysia—
  - (i) in respect of Malaysian tax, other than petroleum income 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 Agreement enters into force;
  - (ii) in respect of petroleum income tax, to tax 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.
- (b) in Seychelles—
  - (i) with regard to taxes withheld at source, respect of amounts paid or credited on or after the first day of January in the year next following the date upon which the Agreement enters into force; or
  - (ii) with regard to other taxes, in respect of taxable years beginning on or after the first day of January next following the date upon which the Agreement enters into force.

### **Article 29 – Termination**

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 30<sup>th</sup> 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) Malaysia—
  - (i) in respect of Malaysian tax, other than petroleum income 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;
  - (ii) in respect of petroleum income tax, to tax 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.
- (b) in Seychelles—
  - (i) in regard to taxes withheld at source, in respect of amounts paid or credited after the end of the calendar year in which such notice is given;
  - (ii) with regard to other taxes in respect of taxable years beginning after the end of the calendar year in which such notice is given.

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

DONE in duplicate at PUTRAJAYA this 3<sup>rd</sup> day of December 2003 in the Malay and the English language, all texts being equally authentic. In the case of any divergence of interpretation the English text shall prevail.

For the Government of the Republic of Seychelles

For the Government of Malaysia

### Protocol

At the time of signing of the Agreement between the Government of Malaysia and the Government of the Republic of Seychelles for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (hereinafter referred to as “the Agreement”), the undersigned have agreed upon the following provisions which shall form an integral part of the Agreement.

1. With reference to Article 23 of the Agreement, it is understood that in the case of Seychelles relief for taxes spared under Malaysia’s Tax Incentive Laws for promotion of economic development will be accounted for by virtue of her territorial scope of taxation. It is further understood that, should her scope of taxation be altered relief for taxes spared will be reviewed accordingly to ensure its continuity. The said review shall consider the following inclusion—

For the purposes of paragraph 3 of Article 23 of the Agreement, the term “Malaysian tax paid” shall be deemed to include Malaysian tax which would, under the laws of Malaysia and in accordance with the Agreement, have been paid 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 the Agreement and the special incentive under the Malaysian laws for the promotion of economic development of Malaysia which were in force on the date of signature of the 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.

2. That the exemption or reduction of tax provided in the Agreement shall not apply as follows—

- (a) in the case of Malaysia—

Any person carrying on offshore business activity under the provision of section 2(1) of the Labuan Offshore Business Activity Act 1990 of Malaysia.

(b) in the case of Seychelles—

Any person carrying on a business activity under the following Acts—

- (i) International Business Companies Act, 1994;
- (ii) International Trusts Act, 1994; and
- (iii) International Trade Zone Act, 1995 and Regulations.

3. In the event a Contracting State enacts any legislation for a business activity of identical or substantially similar character to any business activity referred to in paragraph 2 after the date of signature of the Agreement, that Contracting State shall notify the other Contracting State of the said legislation and paragraph 2 shall apply.

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

DONE in duplicate at PUTRAJAYA this 3<sup>rd</sup> day of December 2003 in the Malay and the English language, all texts being equally authentic. In the case of any divergence of interpretation the English text shall prevail.

Sylvestre Redegonde

For the Government of the Republic Seychelles

Dr. Jamaluddin Jarjis

For the Government of Malaysia