

**P.U. (A) 84/2005**  
**Signed: 3 September 2004**  
**Effective Date: 1 January 2009**

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

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

**I. SCOPE OF THE AGREEMENT**

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.
3. The existing taxes which are the subject of this Agreement are:
  - (a) in Chile, the taxes imposed under the Income Tax Act, "*Ley sobre Impuesto a la Renta*" (hereinafter referred to as "Chilean tax"); and
  - (b) in Malaysia:
    - (i) the income tax; and
    - (ii) the petroleum income tax;(hereinafter referred to as "Malaysian tax")

4. This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall, at the end of each year, notify each other of any significant changes that have been made in their taxation laws.

## II. DEFINITIONS

### Article 3

#### **GENERAL DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires:

- (a) (i) the term "Chile" means the Republic of Chile, and for the purposes of this Agreement, includes any area extending beyond the limits of its territorial waters, and the sea-bed and subsoil of any such area, which is designated under its domestic laws and in accordance with international law as an area over which Chile have sovereign rights for the purposes of exploring and exploiting the natural resources, whether living or non-living;
- (ii) the term "Malaysia" means the Federation of Malaysia, and for the purposes of this Agreement, includes any area extending beyond the limits of its territorial waters, and the sea-bed and subsoil of any such area, which is designated under its domestic laws and in accordance with international law as an area over which Malaysia have sovereign rights for the purposes of exploring and exploiting the natural resources, whether living or non-living;
- (b) the term "person" includes an individual, a company and any other body of persons;
- (c) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (d) 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;
- (e) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when such transport is operated solely between places in the other Contracting State;

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

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 that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, and also includes that State and any political subdivision or 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 (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 Contracting States shall by mutual agreement procedure endeavour to settle the question. If the competent authorities of the Contracting States after having endeavoured to reach an agreement have not been able to settle the question of dual residency, each Contracting State may, notwithstanding the provisions of this Agreement, apply its domestic law.

#### 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; and
- (f) a mine, an oil or gas well, a quarry or any other place relating to the exploration for or the exploitation of natural resources.

3. The term "permanent establishment" shall also include:

- (a) a building site, a construction, an installation or an assembly project and the supervisory activities in connection therewith, but only if

such building site, construction, project or activity lasts more than six months; and

- (b) the performance of professional services and of other activities of an independent character in a Contracting State by an enterprise through employees or other individuals engaged by the enterprise for such purpose, if such activities are carried on within that Contracting State for a period or periods exceeding in the aggregate 183 days within any twelve-month period; and
- (c) the performance of professional services and of other activities of an independent character in a Contracting State by an individual, if that individual is present in that Contracting State for a period or periods exceeding in the aggregate 183 days within any twelve month period.

For the purposes of computing the time limits in this paragraph, activities carried on by an enterprise associated with another enterprise within the meaning of Article 9 of this Agreement shall be aggregated with the period during which activities are carried on by the enterprise if the activities of the associated enterprises are substantially the same.

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 of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, supplying information, carrying out scientific research, or any similar activity for the enterprise, if such activity 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 of any activity which that person undertakes for the enterprise, if such a 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 in respect of which he regularly receives and fulfils orders on behalf of the enterprise.

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

7. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that 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, and that the conditions that are made or imposed in their commercial or financial relations with such enterprises do not differ from those which would be generally made by independent agents.

8. 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.

### **III. TAXATION OF INCOME**

#### **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. For the purposes of this Agreement, 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.

#### 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 or has carried 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 necessary expenses which are incurred for the purposes 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 exercise of a discretion or the making of an estimate by the competent authority, provided that the law shall be applied, so far as the information available to the competent authority permits, in accordance with the 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. 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 ships or aircraft in international traffic shall be taxable only in that State.

2. For the purposes of this Article:

(a) the term "profits" includes:

- (i) gross revenues derived directly from the operation of ships or aircraft in international traffic, and
- (ii) interest over the amounts derived directly from the operation of ships or aircraft in international traffic, only if such interest is incidental to the operation;

(b) the expression "operation of ships and aircraft" by an enterprise, also include the charter or rental on a bareboat basis of ships and aircraft and rental of containers and related equipment, if that charter or rental is incidental to the operation by the enterprise of ships or aircraft in international traffic.

3. Paragraph 1 shall also apply to the share of the profits of an enterprise from the 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, has 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, if it agrees that it is justified, 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:
  - (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 20 per cent of the voting power in the company paying the dividends, and

- (b) 15 per cent of the gross amount of the dividends, in all other cases.

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

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

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

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 situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

## 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 15 per cent of the gross amount of the interest.

3. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and in particular, income from government securities and income from 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 State in which the income arises (whether or not carrying a right to participate in the debtor's profits). The term interest shall not include income dealt with in Article 10.

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

5. 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 a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

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 interest paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

## 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 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 cinematographic films and films, tapes and other means of image or sound reproduction) any patent, trade mark, design or model, plan, secret formula or process or other intangible property, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

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

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

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

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect to which the royalties are paid to take advantage of this Article by means of that creation or assignment.

#### Article 13

#### **CAPITAL GAINS**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property 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, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or containers operated in international traffic or from movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.
4. Gains derived by a resident of a Contracting State from the alienation of instruments or other rights representing the capital of a company or any other type of financial instruments 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 the paragraphs mentioned above, shall be taxable only in the Contracting State of which the alienator is a resident.

#### Article 14

#### **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 5 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 technical, managerial or consultancy nature.
4. The provisions 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 other State professional services or other activities of an independent character from a deemed permanent establishment, and the fees for technical services are effectively connected with such permanent establishment. In such a case the provisions of Article 7 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 in connection with the obligation to pay the fees for technical services was incurred, and such fees for technical services are borne by such permanent establishment, then such fees for technical services shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the 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 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 15

#### **DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other 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 Contracting 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, a person being an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment which the person being an 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 or a similar governing body 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 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State. The income referred to in this paragraph shall include any income derived from any personal activity exercised in the other State related with that person's renown as an artiste or sportsman.

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.

Article 18

### **PENSIONS**

1. Pensions arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned State, but the tax so charged shall not exceed 15 per cent of the gross amount of the pensions.

2. Notwithstanding the provisions of paragraph 1, pensions paid out of public funds of Malaysia or of funds of any state government or local authority of Malaysia to any individual in respect of services rendered to the Government of Malaysia or any state government or local authority of Malaysia in the discharge of governmental functions shall be taxable only in Malaysia unless the individual is a national of, and a resident of Chile.

Article 19

### **GOVERNMENT SERVICE**

1. (a) Salaries, wages and other remuneration, other than a pension, paid by a Contracting State, a political subdivision, a local authority or a statutory body thereof to an individual in respect of services rendered to that State, political subdivision, local authority or statutory body thereof in the discharge of functions of a governmental nature shall be taxable only in that State.
  - (b) However, such salaries, wages and other 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 other State; or
    - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. The provisions of Articles 15, 16 and 17 shall apply to salaries, wages and other remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority or a statutory body thereof.

Article 20  
**STUDENTS**

Payments which a student, apprentice or business trainee 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, if such payments arise from sources outside that State.

Article 21  
**OTHER INCOME**

1. Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that Contracting State except that if such income is derived from sources in the other Contracting State, it may also be taxed in that other 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, and the right or property in respect of which the income is paid is

effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

#### **IV. METHODS FOR ELIMINATION OF DOUBLE TAXATION**

Article 22

##### **ELIMINATION OF DOUBLE TAXATION**

1. In Malaysia double taxation shall be avoided as follows:

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 Chilean tax payable under the laws of Chile (which shall not affect the general principle thereof), and in accordance with this Agreement by a resident of Malaysia in respect of income derived from Chile 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 Chile to a company which is a resident of Malaysia 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 Chilean tax payable by that company in respect of its income out of which the dividend is paid (First Category and Additional Tax). 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. In Chile, double taxation shall be avoided as follows:

- (a) residents in Chile, obtaining income which has, in accordance with the provisions of this Agreement, been subject to taxation in Malaysia, may credit the tax so paid against any Chilean tax payable in respect of the same income, subject to the applicable provisions of the law of Chile. This paragraph shall apply to all income referred to in this Agreement;
- (b) in the case of a dividend paid by a company which is a resident of Malaysia to a company which is a resident of Chile and which controls directly or indirectly 10 per cent or more of the voting power in the company paying the dividend, the company may use as a credit against the Chilean tax payable at company level (First Category Tax) the Malaysian tax payable by the company in Malaysia in respect of the profits out of which such dividend is paid. The credit shall not, however, exceed that part of the Chilean tax, as computed before the credit is given, which corresponds to that income of the company. Credit, and any consequent devolution, is

only given against the Global Complementary Tax and the Additional Tax for tax effectively paid in Malaysia;

- (c) where, in accordance with any provision of the Agreement, income derived by a resident of Chile is exempted from tax in Chile, Chile may nevertheless, in calculating the amount of tax on other income, take into account the exempted income.

3. For the purposes of subparagraph (b) of paragraph 2, the term "Malaysian tax payable" shall be deemed to include Malaysian tax which would, under the laws of Malaysia and in accordance with this Agreement, have been payable on any income derived from sources in Malaysia had the income not been taxed at a reduced rate or exempted from Malaysian tax in accordance with:

- (a) Section 133A of the Income Tax Act 1967; or
- (b) Sections 22, 23, 29, 29A to 29H, 31E and 41B of the Promotion of Investments Act 1986, so far as the sections have not been modified since the date of signature of this Agreement or have been modified only in minor respects so as not to affect their general character; or
- (c) any other provisions which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

4. Relief from Chilean tax by virtue of subparagraph (b) of paragraph 2 shall be granted for a period of 10 years from the date of coming into force of this Agreement. The period of relief provided for in that paragraph may be extended by agreement between the Contracting States.

## **V. SPECIAL PROVISIONS**

Article 23

### **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 that an enterprise of 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.

3. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities that it grants to its own residents.

4. Companies which are resident 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 companies that are residents of that first-mentioned State are or may be subjected.

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

#### Article 24

#### **MUTUAL AGREEMENT PROCEDURE**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Agreement, that person may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the State of which that person is a resident or, if that person's case comes under paragraph 1 of Article 23, to that of the State of which that person 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 endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Agreement.

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.

4. Considering that the main aim of the Agreement is to avoid international double taxation and prevent fiscal evasion, the Contracting States agree that, in

the event the provisions of the Agreement are used in such a manner by a taxpayer as to provide benefits not contemplated or not intended, the competent authorities of the Contracting States shall, under the procedure provided for in this Article, recommend specific amendments to be made to the Agreement. The Contracting States further agree that any such recommendation will be considered and discussed in an expeditious manner with a view to amending the Agreement, where necessary.

5. 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 25

### **EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws in the Contracting States concerning taxes covered by this Agreement insofar as the taxation thereunder is not contrary to this Agreement. Any information received 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, or the determination of appeals in relation to the taxes covered this Agreement. 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.

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

- (a) to carry out administrative measures at variance with the laws and the administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

Article 26

**MEMBERS OF THE 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.

**VI. FINAL PROVISIONS**

Article 27

**ENTRY INTO FORCE**

1. Each of the Contracting States shall notify the other through diplomatic channels of the completion of the procedures required by law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications.

2. The provisions of this Agreement shall have effect:

(a) in Chile:

in respect of taxes on income obtained and amounts paid, credited to an account, made available or accounted as an expense, on or after the first day of January in the calendar year immediately following the year in which this Agreement enters into force; and

(b) 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 immediately following the year in which this 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.

**Article 28**

**TERMINATION**

1. This Agreement shall remain in effect indefinitely, but either Contracting State may terminate this Agreement, through diplomatic channels, by giving to the other Contracting State a written notice of termination on or before June 30th

in any calendar year after the period of five years from the date on which this Agreement enters into force. In such an event this Agreement shall cease to have effect:

(a) in Chile:

in respect of taxes on income obtained and amounts paid, credited to an account, made available or accounted as an expense, on or after the first day of January in the calendar year immediately following the year in which the notice is given;

(b) 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 immediately 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; and

(c) in respect of provisions not covered in paragraphs (a) and (b), such provisions shall cease to have effect on the first day of January in the calendar year immediately following the year in which the notice is given.

IN WITNESS whereof the undersigned, duly authorised thereto, have signed this Agreement.

DONE in duplicate at Santiago this 3 day of September 2004, each in the Malay, Spanish and English languages, each text being equally authentic. In case of divergence in the interpretation and the application of the Spanish and the Malay texts, the English text shall prevail.

## **PROTOCOL**

At the signing of the Agreement between the Government of Malaysia and the Government of The Republic of Chile 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 1

(a) in the case of Malaysia:

The provisions of this Agreement shall not apply to persons carrying on offshore business activities under the Labuan Offshore Business Activity Tax Act 1990 (as amended).

The term "offshore business activity" means offshore business activities as defined under subsection 2(1) of the Labuan Offshore Business Activity Tax Act 1990 (as amended).

(b) in the case of Chile:

It is understood that this Agreement does not apply to persons constituted according to the legislation No. 19.840 (due to their non-resident status in Chile).

2. With reference to Article 5 and 14

It is understood that the term "the performance of professional services and of other activities of an independent character" includes the furnishing of services such as consultancy services.

3. With reference to Article 10

In the case of Chile, the provisions of Article 10 shall not limit the application of the Additional Tax provided that the First Category Tax is fully creditable in computing the amount of Additional Tax to be paid.

4. With reference to Article 11

If in any agreement or convention concluded by Chile with a third state, Chile would agree to exempt interest derived by the Government from the other state, such exemption shall automatically apply, for the purposes of paragraph 2 of Article 11, under the same conditions as if it had been specified in this Agreement.

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

(a) in the case of Malaysia means the Government of Malaysia and shall include:

(i) the government of the states;

- (ii) the Bank Negara Malaysia (the Central Bank of 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 Chile means the Government of Chile and shall include:
- (i) the Central Bank of Chile
  - (ii) the local authorities;
  - (iii) the statutory bodies; and
  - (iv) a financial institution of similar characteristics to that mentioned in subparagraph (v) above, as agreed by the competent authorities.

5. With reference to Article 18

For greater certainty, a pension payment may include an annuity (a periodically paid sum under an obligation to make the payments in return for adequate and full consideration) if the payment is considered a pension payment under the laws of that Contracting State.

6. With reference to general application of the Agreement:

- (a) With respect to pooled investment accounts or funds (as for instance the existing Foreign Capital Investment Fund in Chile), that are subject to a remittance tax and are required to be administered by a resident in Chile, the provisions of the Agreement shall not be interpreted to restrict imposition by Chile of the tax on remittances from such accounts or funds in respect of investment in assets situated in Chile.
- (b) Nothing in this Agreement shall affect the application of the existing provisions of the Chilean legislation DL 600 (Foreign Investment Statute) as they are in force at the time of signature of the Agreement and as they may be amended from time to time without changing the general principle hereof.
- (c) Nothing in this Agreement shall affect the taxation in Chile of a resident in Malaysia in respect of profits attributable to a permanent

establishment situated in Chile, under both the First Category Tax and the Additional Tax but only as long as the First Category Tax is deductible in computing the Additional Tax.

- (d) For the purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of the Agreement may be brought before the Council for Trade in services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 3 of Article 24 or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.
- (e) For the purposes of the Agreement, the Contracting States agree that if either Contracting State introduces capital tax under its domestic law, both Contracting States will participate without delay in negotiations for a Protocol to this Agreement with a view to extending the scope of this Agreement to include the above-mentioned capital tax.
- (f) It is understood that fees or profits for performing professional services or other activities of an independent character are treated as income under Article 14 (Fees for technical services) or Article 7 (Business profits), as the case may be.

IN WITNESS whereof the undersigned, duly authorised thereto, have signed this Protocol.

DONE in duplicate at Santiago this 3 day of September 2004 each in the Spanish, Malay, and English languages, each text being equally authentic. In case of divergence in the interpretation and the application of the Spanish and the Malay texts, the English text shall prevail.