

## OTHER ISSUES

### 1. Double Taxation Agreement (DTA)

Malaysia has signed 62 DTAs with the following countries :-

Albania*	Mongolia
Argentina	Myanmar*
Australia	Morocco*
Austria	Namibia*
Bahrain	Netherlands
Bangladesh	New Zealand
Belgium	Norway
Brunei*	Oman*
Canada	Pakistan
Croatia*	Papua New Guinea
Czech Republic	People's Republic of China
Denmark	Philippines
Egypt*	Poland
Federal Republic of Germany	Romania
Fiji	Russia
Finland	Saudi Arabia
France	Singapore
Hungary	South Africa*
India	South Korea
Indonesia	Sri Lanka
Ireland	Sudan*
Islamic Republic of Iran*	Sweden
Italy	Switzerland
Japan	Thailand
Jordan	Turkey
Kazakhstan*	United Arab Emirates
Kuwait*	United Kingdom
Kyrgyzstan*	United States of America
Luxembourg*	Uzbekistan
Malta	Vietnam
Mauritius	Zimbabwe*

\* DTAs pending ratification

## 2. Second Protocol – Malaysia / Australia Tax Treaty

The Second Protocol amending the agreement between Malaysia and Australia for the avoidance of double taxation and the prevention of fiscal evasion has been issued. Major amendments include:

### a) Royalty (Article 12)

The definition of royalty has been expanded to include payment for the use in connection with television, radio or other broadcasting, or the right to use in connection with such broadcasting, visual images or sounds, or both, transmitted by :

- (i) satellite; or
- (ii) cable, optic fibre or similar technology

The exemption on approved industrial royalty is no longer available as the relevant paragraphs have been deleted.

### b) Associated Enterprises (Article 9)

The Article has been amended to provide for appropriate corresponding adjustments to avoid double taxation in situations where associated enterprises are deemed dealing not at arm's length. The competent authorities are to consult each other before determining such an adjustment.

### c) Dividend (Article 10)

Previously, dividend paid by a company resident in Australia to a resident of Malaysia is subject to a 15% tax on gross. Under the Protocol, no Australian tax will be charged on "franked" dividend if the person entitled to the dividend is a company holding at least 10% of the voting power in the Australian company.

Where the above does not apply, the tax imposed by Australia shall not exceed 15% of the gross dividend. Malaysia does not impose tax on the payment of dividend.

### d) Elimination of Double Taxation (Article 23)

For the purpose of tax sparing, the term "Malaysian tax forgone" shall not be deemed to have been paid in respect of income from:

- i) banking, insurance, consulting, accounting, auditing or similar services; or
- ii) the operation of ships or aircraft other than operated from places in Malaysia for a Malaysian business; or
- iii) any scheme using Malaysia as a conduit or location for income to avoid Australian tax through the exploitation of Australian tax credit provisions.

The above has retroactive application for year of assessment beginning on or after 1<sup>st</sup> January, 1993.

It is to be noted that under the Protocol, the tax sparing provisions will cease to apply after the year of income ending on 30<sup>th</sup> June, 2003.

**e) Limitation of Relief (Article 27)**

The Article has been amended to provide that persons who enjoy a particular tax treatment under a law of a Contracting State which has been identified in an exchange of letters between the States, shall not be entitled to any benefit of the treaty.

In this regard, the Malaysian Government has through an exchange of letters, accepted Australia's proposal that persons carrying on any offshore business activity under the *Labuan Offshore Business Activity Tax Act 1990 (as amended)*, shall not be entitled to the benefit of the treaty.

**f) Effective Date**

The amendments will be effective in respect of Malaysian tax for any year of assessment beginning on or after 1<sup>st</sup> January in the year next following that in which the Protocol enters into force. We understand that the exchange of notes between the Contracting States has not been completed.