

No. 48135

**Ireland
and
Malaysia**

Agreement between the Government of Ireland and the Government of Malaysia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. Kuala Lumpur, 28 November 1998

Entry into force: *21 September 1999 by notification, in accordance with article 29*

Authentic texts: *English and Malay*

Registration with the Secretariat of the United Nations: *Ireland, 28 January 2011*

**Irlande
et
Malaisie**

Accord entre le Gouvernement de l'Irlande et le Gouvernement de la Malaisie tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu. Kuala Lumpur, 28 novembre 1998

Entrée en vigueur : *21 septembre 1999 par notification, conformément à l'article 29*

Textes authentiques : *anglais et malais*

Enregistrement auprès du Secrétariat des Nations Unies : *Irlande, 28 janvier 2011*

[ENGLISH TEXT – TEXTE ANGLAIS]

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

The Government of Ireland and the Government of Malaysia, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

HAVE AGREED as follows:

Article 1
Personal Scope

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

Article 2
Taxes Covered

1. This Agreement shall apply to taxes on income imposed by a Contracting State, irrespective of the manner in which they are levied.
2. 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 the case of Malaysia:
 - (i) the income tax; and
 - (ii) the petroleum income tax; (hereinafter referred to as "Malaysian tax");
 - (b) in the case of Ireland:
 - (i) the income tax;
 - (ii) the corporation tax; and
 - (iii) the capital gains tax;(hereinafter referred to as "Irish tax").
4. This Agreement shall also apply to any identical or substantially similar taxes on income 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 important changes which have been made in their respective taxation laws.

Article 3
General Definitions

1. In 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 the 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 "Ireland" includes any area outside the territorial waters of Ireland which, in accordance with international law, has been or may hereafter be designated under the laws of Ireland concerning the Continental Shelf, as an area within which the rights of Ireland with respect to the sea-bed and subsoil and their natural resources may be exercised
 - (c) the terms "a Contracting State" and "the other Contracting State" mean Malaysia or Ireland as the context requires;
 - (d) the term "person" includes an individual, a company, a trust, an estate and any other body of persons which is treated as a person for tax purposes;
 - (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - (f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (g) the term "tax" means Malaysian tax or Irish tax, as the context requires;
 - (h) the term "national" means any citizen of a Contracting State and any legal person, partnership, association and any other entity deriving its status as such from the laws in force in a Contracting State;
 - (i) 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;
 - (j) the term "competent authority" means:

(i) in the case of Malaysia, the Minister of Finance or his authorised representative; and

(ii) in the case of Ireland, the Revenue Commissioners or their authorised representative.

2. In the application of this Agreement by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which this Agreement applies.

Article 4 *Resident*

1. For the purposes of this Agreement, the term "resident of a Contracting State" means:

(a) in the case of Malaysia, a person who is resident in Malaysia for the purposes of Malaysian tax; and

(b) in the case of Ireland, a person who is resident in Ireland for the purposes of Irish tax.

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 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 it shall be deemed to be a resident of the State in which its place of effective management is situated

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 of extraction of natural resources.
3. A building site, a construction, assembly or installation project constitutes a permanent establishment only if such site or project lasts more than six 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 of collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
 - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.