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AGREEMENT

BETWEEN

THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM

AND

THE GOVERNMENT OF THE UNION OF MYANMAR

FOR

THE AVOIDANCE OF DOUBLE TAXATION

AND

THE PREVENTION OF FISCAL EVASION

WITH RESPECT TO

TAXES ON INCOME

THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM

AND

THE GOVERNMENT OF THE UNION OF MYANMAR,

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 or on behalf of a Contracting State or its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the agreement shall apply are:

(a) in Vietnam :

(i) the Personal Income Tax ;
(ii) the Business Income Tax ; and
(iii) the Income Remittance Tax ;

(hereinafter referred to as " Vietnamese tax ");

(b) in Myanmar:

(i) The income tax imposed under the Income Tax Law 1974 (Law No. 7 of 1974);

(ii) The profit tax imposed under the Profit Tax Law of 1976 (Law No. 4 of 1976);

(hereinafter referred to as " Myanmar tax ").

This Agreement shall also apply to any identical or substantially similar taxes on income which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes referred to in this Article. The competent authorities of the Contracting States shall notify each other of any substantial changes, which 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 " Vietnam " means the Socialist Republic of Vietnam;

(b) the term "Myanmar" means the Union of Myanmar;

(c) the terms "a Contracting State" and "the other Contracting State" mean Vietnam or Myanmar as the context requires;

(d) the term " national " means:

(i) any individual possessing the nationality of a Contracting State;

(ii) any legal person, partnership , association and any other entity deriving its status as such from the laws in force in a Contracting State;

(e) the term "person" includes an individual, a company, a body of persons or any other entity which is treated as a person 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 "company" means any body corporate or any other entity, which is treated as a body corporate for tax purposes;

(h) the term " tax " means Vietnamese tax or Myanmar tax as the context requires;

(i) the term " competent authority " means :

(i) in the case of Vietnam, the Minister of Finance or his authorized representative;

(ii) in the case of Myanmar, the Minister for Finance and Revenue or his authorized representative;

(j) 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.

2. As regards the application of the 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 the Agreement applies.

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 registration or any other criterion of a similar nature.

2. Where, by reason of the provisions of paragraph 1 of this Article 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 of the State in which he has a permanent home available to him;

(b) 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 (center of vital interests);

(c) if the State in which he has his center of vital interests cannot be determined, or if he has no permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

(d) if he has a habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

(e) if the status of resident cannot be determined according to sub-paragraphs (a) to (d), 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, it shall be deemed to be a resident of the Contracting

State in which its place of effective management is situated. If its place of effective management cannot be determined , 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 " shall include 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, a quarry or any other place of extraction of natural resources; including timber or other forest produce, drilling rig, ship or aircraft used for exploration or exploitation of natural resources;

(g) a farm or plantation ;

(h) a warehouse; and

(i) an installation structure, or equipment used for the exploration of natural resources.

3. The term " permanent establishment " likewise encompasses:

(a) a building site, construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six months;

(b) the furnishing of services, including consultancy services, by an enterprise through employees or other personal engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than six months within any 12- month period.

Notwithstanding the preceding provisions of this Article, the term " permanent establishment " shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of advertising, supply of information, scientific research or similar activities which have a preparatory or auxiliary character, for the enterprise.

5. Notwithstanding the preceding provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 7 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

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(a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or

(b) has no such authority, but habitually maintains in the first – mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

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

7. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he shall not be considered an agent of an independent status if the transactions between the agent and the enterprise were not made under arm's length conditions.

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.

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 laws of the Contracting State in which the property in question is situated. However, for the purposes of this Agreement the term shall in any case include property assessory 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 including timber and other forest produce; 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 of them as is directly or indirectly attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3 of this Article where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprises or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. If the information available to the competent authority is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person by the 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. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude such Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

7. 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.

8. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be effected by the provisions of this Article.

ARTICLE 8

SHIPPING AND AIR TRANSPORT

1. The income of an enterprise of one of the Contracting States derived from the other Contracting State from the operation of ships in international traffic may be taxed in that other Contracting State, but the tax chargeable in that other Contracting State on such income shall be reduced by an amount equal to fifty per cent thereof.

2. Profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in that Contracting State.

3. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

4. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall mean profits derived from the transportation by sea or air of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of the ships or aircraft, including:

(a) profits from the sale of tickets for such transportation on behalf of other enterprises;

(b) income from the lease of ships or aircraft and the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers), where such lease or such use, maintenance or rental. as the case may be, is incidental to the operation of ships or aircraft in international traffic.

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 profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the condition made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall 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 recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

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

3. The term " dividends " as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is

subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

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

ARTICLE 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to the Government of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State.

4. For the purpose of paragraph 3, the term "Government":

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

(i) the local authorities;

(ii) the State Bank of Vietnam;

(iii) any institution wholly owned by the Government of Vietnam, as may be agreed from time to time between the competent authorities of the Contracting States;

(b) In the case of Myanmar means the Government of Myanmar and shall include:

(i) the local authorities;

(ii) the Central Bank of Myanmar;

(iii) any institution wholly owned by the Government of Myanmar, as may be agreed from time to time between the competent authorities of the Contracting States.

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 and prizes 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, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the

interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

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 resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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 case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 12

ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that Contracting 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 cinematograph films, films or tapes use for television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, 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, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority, or 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 or fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

. 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 be agreed upon by the payer and 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

TECHNICAL FEES

1. Technical fees derived from one of the Contracting States by a resident of the other Contracting State who is the beneficial owner thereof and is subject to tax in that other State in respect thereof may be taxed in the first-mentioned Contracting State at a rate not exceeding 10 per cent of the gross amount of the technical fees.

2. The term " technical fees " as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.

3. The provisions of paragraph 1 of this Article shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise through a permanent establishment situated therein, or performs in that other State independent personal services, and the technical fees are effectively connected with such permanent establishment or such services. In such case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

4. Technical fees shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority thereof, or a resident of that State. Where, however, the person paying the technical fees, whether he is a resident of the Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by such permanent establishment, then such technical fees shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

5. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other persons, the amount of the technical fees paid exceeds, for what ever 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 14
CAPITAL GAINS

1. Gains from the alienation of immovable property, as defined in Article 6, may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State.

4. Gains from the alienation of shares of the capital stock of a company the property of which consist wholly or principally of immovable property situated in a Contracting State may be taxed in that State.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.

6, Gains from the alienation of any property other than that referred to in paragraphs 1, 2 , 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15

INDEPENDENT PERSONAL SERVICES

Income derived by a resident of a Contracting State in respect of professional services or other tivities of an independent character shall be taxable only in that State except in the following rcumstances, where such income may also be taxed in the other Contracting State:

(a) If he has fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may taxed in that other Contracting State; or

(b) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that State; or

(c) If the remuneration for his activities in the other Contracting State is paid by a resident of that Contracting State or is borne by a permanent establishment or a fixed base situated in that Contracting State and exceeds in the fiscal year US $ 12000.

The term "professional services" includes especially independent scientific, literary, artistic, ducational or teaching activities as well as the independent activities of physicians, lawyers, engineers, rchitects, dentists and accountants.

ARTICLE 16

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 17, 19, 20, 21 and 22, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned; and

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxed only in that State.

ARTICLE 17

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 Contracting State.

ARTICLE 18

ARTISTES AND SPORTSMEN

1. Notwithstanding the provisions of Articles 15 and 16, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a 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, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income derived in respect of the activities referred to in paragraph 1 of this Article within the framework of cultural or sports exchange programme agreed to by both Contracting States shall be exempt from tax in the Contracting State in which these activities are exercised.

ARTICLE 19

PENSIONS AND ANNUITIES

Subject to the provisions of paragraph 2 of Article 20, any pension and other similar remuneration for past employment or any annuity arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other 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 20

GOVERNMENT SERVICE

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or political subdivision or local authority thereof shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the recipient is a resident of that other Contracting State who:

(i) is a national of that other State; or

(ii) did not become a resident of that other 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 thereof to an individual in respect of services rendered to that State or subdivision or authority 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 other State.

3. The provisions of Articles 16, 17, 18 and 19 shall apply to remuneration and 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 thereof.

ARTICLE 21

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 recognised university, college, school or other similar recognised educational institution in that other State; or

(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 organisation 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 2500 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 22

TEACHERS, PROFESSORS 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 institutions shall be exempt from tax in that other State on any remuneration for such teaching or research which is subject to tax in the first-mentioned Contracting State.

2. The provisions of paragraph 1 of this Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

ARTICLE 23

OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to the income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement and arising in the other Contracting State may also be taxed in that other State.

ARTICLE 24
ELIMINATION OF DOUBLE TAXATION

1. The laws in force in either of the Contracting State shall continue to govern the taxation of income in the respective Contracting State except where express provision to the contrary is made in this Agreement. Where income is subject to tax in both Contracting States, relief from double ...ition shall be given in accordance with the following paragraphs of this Article.

2. In the case of Vietnam, Myanmar tax payable in respect of income derived from Myanmar shall be allowed as a credit against Vietnamese tax payable in respect of that income . The credit shall not, however, exceed that part of the Vietnamese tax, as computed before the credit is given which is attributable to such income.

3. In the case of Myanmar, Vietnamese tax payable in respect of income derived from Vietnam shall be allowed as a credit against Myanmar tax payable in respect of that income . The credit shall not, however, exceed that part of the Myanmar tax, as computed before the credit is given which is attributable to such income.

4. For the purposes of paragraph 3, the term "Vietnamese Tax payable" shall be deemed to include the amount of Vietnamese tax which would have been paid if the Vietnamese tax had not been exempted or reduced in accordance with the special incentive laws designed to promote economic development in Vietnam, effective the date of signature of this Agreement, or which may be introduced hereafter 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.

5. For the purposes of paragraph 2 of this Article, the term " Myanmar tax payable " shall be deemed to include the amount of Myanmar tax which would have been paid if the Myanmar tax had not been exempted or reduced in accordance with the special incentive laws designed to promote economic development in Myanmar, effective the date of signature of this Agreement, or which may be introduced hereafter in modification of, or in addition to, those laws so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character.

ARTICLE 25

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 are or may be subjected.

2. The taxation on a permanent establishment , which an enterprise of a Contracting State has in the other Contracting State, shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own resident.

3. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting 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 the first-mentioned State are or may be subjected.

4. Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so residents.

5. Where a Contracting State grants tax incentives to its nationals designed to promote economic development in accordance with its national policy and criteria, it shall not be construed as discrimination under this Article.

6. The provisions of paragraph 2 and 3 of this Article shall not apply to the Vietnamese profit remittance tax and the Vietnamese taxation in respect of agriculture production activities.

7. Notwithstanding the provisions of this Article, for so long as Vietnam continues to grant to investors licenses under the Law on Foreign Investment in Vietnam, which specify the taxation to which the investor shall be subjected, the imposition of such taxation shall not be regarded as breaching the terms of paragraphs 2 and 3 of this Article.

8. The provision of this Article shall apply only to the taxes which are the subject of this Agreement.

ARTICLE 26

MUTUAL AGREEMENT PROCEDURE

1. Where a person who is a resident of a Contracting State considers that the actions of the competent authority of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which that person is a resident. 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 the Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the avoidance 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 27

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 of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement, in particular for the prevention of fraud or evasion of such taxes. 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) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the 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. The competent

authorities shall, through consultations, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information shall be made, including, where appropriate, exchanges of information regarding tax avoidance.

2. In no case shall the provisions of paragraph 1 of this Article be construed so as to impose on the competent authority of the Contracting States 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.

ARTICLE 28

DIPLOMATIC AGENTS AND CONSULAR OFFICIALS

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

ARTICLE 29

ENTRY INTO FORCE

1. Each of the Contracting States shall notify to the other Contracting State the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications and shall thereupon have effect:

(a) in Vietnam:

(i) in respect of taxes withheld at source, in relation to taxable amount paid on or after 1 January following the calendar year in which the Agreement enters into force; and in subsequent calender years;

(ii) in respect of other Vietnamese taxes, in relation to income, profits or gains arising in the calendar year following the calendar year in which the Agreement enters into force, and in subsequent calendar years.

(b) in Myanmar:

(i) in respect of taxes withheld at source, to the income derived on or after the first day of April in the fiscal year following the fiscal year in which this Agreement enters into force;

(ii) in respect of other taxes on income, to taxes chargeable for any year of assessment beginning on or after the first day of April of the second fiscal year following the fiscal year in which this Agreement enters into force and subsequent years of assessment.

ARTICLE 30

TERMINATION

This Agreement shall remain in force until terminated by one of the Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels by giving to the other Contracting State, written notice of termination at least six months before the end of any calendar year beginning after the expiry of five years from the date of entry into force of the Agreement. In such event the Agreement shall cease to have effect:

(a) in Vietnam:

(i) in respect of taxes withheld at source, in relation to taxable amount paid on or after 1 January following the calendar year in which the notice of termination is given;

(ii) in respect of other Vietnamese taxes, in relation to income, profits or gains arising in the calendar year following the calendar year in which the notice of termination is given;

(b) in Myanmar :

(i) in respect of taxes withheld at source, to the income derived on or after the first day of April in the fiscal year following the year in which the notice is given;

(ii) in respect of other taxes on income, to taxes chargeable for any year of assessment beginning on or after the first day of April of the second fiscal year 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 Yangon this 12th day of May of the year two thousand in the English language.

FOR THE GOVERNMENT OF
THE SOCIALIST REPUBLIC OF VIETNAM

NGUYEN SINH HUNG
Minister of Finance
The Socialist Republic of Vietnam

FOR THE GOVERNMENT OF
THE UNION OF MYANMAR

U KHIN MAUNG THEIN
Minister for Finance and Revenue
The Union of Myanmar

BỘ NGOẠI GIAO

Số : 08/2004 /LPQT

SAO Y BẢN CHÍNH
(Để thực hiện)

Hà Nội, ngày 5 tháng 02 năm 2004

TL. BỘ TRƯỞNG BỘ NGOẠI GIAO
KT. Vụ trưởng Vụ Luật pháp và Điều ước quốc tế
Phó Vụ trưởng

Nguyễn Hoàng Anh

Nơi nhận :

- Văn phòng Quốc hội (để báo cáo),
- Văn phòng Chủ tịch nước (để báo cáo),
- Văn phòng Chính phủ (để báo cáo và đăng Công báo)
- Bộ Kế hoạch và Đầu tư,
- Bộ Tài chính,
- Bộ Tư pháp,
- Bộ Lao động, Thương binh và Xã hội,
- Ngân hàng Nhà nước Việt Nam,
- Đại sứ quán CHXHCN Việt Nam tại Mi-an-ma,
- Vụ Châu Á 2, Bộ Ngoại giao,
- Vụ ASEAN, Bộ Ngoại giao,
- Cục Lãnh sự, Bộ Ngoại giao
- Vụ Luật pháp và Điều ước quốc tế, Bộ Ngoại giao,
- Lưu trữ, Bộ Ngoại giao.

Hiệp định giữa Chính phủ nước Cộng hòa xã hội chủ nghĩa Việt Nam và Chính phủ Liên bang Mi-an-ma về tránh đánh thuế hai lần và ngăn ngừa việc trốn lậu thuế đối với cac loại thuế đánh vào thu nhập có hiệu lực từ ngày 12 tháng 8 năm 2003.