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TAXATION CONVENTION WITH THAILAND

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE KINGDOM OF THAILAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT BANGKOK, NOVEMBER 26, 1996



JANUARY 28, 1997.—Convention was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE
39–112 WASHINGTON : 1997

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *January 28, 1997.*

To the Senate of the United States:

I transmit herewith for Senate advice and consent to ratification the Convention Between the Government of the United States of America and the Government of the Kingdom of Thailand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Bangkok, November 26, 1996. An enclosed exchange of notes, transmitted for the information of the Senate, provides clarification with respect to the application of the Convention in specified cases. Also transmitted is the report of the Department of State concerning the Convention.

This Convention, which is similar to other tax treaties between the United States and developing nations, provides maximum rates of tax to be applied to various types of income and protection from double taxation of income. The Convention also provides for the exchange of information to prevent fiscal evasion and sets forth standard rules to limit the benefits of the Convention to persons that are not engaged in treaty shopping.

I recommend that the Senate give early and favorable consideration to this Convention and give its advice and consent to ratification.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, January 10, 1997.

The PRESIDENT,

The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Convention Between the Government of the United States of America and the Government of the Kingdom of Thailand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Bangkok on November 26, 1996 ("the Convention"). Also provided for the information of the Senate is a related exchange of notes.

This Convention will be the first Convention between the United States of America and the Kingdom of Thailand for the avoidance of double taxation with respect to taxes on income. This Convention follows the pattern of the U.S. model treaty with deviations found in many recent U.S. conventions with other developing countries. It provides for maximum rates of tax to be applied to various types of income, protection from double taxation of income, exchange of information to prevent fiscal evasion, and standard rules to limit the benefits of the Convention to persons that are not engaged in treaty shopping. Like other U.S. tax conventions, this Convention provides rules specifying when income that arises in one of the contracting countries (the "source country") and is attributable to residents of the other contracting country (the "country of residence") may be taxed by the source country.

The Convention establishes maximum rates of tax that may be imposed by the source country on specified categories of income, including dividends, interest, and royalties, to residents of the other country. While the withholding rates on dividend and royalty income are generally higher than those in the U.S. model treaty and in many recent conventions with OECD countries, they are generally lower than those in many recent Thai treaties. Pursuant to Article 10, dividends from direct investments are subject to tax by the source country at a rate of ten percent. The threshold criterion for direct investment is ten percent, consistent with other modern U.S. treaties in order to facilitate direct investment. Other dividends are generally taxable at 15 percent.

In general, under Article 11, interest derived and beneficially owned by a resident of either Contracting State may be taxed in both States. However, if the beneficial owner of the interest is not a resident of the source country, the tax levied by the source country is limited to 15 percent in most cases. Interest paid by any fi-

nancial institution and interest earned on trade credits are subject to a ten-percent tax by the source country. In addition, interest earned on government debt, including government-guaranteed debt, is exempt from tax by the source country.

Under Article 12, royalties derived and beneficially owned by a resident of a Contracting State are subject to a five-percent tax by the source country if they are copyright royalties (including software), an eight-percent tax if they arise from the right to use equipment, and a 15-percent tax if they pertain to patents and trademarks.

These rates of taxation on royalty and interest income do not apply, however, if the beneficial owner of the income is not a resident of, but carries on business in the source country and the income is attributable to a permanent establishment in the source country. In that situation, the income is to be considered either business profit or income from independent personal services.

Like other U.S. tax treaties and agreements, this Convention provides the standard anti-abuse rules for certain classes of investment income at Articles 11 and 12.

The taxation of capital gains, described in Article 13 of the Convention, does not follow the general pattern of recent U.S. tax treaties. Under the proposed Convention, as in a few other U.S. tax treaties, gains may be taxed by both Contracting States under the provisions of their domestic laws. Notwithstanding that provision, however, gains from the alienation of ships, aircraft, or containers used or operated by an enterprise of a Contracting State in international traffic or movable property pertaining to the use or operation of such ships, aircraft, or containers are taxable only in the Contracting State in which the enterprise is located.

Article 7 of the proposed Convention generally follows the standard rules for taxation by one country of the business profits of a resident of the other. The non-residence country's right to tax such profits is generally limited to cases in which the profits are attributable to a permanent establishment located in that country. The proposed Convention, however, grants rights to tax business profits that generally are somewhat broader than those found in the U.S. and OECD model treaties.

As do all recent U.S. treaties, Article 14 of this Convention preserves the right of the United States to impose its branch profits tax in addition to the basic corporate tax on a branch's business. The proposed Convention, at Article 7, also accommodates a provision of the 1986 Tax Reform Act that attributes to a permanent establishment income that is earned during the life of the permanent establishment but is deferred and not received until after the permanent establishment no longer exists.

Consistent with U.S. treaty policy, Article 8 of the new Convention permits only the country of residence to tax profits from international carriage by airplanes. This reciprocal exemption also extends to income from the rental of aircraft if the rental income is incidental to income from the operation of the aircraft in international traffic. However, income from the international operation of ships (including rentals that are incidental to such operations) is taxed at one-half the tax rate otherwise applicable. Income from the use or rental of containers that is incidental to the operation

of ships or aircraft in international traffic is treated the same as the income from the operation of the ships or aircraft (i.e., it is exempt if it is incidental to aircraft operations and taxed at half of the rate otherwise applicable if incidental to the operations of ships). This deviation from the preferred U.S. position regarding the taxation of shipping profits, which is suggested as an option in the U.N. model treaty, was necessary to accommodate Thailand's long-standing policy on this issue. The United States and Thailand have agreed to exchange notes under which, if Thailand grants any other country more-favorable treatment on income from the operation of ships in international traffic, negotiations will be reopened to extend such favorable treatment to the United States. Other income from the rental of ships or aircraft and from the use or rental of containers is treated as business profits.

The taxation of income from the performance of personal services under Article 15 of the proposed Convention is similar to that under some U.S. treaties with developing countries but grants a taxing right to the source country with respect to such income that is broader than that in either the U.S. or OECD model treaties.

Article 18 of the proposed Convention contains significant anti-treaty-shopping rules making the Convention's benefits unavailable to persons engaged in treaty shopping.

The proposed Convention also contains the standard rules necessary for administering the Convention, including rules for the resolution of disputes under the Convention (Article 27). The information-exchange provisions of the proposed Convention (Article 28) make clear that Thailand is obligated to provide U.S. tax officials such information as is necessary to carry out the provisions of the Convention. Under this provision, Thailand will provide tax information in a manner consistent with U.S. policy, including bank information, to the United States whenever there is a "Thai tax interest" in the case. While Thailand may not provide information under this Convention where there is no "Thai tax interest," U.S. tax authorities will be given access to information in criminal cases, including tax fraud, regardless of whether there is a "Thai tax interest," under the provisions of the existing Mutual Legal Assistance Treaty between the United States of America and the Kingdom of Thailand. Thus, the United States will be able to obtain information in criminal, but not civil, cases where there is no "Thai tax interest."

The proposed Convention contains an unusual termination provision designed to deal with the "tax interest" problem. The proposed Convention provides that Thailand generally is required to treat a U.S. tax interest as a "Thai tax interest" in all cases, including both civil and criminal tax proceedings. However, this general provision will not be in effect until the United States receives from Thailand a diplomatic note indicating that Thailand is both prepared and able to implement this provision, which will not be possible until Thai law is changed. If the United States has not received such a diplomatic note by June 30 of the fifth year following entry into force of the Convention, the entire Convention will terminate on January 1 of the sixth year following its entry into force (Article 31, Paragraph 2).

The Convention would permit the General Accounting Office and the tax-writing committees of Congress to obtain access to certain tax information exchanged under the Convention for use in their oversight of the administration of U.S. tax laws and treaties (Article 28).

This Convention is subject to ratification. In accordance with Article 30, it will enter into force upon the exchange of instruments of ratification with respect to taxes withheld by the source country and will have effect for payments made or credited on or after the first day of the sixth month following entry into force; with respect to other taxes, it will take effect for taxable years beginning on or after the first day of January following the date on which the Convention enters into force.

If the proposed Convention does not terminate on January 1 of the sixth year following its entry into force, it will remain in force indefinitely. After five years from the date the proposed Convention enters into force, either State may terminate the Convention pursuant to Article 31 by giving at least six months of prior notice through diplomatic channels.

Diplomatic notes exchanged between the parties accompany the Convention and provide clarification with respect to the application of the Convention in specified cases.

A technical memorandum explaining in detail the provisions of the Convention will be prepared by the Department of the Treasury and will be submitted separately to the Senate Committee on Foreign Relations.

The Department of the Treasury and the Department of State cooperated in the negotiation of the Convention. It has the full approval of both Departments.

Respectfully submitted,

WARREN CHRISTOPHER.

Enclosures as stated.

EMBASSY OF THE
UNITED STATES OF AMERICA
Bangkok, November 26, 1996

No. 1107

Excellency:

I have the honor to present my compliments to Your Excellency and have the honor to refer to the Convention Between the Government of the United States of America and the Government of the Kingdom of Thailand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income signed by our two governments on November 26, 1996.

I have the further honor, on behalf of the Government of the United States of America, to

His Excellency
Amnuay Viravan,
Deputy Prime Minister and,
Minister of Foreign Affairs,
of the Kingdom of Thailand.

convey the following understandings relating to the Convention:

It is understood that if the United States hereafter alters its policy regarding the provision of a tax sparing credit, or if the United States reaches an agreement on the provision of a tax sparing credit with any other country, the United States will agree to reopen negotiations with Thailand with a view to the conclusion of a Protocol which would provide a similar tax sparing credit to Thailand.

It is understood that if Thailand agrees in a treaty or other agreement with any other country to (1) a rate of tax on income or profits derived by residents of such other country on the operation of ships that is lower than the rate specified in paragraph 2 of Article 8 (Shipping and Air Transport), or (2) treatment for the rental or use of containers in international traffic that is more favorable than the treatment specified in paragraph 8 of Article 7 (Business Profits) or

paragraph 4 of Article 8 (Shipping and Air Transport), then Thailand will agree to reopen negotiations with the United States with a view to the conclusion of a Protocol which would extend such lower rate or more favorable treatment to residents of the United States.

It is understood that the use of the term "conditions" in paragraph 1 of Article 25 (Relief from Double Taxation) is intended to make clear that U.S. rules regarding "dual capacity" taxpayers apply in determining the extent to which the Thailand petroleum income tax will be considered an income tax under Article 25.

I would appreciate confirmation that the Government of the Kingdom of Thailand shares these understandings.

Accept, Excellency, the renewed assurances of my highest consideration.



No. 0504/4970

Ministry of Foreign Affairs,
Saranrom Palace.

26 November B.E. 2539 (1996)

Excellency,

I have the honour to present my compliments to Your Excellency and have the honour to acknowledge receipt of Your Excellency's Note No. 1107 dated 26 November 1996 which reads as follows:

"I have the honor to present my compliments to Your Excellency and have the honor to refer to the Convention Between the Government of the United States of America and the Government of the Kingdom of Thailand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income signed by our two Governments on November 26, 1996.

I have the further honor, on behalf of the Government of the United States of America, to convey the following understandings relating to the Convention:

His Excellency
William H. Itoh
Ambassador Extraordinary and Plenipotentiary
of the United States of America
BANGKOK

It is understood that if the United States hereafter alters its policy regarding the provision of a tax sparing credit, or if the United States reaches an agreement on the provision of a tax sparing credit with any other country, the United States will agree to reopen negotiations with Thailand with a view to the conclusion of a Protocol which would provide a similar tax sparing credit to Thailand.

It is understood that if Thailand agrees in a treaty or other agreement with any other country to (1) a rate of tax on income or profits derived by residents of such other country on the operation of ships that is lower than the rate specified in paragraph 2 of Article 8 (Shipping and Air Transport), or (2) treatment for the rental or use of containers in international traffic that is more favorable than the treatment specified in paragraph 8 of Article 7 (Business Profits) or paragraph 4 of Article 8 (Shipping and Air Transport), then Thailand will agree to reopen negotiations with the United States with a view to the conclusion of a Protocol which would extend such lower rate or more favorable treatment to residents of the United States.

It is understood that the use of the term "conditions" in paragraph 1 of Article 25 (Relief from Double Taxation) is intended to make clear that U.S. rules regarding "dual capacity" taxpayers apply in determining the extent to which the Thailand petroleum income tax will be considered an income tax under Article 25.

I would appreciate confirmation that the Government of the Kingdom of Thailand shares these understandings.

Accept, Excellency, the renewed assurances of my highest consideration."

In reply, I have the honour to confirm that the Government of the Kingdom of Thailand shares the same understandings contained in Your Excellency's Note under reference.

Accept, Excellency, the renewed assurances of my highest consideration.

(Amnuay Viravan)
Deputy Prime Minister and
Minister of Foreign Affairs

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE KINGDOM OF THAILAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

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ARTICLE 1

Personal Scope

1. This Convention shall apply to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Convention.

2. Notwithstanding any provision of the Convention except paragraph 3 of this Article, a Contracting State may tax its residents (as determined under Article 4 (Residence)), and by reason of citizenship may tax its citizens, as if the Convention had not come into effect. For this purpose, the term "citizen" shall include a former citizen whose loss of citizenship had as one of its principal purposes the avoidance of tax (as defined under the laws of the Contracting States), but only for a period of 10 years following such loss. In the case of the United States, the term "resident" shall include a former long-term lawful resident (whether or not so treated under Article 4) whose loss of residence status had as one of its principal purposes the avoidance of tax (as defined under the laws of the United States), but only for a period of 10 years following such loss.

3. The provisions of paragraph 2 shall not affect:

a) the benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), under paragraphs 2 and 5 of Article 20 (Pensions and Social Security Payments) and under Articles 25 (Relief from Double Taxation), 26 (Non-Discrimination), and 27 (Mutual Agreement Procedure); and

b) the benefits conferred by a Contracting State under Articles 21 (Government Service), 22 (Students and Trainees), 23 (Teachers) and 29 (Diplomatic Agents and Consular Officers), upon individuals who are neither citizens of, nor have immigrant status in, that State.

4. The Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded:

a) by the laws of either Contracting State; or

b) by any other agreement between the Contracting States.

5. Notwithstanding the provisions of subparagraph 4(b):

(a) Notwithstanding any other agreement to which the Contracting States may be parties, a dispute concerning whether a measure is within the scope of this Convention shall be considered only by the competent authorities of the Contracting States, as defined in subparagraph 1(e) of Article 3 (General Definitions) of this Convention, and the procedures under this Convention exclusively shall apply to the dispute.

(b) Unless the competent authorities determine that a taxation measure is not within the scope of this Convention, the nondiscrimination obligations of this Convention exclusively shall apply with respect to that measure, except for such national treatment or most-favored-nation obligations as may apply to trade in goods under the General Agreement on Tariffs and Trade. No national treatment or most-favored-nation obligation under any other agreement shall apply with respect to that measure.

(c) For the purpose of this paragraph, a "measure" is a law, regulation, rule, procedure, decision, administrative action, or any other form of measure.

ARTICLE 2

Taxes Covered

1. The existing taxes to which this Convention shall apply are:

a) in the United States: the Federal income taxes imposed by the Internal Revenue Code, but excluding the social security taxes, (hereinafter referred to as "United States tax");

b) in Thailand: the income tax and the petroleum income tax (hereinafter referred to as "Thai tax").

2. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws and of any official published material concerning the application of the Convention, including explanations, regulations, rulings, or judicial decisions.

ARTICLE 3

General Definitions

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

a) the term "person" includes an individual, an estate, a trust, a partnership, a company, and any other body of persons;

b) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

c) 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;

d) the term "international traffic" means any transport by a ship or aircraft except when such transport is solely between places in the other Contracting State;

e) the term "competent authority" means:

i) in the case of the United States: the Secretary of the Treasury or his delegate; and

ii) in the case of Thailand: the Minister of Finance or his authorized representative;

f) the term "United States" means the United States of America and, where used in a geographic sense, includes any area outside the territorial sea of the United States which, in accordance with international law and the laws of the United States, has been or may hereafter be designated as an area within which the United States may exercise rights with respect to the exploration and exploitation of the natural resources of the seabed or its subsoil; the term "United States" does not include Puerto Rico, the Virgin Islands, Guam, or any other United States possession or territory;

g) the term "Thailand" means the Kingdom of Thailand and any area adjacent to the territorial waters of the Kingdom of Thailand which by Thai legislation, and in accordance with international law, has been or may hereafter be designated as an area within which the rights of the Kingdom of

Thailand with respect to the seabed and subsoil and their natural resources may be exercised;

h) the terms "a Contracting State" and "the other Contracting State" mean the United States or Thailand, as the context requires;

i) the term "tax" means United States tax or Thai tax, as the context requires;

j) the term "nationals" means:

i) all individuals possessing the nationality or citizenship of a Contracting State; and

ii) all legal persons, partnerships, associations and any other entities deriving their status as such from the laws in force in a Contracting State.

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, or the competent authorities agree to a common meaning, have the meaning which it has under the laws of that State concerning the taxes to which the Convention applies.

ARTICLE 4

Residence

1. For the purposes of this Convention, 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, citizenship, place of management, place of incorporation, or any other criterion of a similar nature. The term also includes that State and any political subdivision or local authority thereof. The term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State. For purposes of this paragraph, an individual who is not a resident of Thailand under this paragraph, and who is a United States citizen or an alien admitted to the United States for permanent residence (a "green card" holder) is a resident of the United States only if the individual has a substantial presence, permanent home or habitual abode in the United States. If such individual is a resident of Thailand under this paragraph, he shall be considered a resident of both Contracting States and his residence for purposes of the Convention shall be determined under paragraph 2.

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 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 (center of vital interests);

b) if the State in which he has his center of vital interests cannot be determined, or if he does not have a 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;

c) if he has an 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;

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, the competent authorities of the Contracting States shall settle the question by mutual agreement and determine the mode of application of the Convention to such person.

ARTICLE 5

Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop;

f) a warehouse, in relation to a person performing storage facilities for others; and

g) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources.

3. The term "permanent establishment" likewise encompasses:

a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith or an installation or drilling rig or ship used for the exploration or exploitation of natural resources, but only where such site, project or activities continue for a period or periods aggregating more than 120 days within any 12-month period; and

b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if

(i) activities of that nature continue (for the same or a connected project) within that State for a period or periods aggregating more than 90 days within any 12-month period, provided that a permanent establishment shall not exist in any taxable year in which such services are rendered in that State for a period or periods aggregating less than 30 days in that taxable year; or

(ii) the services are performed within that State for a related enterprise within the meaning of paragraph 1 of Article 9 (Associated Enterprises).

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 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 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 the activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include the use of facilities or the maintenance of a stock of goods or merchandise belonging to the enterprise for the purpose of occasional delivery of such goods or merchandise.

6. Even if an enterprise does not have a permanent establishment in a Contracting State under the preceding paragraphs of this Article, nevertheless, it shall be deemed to have a permanent establishment in a Contracting State if it engages in business in that State through an agent who:

a) has an authority to conclude contracts in the name of that enterprise and regularly exercises

that authority in that State unless the activities of that person are limited to those mentioned in paragraphs 4 and 5 which, if exercised through a fixed place of business, would not make the fixed place of business a permanent establishment under the provisions of that paragraph;

b) regularly secures orders in that State for that enterprise; or

c) maintains in that State a stock of goods or merchandise belonging to that enterprise from which he regularly makes deliveries on behalf of the enterprise.

7. An enterprise 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. However, when by agreement between the agent and the enterprise, the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise and other enterprises which are controlled by it or have a controlling interest in it, he will not be considered an agent of an independent status within the meaning of this paragraph.

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 (Real) Property

1. Income derived by a resident of a Contracting State from immovable (real) property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The terms "immovable property" or "real property" shall have the meanings which they have under the law of the Contracting State in which the property in question is situated. The terms 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 immóvable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7

Business Profits

1. The income or 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 income or profits of the enterprise may be taxed in the other State but only so much of them as is attributable to:

(a) that permanent establishment;

(b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or

(c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

The provisions of subparagraphs (b) and (c) shall apply only if it can be shown that the sales or activities were not carried out by the permanent establishment in order to avoid tax in the Contracting State in which the permanent establishment is situated.

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 income or profits which it might be expected to make if it were a distinct and independent enterprise engaged in the same or similar activities under the same or similar conditions.

3. In determining the income or profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including a reasonable allocation or apportionment of executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in a Contracting State to determine the income or 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 or, in the case of a person who does not claim taxation on the basis of the

actual net profits of the permanent establishment, on the basis of a certain reasonable percentage of the gross receipts of the permanent establishment, nothing in paragraph 2 of this Article shall preclude such State from determining the income or profits to be taxed by such a method. The method adopted shall, however, be such that the result shall be in accordance with the principles laid down in this Article.

5. No income or 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 income or 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 income or profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

8. For the purposes of the Convention, the term "business profits" means income derived from any trade or business, including profits from the rental of ships, aircraft and containers (including trailers, barges and related equipment for the transport or containers), if such profits are not incidental to income from the operation of ships or aircraft in international traffic.

9. In applying paragraphs 1 and 2 of this Article, paragraph 5 of Article 10 (Dividends), paragraph 5 of Article 11 (Interest), paragraph 4 of Article 12 (Royalties), paragraph 1(a) of Article 15 (Independent Personal Services) and paragraph 2 of Article 24 (other Income), any income attributable to a permanent establishment or fixed base during its existence is taxable in the Contracting State in which such permanent establishment or fixed base is situated, even if the payments are deferred until such permanent establishment or fixed base has ceased to exist.

ARTICLE 8

Shipping and Air Transport

1. a) Income or profits which a resident of the United States derives from the operation of aircraft in international traffic shall be taxable only in the United States.

b) Income or profits which a resident of Thailand derives from the operation of aircraft in international traffic shall be taxable only in Thailand.

2. a) The amount of tax imposed by Thailand on income or profits derived by a resident of the United States from the operation of ships in international traffic shall be reduced to 50 percent of the amount which would have been imposed in the absence of this Convention.

b) The amount of tax imposed by the United States on income or profits derived by a resident of Thailand from the operation of ships in international traffic shall be reduced to 50 percent of the amount which would have been imposed in the absence of this Convention.

3. For the purposes of this Article, income or profits from the operation of ships or aircraft in international traffic include income or profits derived from the rental of ships or aircraft if such rental profits are incidental to other income or profits described in paragraphs 1 and 2.

4. Income or profits of an enterprise of a Contracting State from the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) that are incidental to income from the operation of ships or aircraft in international traffic shall be treated for purposes of paragraphs 1 and 2 as income from the operation of ships or aircraft in international traffic.

5. The provisions of paragraphs 1, 2 and 4 shall also apply to income or profits from 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, but for those conditions would have accrued to one of the enterprises, but by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State, and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall, if it agrees that action of the first-mentioned Contracting State was correct, 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 Convention 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) 10 percent of the gross amount of the dividends if the beneficial owner is a company which controls at least 10 percent of the voting power of the company paying the dividends; or

b) 15 percent 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. Subparagraph (b) of paragraph 2 and not subparagraph (a) shall apply in the case of dividends paid by a person which is a resident of the United States and which is a Regulated Investment Company. Subparagraph (a) of paragraph 2 shall not apply to dividends paid by a person which is a resident of the United States and which is a Real Estate Investment Trust, and subparagraph (b) shall apply only if the dividend is beneficially owned by an individual holding less than a 25 percent interest in the Real Estate Investment Trust; otherwise the rate of tax applicable under U.S. domestic law shall apply. The rules of this paragraph shall apply to dividends paid by companies resident in Thailand that are similar to the United States companies referred to in this paragraph. Whether Thai companies are similar to the United States companies referred to in this paragraph will be determined by mutual agreement of the competent authorities.

4. 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 Contracting State of which the company making the distribution is a resident. The term "dividends" also includes income from other arrangements, including debt

obligations, carrying the right to participate in profits, to the extent so characterized under the law of the Contracting State in which the income arises.

5. The provisions of paragraphs 1, 2 and 3 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 (Business Profits) or Article 15 (Independent Personal Services), as the case may be, shall apply.

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:

a) 10 percent of the gross amount of the interest if the interest is beneficially owned by any financial institution (including an insurance company);

b) 10 percent of the gross amount of the interest if the interest is beneficially owned by a resident of the other Contracting State and is paid with respect to indebtedness arising as a consequence of a sale on credit by a resident of that other State of any equipment, merchandise or services, except where the sale was between persons not dealing with each other at arm's length; and

c) 15 percent of the gross amount of the interest in all other cases.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to the Government of the other Contracting State, or to a resident of that other State with respect to debt obligations guaranteed or insured by that Government, shall be exempt from tax in the first-mentioned Contracting State. For the purposes of this paragraph, the term "Government" means:

a) in the case of Thailand, the Government of Thailand and shall include:

i) the Bank of Thailand;

ii) the Export-Import Bank of Thailand;

iii) the local authorities;

iv) such financial institutions, the capital of which is wholly owned by the Government of Thailand or any local authority

as may be agreed from time to time between the competent authorities of both of the Contracting States; and

b) in the case of the United States, the Government of the United States and shall include:

i) the Federal Reserve Banks;

ii) the Export-Import Bank;

iii) the Overseas Private Investment Corporation;

iv) the states and local authorities; and

v) such financial institutions, the capital of which is wholly owned by the Government of the United States or any state or local authority as may be agreed from time to time between the competent authorities of both of the Contracting States.

4. 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 or prizes attaching to such securities, bonds or debentures, as well as all other income that is treated as income from money lent by the taxation law of the Contracting State in which the income arises. However, the term, "interest" does not include income dealt with in Article 10 (Dividends).

5. 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 (a) such permanent establishment or fixed base, or with (b) business activities referred to under subparagraphs (b) and (c) of paragraph 1 of Article 7 (Business Profits). In such cases the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services), as the case may be, shall apply.

6. 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.

7. 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 the Convention.

8. The provisions of paragraphs 1, 2 and 3 shall not apply to an excess inclusion with respect to a residual interest in a United States Real Estate Mortgage Investment Conduit.

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:

a) 5 percent of the gross amount of the royalties described in subparagraph (a) of paragraph 3;

b) 8 percent of the gross amount of the royalties described in subparagraph (b) of paragraph 3; and

c) 15 percent of the gross amount of the royalties described in subparagraph (c) of paragraph 3.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration:

a) for the use of or the right to use any copyright of literary, artistic or scientific work, including software, and motion pictures and works on film, tape or other means of reproduction for use in connection with radio or television broadcasting;

b) for the use of or the right to use industrial, commercial or scientific equipment; or

c) for the use of or the right to use any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

The term "royalties" also includes gains derived from the alienation of any such right or property which are contingent on the productivity, use or disposition thereof.

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 (a) such permanent establishment or fixed base, or with (b) business activities referred to under subparagraph (c) of paragraph 1 of Article 7 (Business Profits). In such case the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services), as the case may be, shall apply.

5. a) 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. However, when 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 a 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.

b) Where subparagraph (a) does not operate to treat royalties as being from sources in one of the Contracting States and the royalties relate to the use of or the right to use in one of the Contracting States any property or right described in paragraph 3, the royalties shall be deemed to arise in that State.

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

ARTICLE 13

Gains

1. Except as otherwise provided in this Convention, each Contracting State may tax gains from the alienation of property in accordance with the provisions of its domestic law.

2. Notwithstanding the provisions of paragraph 1, gains from the alienation of ships, aircraft or containers used or operated by an enterprise of a Contracting State in international traffic or movable property pertaining to the use or operation of such ships, aircraft or containers shall be taxable only in the Contracting State of which the enterprise is a resident.

ARTICLE 14

Branch Tax

1. A corporation which is a resident of a Contracting State may, as provided in paragraphs 2 and 3, be subject in the other Contracting State to a tax in addition to the tax allowable under the other provisions of this Convention.

2. In the case of the United States, such tax may be imposed only on:

a) the "dividend equivalent amount" of the business profits of the corporation which are effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States and which are either attributable to a permanent establishment in the United States or subject to tax in the United States under Article 6 (Income from Immovable (Real) Property) or Article 13 (Gains) of this Convention; and

b) the excess, if any, of interest deductible in the United States in computing the profits of the corporation that are subject to tax in the United States and are either attributable to a permanent establishment in the United States or subject to tax in the United States under Article 6 (Income from Immovable (Real) Property) or Article 13 (Gains) of this Convention over the interest paid by or from the permanent establishment or trade or business in the United States.

3. Notwithstanding any provision of this Convention, a company which is a resident of the United States and which has a permanent establishment in Thailand shall remain subject to taxes on disposal of profits out of Thailand in accordance with the provisions of Thai law.

4. The taxes described in paragraphs 2 and 3 of this Article shall not be imposed at a rate exceeding:

a) the rate specified in paragraph 2(a) of Article 10 (Dividends) for the taxes described in subparagraph (a) of paragraph 2 and paragraph 3 of this Article; and

b) the appropriate rate specified in paragraph 2 of Article 11 (Interest) for the tax described in subparagraph (b) of paragraph 2 of this Article.

ARTICLE 15

Independent Personal Services

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

a) if he has a 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 be 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 90 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 other 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 10,000 United States dollars or its equivalent in Thai currency, not including expenses reimbursed to him or borne on his behalf.

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

ARTICLE 16

Dependent Personal Services

1. Subject to the provisions of Articles 17 (Directors' Fees), 20 (Pensions and Social Security Payments), 21 (Government Service), 22 (Students and Trainees) and 23 (Teachers), 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 any 12-month period commencing or ending in the taxable year concerned;

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 by an enterprise of a Contracting State in international traffic may be taxed in the Contracting State in which the enterprise is resident.

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, or as a designee of a director serving in the capacity of a director, of a company which is a resident of the other Contracting State may be taxed in that other State unless the services are performed in the first-mentioned Contracting State.

ARTICLE 18

Limitation on Benefits

1. A person that is a resident of a Contracting State and derives income from the other Contracting State shall be entitled, in that other Contracting State, to all the benefits of this Convention only if such person is:

a) an individual;

b) a Contracting State or a political subdivision or local authority thereof;

c) a person:

(i) more than 50 percent of the beneficial interest in which (or in the case of a company, more than 50 percent of the number of shares of each class of shares) is owned, directly or indirectly, by persons entitled to the benefits of this Convention under subparagraphs (a), (b), (d), (e), or (f) or who are citizens of the United States; and

(ii) more than 50 percent of the gross income of which is not used, directly or indirectly, to meet liabilities (including liabilities for interest or royalties) to persons not entitled to the benefits of this Convention under subparagraphs (a), (b), (d), (e) or (f) or who are not citizens of the United States;

d) a company in whose principal class of shares there is substantial and regular trading on a recognized stock exchange;

e) a company that is wholly owned, directly or indirectly, by a company referred to in subparagraph (d), provided that each company in the chain of ownership that is used to satisfy the control requirement of this subparagraph is a resident of a Contracting State; or

f) an entity that is a not-for-profit organization and that, by virtue of that status, is generally exempt from income taxation in its Contracting State of residence, provided that more than half of the beneficiaries, members or participants, if any, in such organization are persons that are entitled, under this Article, to the benefits of this Convention.

2. A person that is a resident of a Contracting State and that is engaged in the active conduct of a trade or business in that Contracting State (other than the business of making or managing investments, unless these activities are banking or insurance activities carried on by a bank or insurance company), shall, notwithstanding the provisions of paragraph 1, be entitled to benefits of the Convention with respect to any item of income derived from the other Contracting State, if:

(a) (i) the income derived from that other Contracting State is derived in connection with the trade or business carried on in the first-mentioned Contracting State; and

(ii) the trade or business carried on in the first-mentioned Contracting State is substantial in relation to the business or activity giving rise to the income in the other Contracting State; or

(b) the income derived from the other Contracting State is incidental to the trade or business carried on in the first-mentioned Contracting State.

3. A resident of Thailand that is an "international banking facility" as that term is defined under the laws of Thailand (or any other resident of Thailand that is subject to the same taxation treatment under the laws of Thailand), shall not be entitled to any U.S. benefits under this Convention with respect to any income that such facility receives from the United States.

4. A person that is not entitled to the benefits of the Convention pursuant to the provisions of the preceding paragraphs, may, nevertheless, be granted the benefits of the Convention if the competent authority of the State in which the income in question arises so determines.

5. For purposes of paragraph 1, the term "recognized stock exchange" means:

a) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a National Securities Exchange for purposes of the Securities Exchange Act of 1934;

b) any securities exchange recognized by the Securities and Exchange Commission of Thailand; and

c) any other stock exchange agreed upon by the competent authorities of the Contracting States.

6. Where under any provision of this Convention income arising in one of the Contracting States is relieved in whole or in part from tax in that Contracting State and, under the law in force in the other Contracting State, a person, in respect of the said income, is subject to tax by reference to the amount of the income which is remitted to or received in the other Contracting State and not by reference to the full amount of the income, then the relief to be allowed under this Convention in the firstmentioned Contracting State shall apply only to so much of the income as is remitted to or received in the other Contracting State during the calendar year such income accrues or the next succeeding year.

7. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Article.

ARTICLE 19

Artistes and Sportsmen

1. Notwithstanding the provisions of Articles 15 (Independent Personal Services) and 16 (Dependent Personal Services), income derived by a resident of a Contracting State as an entertainer, such as a theater, motion picture, radio, or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State, except where the amount of the gross receipts derived by such entertainer or sportsman from such activities does not exceed the lesser of 100 United States dollars or its equivalent in Thai currency per day or 3,000 United States dollars or its equivalent in Thai currency in the aggregate for the taxable year concerned.

2. Where income in respect of activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman but to another person, that income of that other person may, notwithstanding the provisions of Articles 7 (Business Profits), 15 (Independent Personal Services) and 16 (Dependent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised, unless it is established that neither the entertainer or sportsman nor persons related thereto participate directly or indirectly in the profits of that other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions, or other distributions.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply to remuneration or profits, salaries, wages and similar income derived from activities performed in a Contracting State by public entertainers if the visit to that Contracting State is substantially supported by public funds of the other Contracting State, including any political subdivision or local authority thereof.

ARTICLE 20

Pensions and Social Security Payments

1. Subject to the provisions of paragraph 2 of Article 21 (Government Service), pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, social security benefits and other similar public pensions paid by a Contracting State to a resident of the other Contracting State or a citizen of the United States shall be taxable only in the first-mentioned State.

3. Annuities derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated times during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

4. Alimony paid to a resident of a Contracting State shall be taxable only in that State. The term "alimony" as used in this paragraph means periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, which payments are taxable to the recipient under the laws of the State of which he is a resident.

5. Periodic payments, not dealt with in paragraph 4, for the support of a child made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, paid by a resident of a Contracting State to a resident of the other Contracting State, shall be taxable only in the first-mentioned State.

ARTICLE 21

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 subdivision or authority 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 individual is a resident of that State who:

i) is a national of that State; or

ii) did not become a resident of that State solely for the purpose of rendering the services.

2. a) Any pension paid by, or out of funds created by, a Contracting State or 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 (Dependent Personal Services), 17 (Directors' Fees) and 20 (Pensions and Social Security Payments) shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 22

Students and Trainees

1. a) An individual who is a resident of one of the Contracting States at the time he becomes temporarily present in the other Contracting State and who is temporarily present in that other Contracting State for the primary purpose of:

i) studying at a university or other recognized educational institution in that other Contracting State;

ii) securing training required to qualify him to practice a profession or professional specialty; or

iii) studying or doing research as a recipient of a grant, allowance, or award from a government, religious, charitable, scientific, literary, or educational organization,

shall be exempt from tax by that other Contracting State with respect to amounts described in subparagraph (b) for a period not exceeding five taxable years from the date of his arrival in that other Contracting State.

b) The amounts referred to in subparagraph (a) are:

i) gifts from abroad for the purpose of his maintenance, education, study, research, or training;

ii) the grant, allowance, or award; and

iii) income from personal services performed in that other Contracting State in an amount not in excess of 3,000 United States dollars or its equivalent in Thai currency for any taxable year.

2. An individual who is a resident of one of the Contracting States at the time he becomes temporarily present in the other Contracting State and who is temporarily present in that other Contracting State as an employee of, or under contract with, a resident of the first-mentioned Contracting State, for the primary purpose of:

a) acquiring technical, professional, or business experience from a person other than that resident of the first-mentioned Contracting State or other than a person related to such resident; or

b) studying at a university or other recognized educational institution in that other Contracting State,

shall be exempt from tax by that other Contracting State for a period not exceeding 12 consecutive months with respect to his income from personal services in an aggregate amount not in excess of 7,500 United States dollars or its equivalent in Thai currency for any taxable year, not including expenses reimbursed to him or borne on his behalf.

3. An individual who is a resident of one of the Contracting States at the time he becomes temporarily present in the other Contracting State and who is temporarily present in that other Contracting State for a period not exceeding one year, as a participant in a program sponsored by the Government of that other Contracting State, for the primary purpose of training, research, or study, shall be exempt from tax by that other Contracting State with respect to his income from personal services in respect of such training, research, or study performed in that other Contracting State in an aggregate amount not in excess of 10,000 United States dollars or its equivalent in Thai currency in any taxable year, not including expenses reimbursed to him or borne on his behalf.

4. The benefits provided under Article 23 (Teachers) and paragraph 1 of this Article shall, when taken together, extend only for such period of time, not to exceed 5 taxable years from the date of arrival of the individual claiming such benefits, as may reasonably or customarily be required to effectuate the purpose of the visit. The benefits provided under Article 23 (Teachers) shall not be available to an individual if, during the immediately preceding period, such individual enjoyed the benefits of paragraph 1 of this Article.

ARTICLE 23

Teachers

1. An individual who visits a Contracting State for a period not exceeding two years for the purposes of teaching or engaging in research at a university, college or other recognized educational institution in that State, and who was immediately before that visit a resident of the other Contracting State, shall be exempted from tax by the first-mentioned Contracting State on any remuneration for such teaching or research for a period not exceeding two years from the date he first visits that State for such purpose.

2. This Article shall apply to income from research only if such research is undertaken by the individual in the public interest and not primarily for the benefit of some other private person or persons.

ARTICLE 24

Other Income

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

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6 (Income from Immovable (Real) Property), if the beneficial owner of the income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the 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 (Business Profits) or Article 15 (Independent Personal Services), 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 Convention and arising in the other Contracting State may also be taxed in that other State.

ARTICLE 25

Relief from Double Taxation

1. In accordance with the provisions and subject to the conditions and limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income

a) the income tax paid to Thailand by or on behalf of such citizen or resident; and

b) in the case of a United States company owning at least 10 percent of the voting stock of a company which is a resident of Thailand and from which the United States company receives dividends, the income tax paid to Thailand by or on behalf of the distributing company with respect to the profits out of which the dividends are paid.

For the purposes of this paragraph, the taxes referred to in paragraphs 1(b) and 2 of Article 2 (Taxes Covered) shall be considered income taxes.

2. In accordance with the provisions and subject to the limitations of the law of Thailand (as it may be amended from time to time without changing the general principle hereof), United States tax payable in respect of income from sources within the United States shall be allowed as a credit against Thai tax payable in respect of that income. The credit shall not exceed that part of the Thai tax as computed before the credit is given which is appropriate to such item of income. The provisions of this paragraph shall not apply in the case of income that has been denied benefits of this Convention under the provisions of Article 18 (Limitation on Benefits).

3. For the purposes of allowing relief from double taxation pursuant to this Article, income shall be deemed to arise exclusively as follows:

a) income derived by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention (other than solely by reason of citizenship in accordance with paragraph 2 of Article 1 (Personal Scope)) shall be deemed to arise in that other State;

b) income derived by a resident of a Contracting State which may not be taxed in the

other Contracting State in accordance with the Convention shall be deemed to arise in the first-mentioned State.

Notwithstanding the preceding sentence, the determination of the source of income for purposes of this Article shall be subject to such source rules in the domestic laws of the Contracting States as apply for the purpose of limiting the foreign tax credit. The rules of this paragraph shall not apply in determining credits against the tax of a Contracting State for foreign taxes other than the taxes of the other Contracting State referred to in Article 2 (Taxes Covered).

ARTICLE 26

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. This provision shall apply to persons who are not residents of one or both of the Contracting States.

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

3. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 7 of Article 11 (Interest), or paragraph 6 of Article 12 (Royalties) apply, interest, royalties, and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable profits of the first-mentioned resident, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. 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 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.

5. Nothing in this Article shall be construed as preventing either Contracting State from imposing the taxes described in Article 14 (Branch Tax).

ARTICLE 27

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention 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 he is a resident or, if his case comes under paragraph 1 of Article 26 (Non-Discrimination), to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at 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 the Convention.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular the competent authorities of the Contracting States may agree to increase any specific amounts referred to in the Convention to reflect economic or monetary developments. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. In the event the competent authorities reach an agreement referred to in paragraphs 2 and 3, taxes shall be imposed on such income, and refund or credit of taxes shall be allowed by the Contracting States in accordance with such agreement.

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 28

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 Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1 (General Scope). 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, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. 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 administrative practice of that or of the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

3. Subject to the provisions of paragraph 2 of Article 31 (Termination), if information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same manner and to the same extent as if the tax of the first- mentioned State were the tax of that other State and were being imposed by that other State. The application of this paragraph shall be suspended until such time as the Government of the United States receives from the Government of Thailand a diplomatic note indicating that Thailand is

prepared and able to implement the provisions of this paragraph.

4. For the purposes of this Article, the Convention shall apply, notwithstanding the provisions of Article 2 (Taxes Covered) to all taxes imposed:

(i) in the case of the United States, under the Internal Revenue Code; and

(ii) in the case of Thailand, under the Revenue Code, and under the Petroleum Income Tax Act.

ARTICLE 29

Diplomatic Agents and Consular Officers

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

ARTICLE 30

Entry into Force

1. This Convention shall be subject to ratification in accordance with the applicable procedures of each Contracting State and instruments of ratification shall be exchanged at Washington as soon as possible.

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of the sixth month next following the date on which the Convention enters into force;

b) in respect of other taxes, for taxable periods beginning on or after the first day of January next following the date on which the Convention enters into force.

ARTICLE 31

Termination

1. This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention at any time after 5 years from the date on which the Convention enters into force, provided that at least 6 months prior notice of termination has been given through diplomatic channels. In such event, the Convention shall cease to have effect:

a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January next following the expiration of the 6 months period;

b) in respect of other taxes, for taxable periods beginning on or after the first day of January next following the expiration of the 6 months period.

2. Notwithstanding paragraph 1, this Convention shall terminate on January 1 of the 6th year following the year in which the Convention enters into force, unless the Government of the United States has received from the Government of Thailand by June 30, of the 5th year following entry into force, a diplomatic note of the character described in the last sentence of paragraph 3 of Article 28 (Exchange of Information).

DONE at Bangkok in duplicate, on this 26th day of November, 1996, in the English language.

FOR THE GOVERNMENT OF THE THE UNITED STATES OF AMERICA:

William H. Itoh
Ambassador of the
United States of America

FOR THE GOVERNMENT OF KINGDOM OF THAILAND:

Amnuay Virawan
Deputy Prime Minister
and Minister of
Foreign Affairs