



# Double Taxation Avoidance Agreement between Thailand and Nepal

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## DEZAN SHIRA & ASSOCIATES

Corporate Establishment, Tax, Accounting & Payroll Throughout Asia

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**AGREEMENT**  
**BETWEEN**  
**THE GOVERNMENT OF THE KINGDOM OF THAILAND**  
**AND**  
**HIS MAJESTY'S GOVERNMENT OF NEPAL**  
**FOR THE AVOIDANCE OF DOUBLE TAXATION**  
**AND THE PREVENTION OF FISCAL EVASION**  
**WITH RESPECT TO TAXES ON INCOME**

The Government of the Kingdom of Thailand and His Majesty's Government of Nepal

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 on behalf of a Contracting State or of its 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 in particular:

(a) In the case of Thailand:

- the income tax; and
  - the petroleum income tax;
- (hereinafter referred to as "Thai tax")

(b) In the case of Nepal;

- the income tax imposed under the Income Tax Act;
- (hereinafter referred to as "Nepal tax")

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

### **ARTICLE 3**

#### **GENERAL DEFINITIONS**

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

- (a) the term "Thailand" means the Kingdom of Thailand.;
- (b) the term "Nepal" means the Kingdom of Nepal;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Thailand or Nepal as the context requires;
- (d) the term "person" includes an individual, a company and any other body of persons as well as any entity treated as a taxable unit under the taxation laws in force in either Contracting State;
- (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

- (f) the term "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting state and an enterprise carried on by a resident of the other Contracting State;
- (g) the term "tax " means Thai tax or Nepal tax as the context requires, but shall not include any amount which is payable in respect of any default or omissions in relation to the taxes to which this Agreement applies or which represents a penalty imposed relating to these taxes;
- (h) 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;
- (i) the term "international traffic " means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State; and
- (j) the term " competent authority " means, in the case of Thailand, the Minister of Finance or his authorized representative, and, in the case of Nepal the Minister of Finance or his authorized representative;

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 Contracting 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 incorporation, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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 (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident 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 State shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, it shall be deemed to be a resident of the Contracting State in which it is incorporated or under the law of which it is deemed to be a resident, if the company under the foregoing criterion still is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated. If the

State in which its place of effective management is situated cannot be determined, then 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 " includes especially:
  - (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop;
  - (f) a mine, oil or gas well, quarry or any other place of extraction of natural resources;
  - (g) a farm or plantation;
  - (h) a warehouse, in relation to a person providing storage facilities for others;
  - (i) a building site, a construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities continue for a period of more than 183 days;
  - (j) the furnishing of services including consultancy services by a resident of one of the Contracting States through employees or other personnel, where activities of that nature continue for the same or a connected project within the other Contracting State for a period or periods aggregating more than 183 days within any twelve-month period.

3. 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 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 activities which have a preparatory or auxiliary character, for the enterprise;

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting in a Contracting State, on behalf of the enterprise of the other Contracting State, the 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;

- (a) has and habitually exercises in the first - mentioned State, an authority to conclude contracts on behalf of the enterprise unless his activities are limited to the purchase of goods or merchandise for the enterprise;
- (b) has no such authority, but habitually maintains in the first - mentioned State a stock of goods or merchandise belonging to the enterprise from which he fills orders or makes deliveries on behalf of the enterprise; or
- (c) has no such authority, but habitually secures orders in the first-mentioned State wholly or almost wholly for the

enterprise or for the enterprise and other enterprises which are controlled by it or have a controlling interest in it;

5. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting state shall, except in regard to reinsurance, be deemed to have a permanent establishment in the other State if it collects premiums in the territory of that other State or insures risks situated therein through an employee or through a representative who is not an agent of an independent status within the meaning of paragraph 6.

6. 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 or 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 independent status within the meaning of this paragraph.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is 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 law of the Contracting State in which the property in question is situated. The term shall in any case include

property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the rights to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise 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 provision 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 separate enterprise engaged in the same or similar activities under the same or similar condition and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses under the provisions of domestic law 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 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 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 a 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 head office of the enterprise or any of its other offices.

4. 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 a certain percentage of the gross receipt of the enterprise or of the permanent establishment or on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting

State from determining the profits to be taxed by such a method as may be customary; the method adopted shall, however, be such that the result shall be in accordance with the principles contained 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

## **ARTICLE 8**

### **SHIPPING, AIR TRANSPORT AND CONTAINERS**

1. Income or 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;

2. Income or profits derived by an enterprise of a Contracting State from the operation of ships in international traffic may be taxed in the other Contracting State, but the tax imposed in that other State shall be reduced by an amount equal to 50 percent thereof;

3. 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.

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

## **ARTICLE 9**

### **ASSOCIATED ENTERPRISES**

1. Where
  - (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
  - (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State; and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any income or 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 income or 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 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 the Agreement and the competent authorities of the Contracting States shall, if necessary, consult each other.

3. A Contracting State shall not change the profits of an enterprise in the circumstances referred to in paragraph 2 after the expiry of the time limits provided in its national laws.

## **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 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least 10 per cent of the shares of the company paying the dividends;
- b) 15 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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, mining shares, founders' 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 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives income or profits 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 income or profits arising in such other State. Nothing in this paragraph shall be construed as preventing a Contracting State from imposing income tax, according to the laws of that State, on the disposal of profits made by a permanent establishment situated therein.

## **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 and is a company which is a resident of the other Contracting State, the tax so charged shall not exceed;

- (a) 10 per cent of the gross amount of the interest if it is received by any financial institution (including an insurance company);
- (b) 15 per cent of the gross amount of the interest in other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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.

For the purpose of this paragraph, the term "Government"

(a) in the case of Thailand, means the Government of the Kingdom of Thailand and shall include;

- (i) the Bank of Thailand;
- (ii) Export -Import Bank of Thailand;
- (iii) the local authority or a statutory body thereof;
- (iv) such institutions, the capital of which is wholly owned by the Government of the Kingdom of Thailand or any local authorities as may be agreed from time to time between the competent authorities of the two Contracting States;

(b) in the case of Nepal, means His Majesty's Government of Nepal and shall include;

- (i) the local authority or a statutory body thereof;
- (ii) Nepal Rastra Bank (Central Bank of Nepal);
- (iii) such institutions, the capital of which is wholly owned by His Majesty's Government of Nepal or any local authorities as may be agreed from time to time between the competent authorities of the two 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 and prizes attaching to such securities, bonds or debentures, as well as income assimilated to income from money lent by the taxation law of the Contracting state in which the income arises.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which

the interest arises, through a permanent establishment situated therein, 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 (c) of paragraph 1 of Article 7. In such case the provisions of Article 7 or Article 14, 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 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 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 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 recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 15 per cent of the gross amount of the royalties.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the alienation of or the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematography films, or films or tapes used for radio or television 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 (or fees for technical services) 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 (a) such permanent establishment or fixed base, or with (b) business activities referred to under (c) of paragraph 1 of Article 7. In such cases the provisions of Article 7 or Article 14, 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 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 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.

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 this Agreement.

### **ARTICLE 13**

#### **CAPITAL GAINS**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State 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 a 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 State.

4. Gains from the alienation of any property other than that referred to in paragraphs 1,2 and 3 of this Article and paragraph 3 of Article 12, shall be taxable only in the Contracting State of which the alienator is a resident. Nothing in this paragraph shall prevent either Contracting State from taxing the gains or income from the sale or transfer of shares or other securities.

### **ARTICLE 14**

#### **INDEPENDENT PERSONAL SERVICES**

1. Income derived by 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 available to him in the other Contracting State for the purpose of performing his activities, for a period or periods amounting to or exceeding in the aggregate 183 days within, any twelve-month period; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other 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 within any twelve- month period; 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; in that case, only so much of the remuneration as is derived there from may be taxed in that other State.

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

## **ARTICLE 15**

### **DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 16, 18 and 19, 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 within any twelve- month period, 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 taxable only in that State.

## **ARTICLE 16**

### **DIRECTORS ' FEES**

1. Director's 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 resident of the other Contracting State may be taxed in that other State.

2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.

## **ARTICLE 17**

### **ARTISTES AND SPORTSMEN**

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artist, 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, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

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

4. Notwithstanding the provisions of Article 7, where the activities mentioned in paragraph 1 are provided in a Contracting State by an enterprise of the other Contracting State the profits derived from providing these activities by such an enterprise may be taxed in the first-mentioned Contracting State unless the enterprise is substantially supported from the public funds of the other Contracting State, including any local authority or statutory body thereof, in connection with the provisions of such activities.

## **ARTICLE 18**

### **PENSIONS**

1. Subject to the provisions of paragraph 2 of Article 19, 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, pensions and other similar remuneration derived by a resident of a Contracting State may be taxed in the other Contracting State if such

payments are borne by an enterprise of that other State or by a permanent establishment situated therein.

## **ARTICLE 19**

### **GOVERNMENTAL FUNCTION**

1.
  - a) Remuneration, other than a pension, paid by a Contracting State or a local authority thereof to an individual in respect of services rendered to that State 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 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 a local authority thereof to an individual in respect of services rendered to that State 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 State.
  
3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof.

## **ARTICLE 20**

### **STUDENTS**

An individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State and whose visit to the first-mentioned Contracting State is solely for the purpose of;

- (a) studying at a university or other recognized educational institution; or
- (b) securing training to qualify him to practise a profession or trade; or
- (c) studying or carrying out research as a recipient of grant, allowance or award from a governmental, religious, charitable, scientific, literary or educational organization; shall be exempt from tax in the first-mentioned State on:
  - (i) remittances from abroad for the purposes of his maintenance, education, study, research or training;
  - (ii) the grant, allowance or award; and
  - (iii) income from personal services rendered in that State provided the income constitutes earnings reasonably necessary for his maintenance and education.

## **ARTICLE 21**

### **PROFESSORS, TEACHERS AND RESEARCHERS**

1. An individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State, and who at the invitation of any university, college, school or other similar educational institution which is recognized by the competent authority in the first-mentioned Contracting State, visits that first-mentioned Contracting State for a period not exceeding two years solely for the purpose of teaching or research or both at such educational institution shall be exempt from tax in that other Contracting State on any remuneration for such teaching or research.

2. The provisions of paragraph 1 shall not apply to income from research if such research is undertaken by the individual primarily for the private benefit of a specific person or persons.

## **ARTICLE 22**

### **OTHER INCOME**

Items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Agreement may be taxed in the State where the income arises.

## **ARTICLE 23**

### **ELIMINATION OF DOUBLE TAXATION**

1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting States except when an express provision to the contrary is made in this Agreement. When income is subject to tax in both Contracting States, relief from double taxation shall be given in accordance with the following paragraphs of this Article.
2. Where a resident of Nepal derives income from Thailand which in accordance with the provisions of this Agreement, may be taxed in Thailand the amount of Thai tax payable in respect of that income, shall be allowed as a credit against the Nepal tax imposed on that resident in respect of that income. The credit shall not, however, exceed that part of the Nepal tax which is attributable to such income.
3. Where a resident of Thailand derives income from Nepal which in accordance with the provision of this Agreement may be taxed in Nepal, the amount of Nepal tax payable in respect of that income shall be allowed as a credit against the Thai tax imposed on that resident in respect of that income. The credit shall not, however, exceed that part of the Thai tax which is attributable to such income.
4. For the purpose of allowance as a credit in a Contracting State the tax paid in the other Contracting State shall be deemed to include the tax which is otherwise payable in that other State

but has been reduced or waived by that State under its special provisions for the promotion of its economic development .

## **ARTICLE 24**

### **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 other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.
3. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, 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.
4. The provisions of this Article 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.
5. The provisions of this Article shall only apply to the taxes which are the subject of this Agreement.

## **ARTICLE 25**

### **MUTUAL AGREEMENT PROCEDURE**

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

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

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting State may communicate with each other directly for the purposes 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 26**

### **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 25, 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 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 the Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purposes of reaching an agreement in view of application of the provisions of this Convention. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

## **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 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. 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 Convention. Such persons or authorities shall use the information only for such purposes.

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*).

## **ARTICLE 28**

### **Diplomatic Agents and Consular Officials**

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 29**

### **Entry Into Force**

This Convention shall be approved in accordance with the constitutional procedures in force in the respective Contracting States and shall enter into force upon the 30th day after the date of the exchange of notes indicating that the necessary formalities have been completed in both states, and shall have effect:

- (i) in respect of withholding taxes, to the amounts payable on or after the 1st of January, in the calendar year next following that in which the Convention enters into force;
- (ii) in respect of other taxes on income, for the taxable years and accounting periods, beginning on or after the 1st of January of the calendar year next following that in which the Convention enters into force.

### **ARTICLE 30**

#### **Termination**

This Convention shall remain in force indefinitely but either Contracting State may terminate the Convention, through diplomatic channels, by giving to the other Contracting State, written notice of termination on or before June 30 of any calendar year from the fifth year from the year in which the Convention entered into force. In such event, the Convention shall cease to have effect:

- (i) in respect of withholding taxes, to the amount payable on or after the 1st January of the calendar year next following that in which the notice of termination is given;
- (ii) in respect of other taxes on income, for the taxable years and accounting periods beginning on or after January the 1st of the year next following the year in which the notice of termination is given.

**In witness whereof**, the undersigned duly authorized thereto, have signed this Convention.

**Done** at Bucharest on 26th June 1996, in two originals, each in the Thai, Romanian, and English languages, the three texts being equally authentic. In case there is any divergence of interpretation between the Thai and Romanian texts, the English text shall prevail.

**FOR THE GOVERNMENT OF THE  
KINGDOM OF THAILAND:**

Anmuay Viravan

**Deputy Prime Minister and Minister of  
Foreign affairs**

**FOR THE GOVERNMENT OF ROMANIA:**

Florin Georgescu

**Minister of State and Minister of Finance**