



Double Taxation Avoidance Agreement between Thailand and Switzerland

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DEZAN SHIRA & ASSOCIATES

Corporate Establishment, Tax, Accounting & Payroll Throughout Asia

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CONVENTION
BETWEEN
THE KINGDOM OF THAILAND
AND
THE SWISS CONFEDERATION
FOR THE AVOIDANCE OF DOUBLE TAXATION
WITH RESPECT TO TAXES ON INCOME

The Royal Government of Thailand and the Swiss Federal Council,

Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income,

Have agreed as follows:

ARTICLE 1

Personal Scope

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

ARTICLE 2

Taxes Covered

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income including taxes on gains from the alienation of movable or immovable

property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are in particular:

- a) in the case of Switzerland: the federal, cantonal and communal, taxes on income (total income, earned income, income from capital, industrial and commercial profits, capital gains, and other items of income) (hereinafter referred to as "Swiss tax");
- b) In the case of Thailand:
 - the income tax; and
 - the petroleum income tax(hereinafter referred to as "Thai tax").

4. 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 significant changes which have been made in their respective taxation laws.

ARTICLE 3

General Definitions

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

- a) the term "Switzerland" means the Swiss Confederation;
- b) the term "Thailand" means the Kingdom of Thailand and includes any area adjacent to the territorial sea of the Kingdom of Thailand including the seabed and subsoil over which the Kingdom of Thailand may exercise jurisdiction by virtue of its legislation and in accordance with international law;
- c) the terms "a Contracting State" and "the other Contracting

State" mean Thailand or Switzerland as the context requires;

- d) the term "person" includes an individual, a company and any other body of persons and, in the case of Thailand, the term shall also cover any entity treated as taxable unit;
- e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- g) the term "tax" means Thai tax or Swiss tax as the context requires;
- 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:
 - (i) in the case of Switzerland, the Director of the Federal Tax Administration or his authorised representative;
and
 - (ii) in the case of Thailand, the Minister of Finance or his authorized representative.

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

ARTICLE 4

Resident

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, 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 States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then the question shall be settled by the competent authorities of the Contracting States.

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 mine, an oil or gas well, a 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 six months;
- j) the furnishing of services including consultancy services by a resident of a Contracting State 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 six months 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 a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar 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 an enterprise of the other Contracting State, the enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State, 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 regularly 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 of this Article.
6. 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 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 a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

Income From Immovable Property

1. Income derived by a resident of a Contracting State from immovable property 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 right to work, mineral deposits, sources and other natural resources; ships 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 professional 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 that permanent establishment.

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 conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes 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.

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 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 an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

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 paragraph, 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.

ARTICLE 8

Shipping and Air Transport

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 sources within the other 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 per cent thereof.

3. The provisions of paragraphs 1 and 2 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

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.

ARTICLE 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

- a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 per cent of the capital of the company paying the dividends; or
- 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, "jouissance" shares or "jouissance" rights, 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, 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 shall apply.

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

profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State. Nothing in this paragraph shall be construed as preventing a Contracting State from imposing income tax, according to the laws of that State, on profits remitted from, or disposed out of, that Contracting State 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, 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 this limitation.

3. Notwithstanding the provisions of paragraph 2,

- a) interest arising in Switzerland and paid to a resident of Thailand shall be taxable only in Thailand if it is paid in respect of a loan made, guaranteed or insured by the Bank of Thailand or the Export-Import Bank of Thailand;
- b) interest arising in Thailand and paid to a resident of Switzerland shall be taxable only in Switzerland if it is paid in respect of a loan guaranteed or insured under the Swiss provisions regulating the Export or Investment Risk Guarantee.

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, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment 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 Convention.

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:
 - a) 5 per cent of the gross amount of the royalties if they are made as a consideration for the alienation or the use of, or the right to use any copyright, artistic or scientific work, excluding cinematograph films or films or tapes used for radio or television broadcasting;
 - b) 10 per cent of the gross amount of the royalties if they are made as a consideration for the alienation of any patent, trade mark, design or model, plan, secret formula or process;
 - c) 15 per cent of the gross amount of the royalties in all other cases.

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

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the alienation or for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph 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 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, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such cases the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment 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 Convention.

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, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

3. Gains derived by and 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 derived by a resident of a Contracting State from the alienation of shares or comparable rights in a company, the assets of which consist wholly or principally of immovable property as referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
5. Gains from the alienation of shares in a company, which is a resident of a Contracting State other than those mentioned in paragraph 4, forming part of at least 20 per cent of the capital of the company may be taxed in that State, but the tax imposed in that State shall be reduced by an amount equal to 50 per cent thereof.
6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4, and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14

Personal Services

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration in respect of an employment as well as income in respect of professional services or other independent activities of a similar character, derived by a resident of a Contracting State, shall be taxable only in that State, unless the employment, services or activities are exercised or performed in the other Contracting State. If the employment, services or activities are so exercised or performed, such remuneration or income as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration or income derived by a resident of a Contracting State in respect of an employment, services or activities exercised or performed 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 twelve month period, and
 - b) the remuneration or income is paid by, or on behalf of, a person who is not a resident of the other State, and
 - c) the remuneration or income is not borne by a permanent establishment which that person 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 may be taxed in that Contracting State.

ARTICLE 15

Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 16

Artistes and Athletes

1. Notwithstanding the provisions of Article 14, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, 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 an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

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

ARTICLE 17

Pensions

Subject to the provisions of paragraph 2 of Article 18, 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.

ARTICLE 18

Governmental Function

1.
 - a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or political subdivision or local authority 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 political subdivision or a local authority thereof to an individual in respect of services rendered to that State or political subdivision or local 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 14, 15 and 17 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 19

Students

1. An individual who, immediately before visiting a Contracting State, was 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 a 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.

2. With respect to income from personal services rendered in the first-mentioned State, a student described in paragraph 1 shall be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the State which he is visiting.

ARTICLE 20

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 where express provisions to the contrary are made in this Convention.

2. a) Where a resident of Switzerland denies income which, in accordance with the provisions of this Convention, may be taxed in Thailand, Switzerland shall, subject to the provisions of sub-paragraph b), exempt such income from tax but may, in calculating tax on the remaining income of that resident, apply the rate of tax which would have been applicable if the exempted income had not been so exempted. Provided, however, that where income or profits derived by an enterprise which is a resident of Switzerland from sources within Thailand which in accordance with paragraph 2 of Article 8 or paragraph 5 of Article 13 are subject to tax in Thailand, the Swiss tax charged on such income, or profits shall be reduced by one half.
- b) Where a resident of Switzerland derives dividends, interest or royalties which, in accordance with the provisions of Article 10, 11 or 12, may be taxed in Thailand, Switzerland shall allow, upon request, a relief to such resident. The relief may consist of:
- (i) a deduction from the tax on the income of that

resident of an amount equal to the tax levied in Thailand in accordance with the provisions of Article 10, 11 or 12; such deduction shall not, however, exceed that part of the Swiss tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in Thailand; or

- (ii) a lump sum reduction of the Swiss tax; or
- (iii) a partial exemption of such dividends, interest or royalties from Swiss tax, in any case consisting at least of the deduction of the tax levied in Thailand from the gross amount of the dividends, interest or royalties. Switzerland shall determine the applicable relief and regulate the procedure in accordance with the Swiss provisions relating to the carrying out of international conventions of the Swiss Confederation for the avoidance of double taxation.

c) Where a resident of Switzerland derives interest which, in accordance with the provisions of sub-paragraph b) of paragraph 2 of Article 11 may be taxed in Thailand, Switzerland shall allow, upon request, a relief to such resident which may consist of:

- (i) the deduction of 5 per cent of the gross amount of such interest, and
- (ii) a deduction from the Swiss tax on the income of that resident, as computed by reference to the relief referred to in (i), of an amount of 10 per cent of the gross amount of the interest; such deduction shall, however, be determined pursuant to the general principles of relief referred to in paragraph b).

d) Where a resident of Switzerland derives dividends or interest or royalties which, in accordance with the Investment

Promotion Act (B.E. 2520) or of the Revenue Code (B.E. 2481) or other special incentive laws which are designated to promote economic development of Thailand, effective on the date of signature of this Convention, or which may be introduced hereinafter in modification of or in addition to the existing laws, are exempt from Thai tax or taxed at a rate lower than the rate provided for in Article 10, paragraph 2, or in Article 11, paragraph 2, or Article 12, paragraph 2, respectively, Switzerland shall allow, upon request, a relief to such resident of an amount equal to 10 per cent of the gross amount of the dividends, interest and royalties. In the case of dividends such relief shall only be allowed if the dividends are not exempted from Swiss tax under the provision of subparagraph e) of this paragraph.

- e) A company which is a resident of Switzerland and which derives dividends from a company which is a resident of Thailand shall be entitled for the purposes of Swiss tax with respect to such dividends, to the same relief which would be granted for the company if the company paying the dividends were a resident of Switzerland.

3. In the case of Thailand, Swiss tax payable in respect of income derived from Switzerland shall be allowed as a credit against Thai tax payable in respect of that income. The credit shall not, however, exceed that part of the Thai tax, as computed before the credit is given, which is appropriate to such item of income.

ARTICLE 21

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 of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

3. 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.

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. In this Article the term "taxation" means taxes which are the subject of this Convention.

ARTICLE 22

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 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 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 purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 23

Exchange of Information

1. The competent authorities of the Contracting States shall exchange upon request such information as is necessary for carrying out the provisions of Articles 7, 10, 11, 12 and 20. 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 involved in the application of such Articles.

2. In no case shall the provisions of this Article be construed so as to impose on Contracting State the obligation to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State or 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 or to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process or information, the disclosure of which would be contrary to public policy.

ARTICLE 24

Diplomatic Agents and Consular Officers

1. Nothing in this Connection 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.

2. Notwithstanding the provisions of Article 4, an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed, for the purposes of this Convention, to be a resident of the sending State if:
 - a) in accordance with international law he is not liable to tax in, the receiving Contracting State in respect of income from sources outside, that State, and
 - b) he is liable in the sending State to the same obligations in relation to tax on his total income as are residents of that State.

3. The Convention shall not apply to international organisations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income.

ARTICLE 25

Entry Into Force

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Berne 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 the source, on amounts paid

or remitted on or after the first day of January next following that in which the exchange of instruments of ratification takes place;

- (b) in respect of other taxes on income, for taxable years or accounting periods beginning on or after the first day of January next following that in which the exchange of instruments of ratification takes place.

ARTICLE 26

Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year. In such event, the Convention shall cease to have effect:

- a) in respect of taxes withheld at the source, on amounts paid or remitted on or after the first day of January next following that in which the notice is given;
- b) in respect of other taxes on income, for taxable years or accounting periods beginning on or after the first day of January next following that in which the notice is given.

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

Done in duplicate at Bangkok on this 12 February 1996 in the English, German and Thai languages, all texts being equally authentic. In case there is any divergency of interpretation between the German and the Thai texts, the English text shall prevail.

FOR THE ROYAL GOVERNMENT OF FOR THE SWISS FEDERAL COUNCIL:
THAILAND:

K. Kasemsri

Blaise Codet

(H.E. Mr. Kasem S. Kasemsri)

(H.E. Mr. Blaise Codet)

Minister of Foreign Affairs

**Ambassador Extraordinary and
Plenipotentiary**

PROTOCOL

The Royal Government of Thailand and the Swiss Federal Council have agreed at the signing of the Convention between the two States for the avoidance of double taxation with respect to taxes on income upon the following provisions which shall form an integral part of the said Convention:

1. With reference to Article 5

It is understood that technical services as defined in paragraph 12 of the commentaries on Article 12 of the OECD Model Convention 1977 are covered by sub-paragraph j) of paragraph 2 of Article 5.

In respect of paragraph 3 of Article 5, it is understood that the maintenance of a stock of goods or merchandise for the purpose of delivery or facilities used for delivery of goods and merchandise do not constitute a permanent establishment as long as the conditions of sub-paragraph b) of paragraph 4 of the same Article are not fulfilled.

In respect of sub-paragraph c) of paragraph 4 of Article 5, it is understood that the mere fact that such a person 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, does not constitute a permanent establishment less such person is authorized to negotiate any essential element or detail which lead to the order being secured and the contract being concluded, even if the contract is signed by the enterprise and not by such person.

2. With reference to Article 7

In respect of paragraphs 1 and 2 of Article 7, where an enterprise of a Contracting State, having a permanent establishment in the other Contracting State, sells goods or merchandise or carries on other business activities in that other State, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of that part of the total receipts which is attributable to the actual activity of the permanent establishment for such sales or such other business activities.

It is understood also that the profits of the enterprise shall be considered to be attributable to the permanent establishment if the enterprise sells goods or merchandise or carries on business of the same or similar kind as the sales or business undertaken by the permanent establishment provided that the permanent establishment has taken a determinant part in these activities.

3. With reference to Article 10

In respect of paragraph 5 it is understood that as long as Switzerland does not, according to its internal law, levy an additional tax on profits of a permanent establishment remitted from, or disposed out of Switzerland, the tax so charged in Thailand shall be limited at the rate provided for in sub-paragraph a) of paragraph 2 of Article 10.

4. With reference to Article 11

In respect of paragraph 3 it is understood that

- a) the competent authorities may specify and agree in letters exchanged on any institution to which the provisions of sub-paragraph a) and b) shall apply and on the mode of application of this provision;
- b) the Swiss National Bank does not perform activities as described in paragraph 3.

5. With reference to Article 12

In respect of paragraph 2, sub-paragraph c) it is understood that, as long as Switzerland

- does not, according to its internal law, levy a tax at source on royalties paid to non-residents and
- for tax credit purposes, in general allows as a deductible expense 50 per cent of the gross amount of the royalties,

royalties paid from a resident of Thailand to a resident of Switzerland shall be taxable in Thailand at a rate not exceeding 10 per cent of such gross amount.

Done in duplicate at Bangkok this 12 February 1996 in the English, German and Thai languages, all texts being equally authentic. In case there is any divergency of interpretation between the German and Thai texts, the English text shall prevail.

FOR THE ROYAL GOVERNMENT OF FOR THE SWISS FEDERAL COUNCIL:

THAILAND:

Blaise Codet

K. Kasemsri

(H.E. Mr. Blaise Codet)

(H.E. Mr. Kasem S. Kasemsri)

Ambassador Extraordinary and

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