

No. 6895

**THAILAND
and
JAPAN**

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with exchange of letters). Signed at Bangkok, on 1 March 1963

Official text: English.

Registered by Thailand on 4 September 1963.

**THAÏLANDE
et
JAPON**

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec échange de lettres). Signée à Bangkok, le 1^{er} mars 1963

Texte officiel anglais.

Enregistrée par la Thaïlande le 4 septembre 1963.

No. 6895. CONVENTION¹ BETWEEN THAILAND AND JAPAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME. SIGNED AT BANGKOK, ON 1 MARCH 1963

The Government of Thailand and the Government of Japan,
Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
Have appointed for that purpose as their respective Plenipotentiaries :

The Government of Thailand :

Mr. Thanat Khoman, Minister of Foreign Affairs of Thailand

The Government of Japan :

Mr. Hisanaga Shimadzu, Ambassador Extraordinary and Plenipotentiary of Japan to Thailand

Who, having communicated to one another their respective full powers, found in good and due form, have agreed upon the following Articles :

Article I

1. The taxes which are the subject of the present Convention are :

- (a) In Japan : The income tax and the corporation tax.
- (b) In Thailand : The income tax.

2. The present Convention shall also apply to any other tax on income or profits which has a substantially similar character to those referred to in the preceding paragraph and which may be imposed in either Contracting State after the date of signature of the present Convention.

Article II

1. In the present Convention, unless the context otherwise requires :

- (a) The term " Japan ", when used in a geographical sense, means all the territory in which the laws relating to Japanese tax are enforced.

¹ Came into force on 24 July 1963, the date of the exchange of notes indicating the approval of the Convention by both parties pursuant to their respective legal procedures, in accordance with the provisions of article XX (1).

- (b) The term "Thailand" means the Kingdom of Thailand.
- (c) The terms "one of the Contracting States" and "the other Contracting State" mean Japan or Thailand, as the context requires.
- (d) The term "Japanese tax" means the income tax, the corporation tax and such other tax on income or profits of a substantially similar character as referred to in paragraph 2 of Article I; and the term "Thai tax" means the income tax and such other tax on income or profits of a substantially similar character as referred to in paragraph 2 of Article I.
- (e) The term "tax" means Japanese tax or Thai tax, as the context requires.
- (f) The term "Japanese corporation" means a company or any other kind of juridical person created under the law of Japan or any organization without juridical personality treated for the purposes of Japanese tax as a juridical person created under the law of Japan; and the term "Thai corporation" means a company or any other kind of juridical person created under the law of Thailand or any other body or group of persons without juridical personality which is taxed in a substantially same manner as a juridical person created under the law of Thailand.
- (g) The terms "corporation of one of the Contracting States" and "corporation of the other Contracting State" mean a Japanese corporation or a Thai corporation, as the context requires.
- (h) The term "resident of Japan" means any individual who is resident in Japan for the purposes of Japanese tax and not resident in Thailand for the purposes of Thai tax and any Japanese corporation; and the term "resident of Thailand" means any individual who is resident in Thailand for the purposes of Thai tax and not resident in Japan for the purposes of Japanese tax and any Thai corporation.
- (i) The terms "resident of one of the Contracting States" and "resident of the other Contracting State" mean a resident of Japan or a resident of Thailand, as the context requires.
- (j) The term "Japanese enterprise" means an industrial or commercial enterprise or undertaking carried on by a resident of Japan; and the term "Thai enterprise" means an industrial or commercial enterprise or undertaking carried on by a resident of Thailand.
- (k) The terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean a Japanese enterprise or a Thai enterprise, as the context requires.
- (l) The term "permanent establishment" means a fixed place of business in which the business of an enterprise is wholly or partly carried on.

- (i) The term “fixed place of business” shall include a place of management, a branch, an office, a factory, a workshop, a warehouse, a mine, quarry or other place of extraction of natural resources.
- (ii) An enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State, if
 - (aa) it carries on in that other Contracting State a construction, installation or assembly project or the like;
 - (bb) it carries on in that other Contracting State a business which consists of providing the services of public entertainers referred to in paragraph 2 of Article X.
- (iii) The use of mere storage facilities or the maintenance of a fixed place of business by an enterprise of one of the Contracting States exclusively for the purchase or display of goods or merchandise in the other Contracting State and not for any processing of such goods or merchandise therein shall not constitute a permanent establishment.
- (iv) A person acting in one of the Contracting States for or on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment of that enterprise in the former Contracting State, but only if
 - (aa) he has and habitually exercises in the former Contracting State an authority to negotiate and conclude contracts for or on behalf of the enterprise, unless the activities of the person are limited exclusively to the purchase of goods or merchandise for or on behalf of the enterprise, or
 - (bb) he habitually maintains in the former Contracting State a stock of goods or merchandise belonging to the enterprise from which the person regularly delivers goods or merchandise for or on behalf of the enterprise, or
 - (cc) he habitually secures orders in the former Contracting State wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises which are controlled by it or have a controlling interest in it.
- (v) A broker, commission agent or other agent of genuinely independent status who merely acts as an intermediary between an enterprise of one of the Contracting States and prospective customer in the other Contracting State shall not be deemed to be a permanent establishment of the enterprise in that other Contracting State.

- (vi) The fact that a corporation of one of the Contracting States controls or is controlled by a corporation which is a corporation of the other Contracting State or which carries on a trade or business in that other Contracting State shall not of itself constitute either corporation a permanent establishment of the other.
- (m) The term "industrial or commercial profits" includes manufacturing, mercantile, agricultural, fishing, mining and insurance profits as well as profits from banking and security dealings, but does not include income in the form of dividends, interest, rents, royalties, capital gains, or remuneration for personal services.
- (n) The term "competent authorities" means, in the case of Japan, the Minister of Finance or his authorized representative; and in the case of Thailand, the Minister of Finance or his authorized representative.

2. In the application of the provisions of the present Convention by either Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the tax.

Article III

1. The industrial or commercial profits (excluding the profits derived from the operation of ships or aircraft) of an enterprise of one of the Contracting States shall not be subject to tax in the other Contracting State unless the enterprise carries on a trade or business in that other Contracting State through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits in that other Contracting State, but only on so much of them as is attributable to that permanent establishment.

2. Where an enterprise of one of the Contracting States carries on a trade or business in the other Contracting State through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other Contracting State if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing on an independent basis with the enterprise of which it is a permanent establishment.

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

4. In determining the tax of one of the Contracting States, no account shall be taken of the mere purchase of goods or merchandise therein by an enterprise of the other Contracting State for that enterprise.

Article IV

Where

- (a) an enterprise of one of the Contracting States participates directly or indirectly in the managerial or financial control of an enterprise of the other Contracting State, or
- (b) the same individuals or corporations participate directly or indirectly in the managerial or financial control of an enterprise of one of the Contracting States and an enterprise of the other Contracting State,

and in either case, conditions are made or imposed between the two enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises, then any profits which would but for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

Article V

1. Profits which an enterprise of one of the Contracting States derives from the operation of aircraft shall be exempt from tax of the other Contracting State unless the aircraft are operated wholly or mainly between places within that other Contracting State.

2. The amount of tax imposed by one of the Contracting States on profits which an enterprise of the other Contracting State derives from the operation of ships shall be reduced by an amount equal to 50 per cent thereof unless the ships are operated wholly or mainly between places within the former Contracting State.

Article VI

1. Subject to the provisions of paragraph 2 of this Article, the rate of tax imposed by one of the Contracting States on dividends paid by a corporation of that Contracting State to its parent corporation which is a corporation of the other Contracting State shall not exceed 25 per cent.

2. The rate of tax imposed by one of the Contracting States on dividends paid by a corporation of that Contracting State engaged in an industrial undertaking to a resident of the other Contracting State shall not exceed 20 per cent :

Provided that where such resident is a parent corporation of the corporation which pays the dividends, such rate of tax shall not exceed 15 per cent.

3. Where a corporation of one of the Contracting States derives profits or income from sources within the other Contracting State, there shall not be imposed in that other Contracting State any form of taxation on dividends paid by the corporation unless paid to a resident of that other Contracting State, or any tax in the nature of undistributed profits tax on undistributed profits of the corporation, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

4. Dividends paid by a corporation of one of the Contracting States shall be treated as income from sources within that Contracting State.

5. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, where a resident of one of the Contracting States has a permanent establishment situated in the other Contracting State and such dividends are attributable to that permanent establishment, that other Contracting State may, in accordance with the provisions of its tax law, impose tax on such dividends as if they were industrial or commercial profits to which the provisions of Article III are applicable.

6. In paragraphs 1 and 2 of this Article, the term " parent corporation " means a corporation which owns not less than 25 per cent of the entire shares with voting power of the corporation paying the dividend for at least six months immediately prior to the date when the dividend becomes payable.

7. In paragraph 2 of this Article, the term " industrial undertaking " means an undertaking falling under any of the classes mentioned below—

- (a) manufacturing, assembling and processing;
- (b) construction, civil engineering and shipbuilding;
- (c) electricity, hydraulic power, gas and water supply;
- (d) plantation, agriculture, forestry and fishery; and
- (e) any other undertaking which may be declared to be an " industrial undertaking " for the purposes of this Article by the competent authorities of the Contracting State in which the undertaking is situated.

Article VII

1. Interest received by the Government (including a local government) of one of the Contracting States from sources within the other Contracting State shall be exempt from tax of that other Contracting State.

2. Interest received by any financial institution fully owned by one of the Contracting States from sources within the other Contracting State shall be exempt from tax of that other Contracting State.

3. Interest received by a resident of one of the Contracting States on bonds issued by the Government (including a local government) of the other Contracting State shall be exempt from tax of that other Contracting State.

4. The rate of tax imposed by one of the Contracting States on interest received by any financial institution (including an insurance company) which is a corporation of the other Contracting State on debentures issued by, or on loans made to, an enterprise of the former Contracting State engaged in an industrial undertaking referred to in paragraph 7 of Article VI shall not exceed 10 per cent.

5. Interest paid by the Government (including a local government) of one of the Contracting States or by an enterprise of one of the Contracting States shall be treated as income from sources within that Contracting State, except that interest (other than that paid on indebtedness in connection with the purchase of ships or aircraft) paid —

(a) by an enterprise of one of the Contracting States with a permanent establishment outside both Contracting States to a resident of the other Contracting State, or

(b) by an enterprise of one of the Contracting States with a permanent establishment in the other Contracting State

directly out of the fund of such permanent establishment on indebtedness incurred for the use of, or on banking deposits made with, such permanent establishment in the conduct of its trade or business shall be treated as income from sources within the State where such permanent establishment is situated.

6. Notwithstanding the provisions of paragraphs 3 and 4 of this Article, where a resident of one of the Contracting States has a permanent establishment situated in the other Contracting State and such interest is attributable to that permanent establishment, that other Contracting State may, in accordance with the provisions of its tax law, impose tax on such interest as if it were industrial or commercial profits to which the provisions of Article III are applicable.

7. In this Article, the term " interest " means interest on bonds, securities, notes, debentures or any other form of indebtedness.

Article VIII

1. The rate of tax imposed by one of the Contracting States on royalty derived from sources within that Contracting State by a resident of the other Contracting State shall not exceed 15 per cent.

2. In this Article, the term "royalty" means any royalty and other amount paid as consideration for using, or for the right to use, any copyright, patent, design, secret process and formula, trademark or other like property; but does not include any royalty, rental and other amount paid in respect of a motion picture film and the operation of a mine, quarry or any other place of extraction of natural resources.

3. Royalty shall be treated as income from sources within the Contracting State in which the property referred to in the preceding paragraph is to be used.

4. The rate of tax imposed by one of the Contracting States on income derived from sources within that Contracting State from the alienation of the property referred to in paragraph 2 of this Article by a resident of the other Contracting State shall not exceed 15 per cent of the gross amount received.

5. Income derived from the alienation of the property referred to in paragraph 2 of this Article shall be treated as income from sources within the Contracting State in which such property is to be used.

6. Notwithstanding the provisions of paragraphs 1 and 4 of this Article, where a resident of one of the Contracting States has a permanent establishment situated in the other Contracting State and such royalty or income is attributable to that permanent establishment, that other Contracting State may, in accordance with the provisions of its tax law, impose tax on such royalty or income as if it were industrial or commercial profits to which the provisions of Article III are applicable.

Article IX

1. Salaries, wages, pensions or similar remuneration paid by the Government (including a local government) of one of the Contracting States, or paid out of funds to which such Government contributes, to an individual who is a national of that Contracting State (other than an individual who has been admitted to the other Contracting State for permanent residence therein) in respect of services rendered in the discharge of governmental functions shall be exempt from tax of that other Contracting State.

2. The provisions of this Article shall not apply to salaries, wages, pensions or similar remuneration paid in respect of services rendered in connection with any trade or business carried on by such Government for the purposes of profit.

Article X

1. An individual who is a resident of one of the Contracting States shall be exempt from tax of the other Contracting State on remuneration or profits for personal (including professional) services performed within that other Contracting State in any taxable year, if—

- (a) he is present within that other Contracting State for a period or periods not exceeding in the aggregate 180 days during that taxable year,
- (b) the services are performed for or on behalf of a resident of the former Contracting State, and
- (c) the remuneration or profits are not deducted in computing the profits of an enterprise chargeable to tax in that other Contracting State.

2. The provisions of this Article shall not apply to the remuneration or profits of public entertainers, such as theatre, motion picture, radio or television artistes, musicians and athletes.

Article XI

An individual who is a resident of one of the Contracting States at the beginning of a visit to the other Contracting State and who at the invitation of the Government of the other Contracting State, or of a recognized university, college, school or other educational institution in that other Contracting State, visits that other Contracting State for a period not exceeding two years for the purpose of teaching or engaging in research at such educational institution in that other Contracting State, shall be exempt from tax of that other Contracting State in respect of the remuneration for such teaching or research.

Article XII

1. An individual who is a resident of one of the Contracting States at the beginning of a visit to the other Contracting State and is temporarily present in that other Contracting State solely—

- (a) as a student at a recognized university, college or school in that other Contracting State,
- (b) as a recipient of grant, allowance or award for the primary purpose of study or research from a governmental, religious, charitable, scientific, literary or educational organization, or

- c) as a business apprentice,
shall be exempt from tax of that other Contracting State in respect of—
- (i) remittances from abroad for the purposes of his maintenance, education, study, research or training,
 - (ii) the grant, allowance or award, and
 - (iii) remuneration for personal services in that other Contracting State not exceeding the sum of 360,000 Yen or 20,000 Baht, as the case may be, during any taxable year.

2. An individual who is a resident of one of the Contracting States at the beginning of a visit to the other Contracting State and is temporarily present in that other Contracting State for a period not exceeding twelve months as an employee of, or under contract with, an enterprise of the former Contracting State, or an organization referred to in paragraph 1 (b) of this Article, solely to acquire technical, professional or business experience from a person other than such enterprise or organization, shall be exempt from tax of that other Contracting State on the remuneration for such period for his services directly related to the acquisition of such experience, if the total amount received from abroad and paid in that other Contracting State does not exceed the sum of 1,000,000 Yen or 55,000 Baht, as the case may be, during any taxable year.

3. An individual who is a resident of one of the Contracting States at the beginning of a visit to the other Contracting State and is temporarily present in that other Contracting State under arrangements with the Government (including a local government) of that other Contracting State, solely for the purpose of study, research or training shall be exempt from tax of that other Contracting State on remuneration for his services directly related to such study, research or training, if the total amount received from abroad and paid in that other Contracting State does not exceed the sum of 1,000,000 Yen or 55,000 Baht, as the case may be, during any taxable year.

4. The benefits of paragraph 1, 2 or 3 of this Article shall not be concurrently cumulative.

Article XIII

For the purposes of the present Convention :

- (a) Income derived from immovable property (including profits or gains derived from the alienation of such property), and royalties in respect

of the operation of mines, quarries or any other places of extraction of natural resources shall be treated as income from sources within the Contracting State in which such immovable property, mines, quarries or any other places of extraction of natural resources are situated.

- (b) Remuneration or profits for personal (including professional) services shall be treated as income from sources within the Contracting State in which are rendered the services for which such remuneration or profits are paid, and the services performed in ships or aircraft operated by an enterprise of one of the Contracting States shall be deemed to be rendered in that Contracting State, unless the ships or aircraft are operated wholly or mainly between places within the other Contracting State.

Article XIV

1. The laws in force in either Contracting State will continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in the present Convention.

2. (a) Subject to the provisions of the law of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan, Thai tax payable, whether directly or by deduction, in respect of income from sources within Thailand shall be allowed as a credit against Japanese tax payable in respect of that income. Where such income is a dividend paid by a Thai corporation to a Japanese corporation which owns not less than 25 per cent of the entire shares with voting power of the Thai corporation, the credit shall take into account Thai tax payable by the Thai corporation in respect of its profits.

(b) For the purposes of the credit referred to in subparagraph (a) of this paragraph, there shall be deemed to have been paid the amount of Thai tax reduced or exempted under the provisions of paragraph 2 of Article VI or paragraph 3 of Article VII of the present Convention, or the provisions of Section 19 (4) and 35 of the Promotion of Industrial Investment Act, B.E. 2505 (1962), of Thailand. However, such exemption under the said provisions of the Promotion of Industrial Investment Act, B.E. 2505 (1962), as is to be taken into account in allowing as a credit against Japanese tax shall not exceed the scope of the benefit accorded under the provisions of the said Act as in effect on the date of signature of the present Convention.

(c) For the purposes of this paragraph, the term " Japanese tax " includes the inhabitant taxes.

3. The amount of Japanese tax payable, under the laws of Japan and in accordance with the provisions of the present Convention, whether directly or by deduction, by a resident of Thailand, in respect of income from sources within Japan which has been subjected to tax both in Japan and Thailand, shall be allowed as a credit against Thai tax payable in respect of such income, but in an amount not exceeding that proportion of Thai tax which such income bears to the entire income chargeable to Thai tax. For the purpose of determining such entire income, a loss incurred in any country shall not be taken into account.

Article XV

1. The competent authorities of both Contracting States may exchange such information available under their respective tax laws in the normal course of administration as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or for the administration of statutory provisions against tax avoidance in relation to the tax. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those, including a court, concerned with the assessment and collection of the tax or the determination of appeal in relations thereto. No information shall be exchanged which would disclose any trade, business, industrial or professional secret.

2. Each of the Contracting States may collect for the other Contracting State the tax imposed by that other Contracting State (as though such tax were the tax of the former Contracting State) as will ensure that exemptions, reduced rates of tax or any other benefit accorded under the present Convention by such other Contracting State shall not be enjoyed by persons not entitled to such benefits.

Article XVI

Any taxpayer, who shows proof that the action of the taxation authorities of either Contracting State has resulted or will result in double taxation contrary to the provisions of the present Convention, may make a representation to the competent authorities of the Contracting State of which the taxpayer is a resident. Should the representation be deemed justified, such competent authorities shall endeavour to come to an agreement with the competent authorities of the other Contracting State with a view to avoidance of the double taxation in question.

Article XVII

1. Should any difficulty or doubt arise as to the interpretation or application of the present Convention, the competent authorities of the Contracting States may settle the question by mutual agreement; it being understood, however, that this provision shall not be construed to preclude the Contracting States from settling by negotiation through diplomatic channels any dispute arising under the present Convention.

2. Details including procedures for the implementation of the present Convention may be agreed upon through consultation between the Governments or between the competent authorities of the Contracting States.

Article XVIII

1. The provisions of the present Convention shall not affect the right to benefit by any more extensive exemptions which have been conferred, or which may hereafter be conferred, on diplomatic and consular officials in virtue of the general rules of international law.

2. The provisions of the present Convention shall not be construed to restrict in any manner any exemption, deduction, credit or other allowance now or hereafter accorded by the laws of one of the Contracting States in determining the tax of that Contracting State.

3. The competent authorities of either Contracting State may prescribe regulations necessary to interpret and carry out the provisions of the present Convention and may communicate with each other directly for the purpose of giving effect to the provisions of the present Convention.

4. In the event of a substantial change in the tax law of either Contracting State, the competent authorities of both Contracting States may consult with each other to consider whether such change makes it appropriate to amend the provisions of the present Convention.

Article XIX

1. Nationals of one of the Contracting States shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other, higher or more burdensome than the taxation and connected requirements to which nationals of that other Contracting State in the same circumstances are or may be subjected.

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

3. Enterprises of one of the Contracting States, the capital of which is wholly or partly owned by one or more residents of the other Contracting State, shall not be subjected in the former Contracting State to any taxation or any requirement connected therewith which is other, higher or more burdensome than the taxation and connected requirements to which other enterprises of the former Contracting State, the capital of which is wholly or partly owned by one or more residents of that former Contracting State, are or may be subjected.

4. In this Article, the terms “nationals of one of the Contracting States” and “nationals of the other Contracting State” mean all individuals possessing the nationality of Japan and all Japanese corporations, or all individuals possessing the nationality of Thailand and all Thai corporations, as the context requires.

5. In this Article, the term “taxation” means taxes of every kind.

6. Nothing contained in this Article shall be construed as obliging either Contracting State to grant to nationals of the other Contracting State not resident of the former Contracting State those personal allowances, reliefs and reductions for tax purposes which are by law available only to residents of that former Contracting State.

Article XX

1. The present Convention shall be approved by Japan and Thailand in accordance with their respective legal procedures, and shall enter into force upon the date of exchange of notes indicating such approval.

2. The present Convention shall be applicable—

- (a) In Japan : As respects income for the taxable years beginning on or after the first day of January of the calendar year in which the exchange of notes takes place.
- (b) In Thailand : As respects income for the taxable years or accounting periods beginning on or after the first day of January of the calendar year in which the exchange of notes takes place.

3. Either Contracting State may terminate the present Convention at any time after a period of five years from the date on which the present

Convention enters into force, by giving to the other Contracting State notice of termination, provided that such notice shall be given on or before the 30th day of June, and, in such event, the present Convention shall cease to be effective—

- (a) In Japan : As respects income for the taxable years beginning on or after the first day of January of the calendar year next following that in which the notice is given.
- (b) In Thailand : As respects income for the taxable years or accounting periods beginning on or after the first day of January of the calendar year next following that in which the notice is given.

IF WITNESS WHEREOF the undersigned Plenipotentiaries have signed the present Convention.

DONE in duplicate at Bangkok, this first day of March 1963 in the English language.

For the Government
of Thailand :
(Signed) Th. KHOMAN

For the Government
of Japan :
(Signed) H. SHIMADZU

EXCHANGE OF LETTERS

I

MINISTRY OF FOREIGN AFFAIRS
SARANROM PALACE

No. (0603)6279/2506

1st March, B.E. 2506

Excellency,

I have the honour to refer to the Convention between Thailand and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed today.¹

The following is the understanding of the Government of Thailand pertaining to the interpretation and implementation of the Convention :

1. The term " installation " as used in subparagraph (l) (ii) (aa) of paragraph 1 of Article II is understood not to include such project which is considerably small in scale or short in duration as the fixing, and testing of the operation, of small machinery carried out by the seller thereof.

¹ See p. 234 of this volume.

2. The term “almost wholly” as used in subparagraph (l) (iv) (cc) of paragraph 1 of Article II is understood to mean that the person’s activities for enterprises other than those referred to therein are of such minor importance as compared with his activities for the enterprises mentioned therein that for all practical purposes such person may be regarded as working solely for the latter enterprises. Enterprises controlled by the same person shall be treated as one enterprise.

3. The term “a broker, commission agent or other agent of genuinely independent status” as used in subparagraph (l) (v) of paragraph 1 of Article II is understood not to include a person who is engaged in one of the Contracting States in such activities as prescribed in subparagraph (l) (iv) (aa), (bb) and (cc) of the said paragraph wholly or almost wholly for or on behalf of an enterprise of the other Contracting State or for or on behalf of such enterprise and other enterprises which are controlled by or have a controlling interest in such enterprise.

In this paragraph, the term “almost wholly” means the same as is provided in paragraph 2 of this understanding.

4. In the application of the provisions of paragraph 1 of Article III, the competent authorities of the Contracting State in which a permanent establishment is situated may—

- (a) deem to be attributable to the permanent establishment all profits arising from such activities as have usually been performed by the permanent establishment, and
- (b) unless proved to the contrary, treat as attributable to the permanent establishment all profits arising from the activities which the permanent establishment is capable of performing,

but only in so far as such profits are derived from sources within that Contracting State.

5. Any undertaking other than those mentioned in subparagraphs (a), (b), (c) and (d) of paragraph 7 of Article VI which is entitled to the privileges accorded under the laws of Thailand on promotion of industrial investment shall be deemed to have been declared to be an “industrial undertaking” by the competent authorities of Thailand under the provisions of subparagraph (e) of paragraph 7 of Article VI.

Accept, Excellency, the assurances of my highest consideration.

(Signed) Th. KHOMAN
Minister of Foreign Affairs

His Excellency Mr. Hisanaga Shimadzu
Ambassador Extraordinary and Plenipotentiary of Japan
Bangkok

II

EMBASSY OF JAPAN
THAILAND

No. 201/38

1st March, 1963

Excellency,

I have the honour to refer to the Convention between Japan and Thailand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed today.

The following is the understanding of the Government of Japan pertaining to the interpretation and implementation of the Convention :

[*See letter I*]

Accept, Excellency, the assurances of my highest consideration.

(*Signed*) H. SHIMADZU
Ambassador Extraordinary
and Plenipotentiary of Japan