

No. 15004

**NETHERLANDS
and
THAILAND**

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital (with protocol). Signed at Bangkok on 11 September 1975

Authentic texts: Dutch, Thai and English.

Registered by the Netherlands on 27 August 1976.

**PAYS-BAS
et
THAÏLANDE**

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu et d'impôts sur la fortune (avec protocole). Signée à Bangkok le 11 septembre 1975

Textes authentiques : néerlandais, thaï et anglais.

Enregistrée par les Pays-Bas le 27 août 1976.

CONVENTION¹ BETWEEN THE KINGDOM OF THE NETHERLANDS
AND THE KINGDOM OF THAILAND FOR THE AVOIDANCE OF
DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVA-
SION WITH RESPECT TO TAXES ON INCOME AND ON
CAPITAL

The Government of the Kingdom of the Netherlands and the Government of the Kingdom of Thailand,

Desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,

Have agreed as follows:

CHAPTER I. SCOPE OF THE CONVENTION

Article 1. PERSONAL SCOPE

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

Article 2. TAXES COVERED

1. This Convention shall apply to taxes on income and on capital imposed on behalf of each of the States 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 and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, 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 the Netherlands:

- (1) *de inkomstenbelasting* (income tax),
 - (2) *de loonbelasting* (wages tax),
 - (3) *de vennootschapsbelasting* (company tax),
 - (4) *de dividendbelasting* (dividend tax),
 - (5) *de vermogensbelasting* (capital tax),
- (hereinafter referred to as "Netherlands tax");

b) in the case of Thailand:

- (1) the income tax,
 - (2) the local development tax,
- (hereinafter referred to as "Thai tax").

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

¹ Came into force on 9 June 1976, the date of the exchange of notes confirming its approval pursuant to the legal procedures of the two countries, in accordance with article 30.

CHAPTER II. DEFINITIONS

Article 3. GENERAL DEFINITIONS

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

a) The term "State" means the Netherlands or Thailand, as the context requires; the term "States" means the Netherlands and Thailand;

b) The term "the Netherlands" comprises the part of the Kingdom of the Netherlands that is situated in Europe and the part of the sea-bed and its subsoil under the North Sea, over which the Kingdom of the Netherlands has sovereign rights in accordance with international law;

c) The term "Thailand" comprises the Kingdom of Thailand and any area adjacent to the territorial waters of the Kingdom of Thailand which by Thai legislation, and in accordance with international law, has been or may hereafter be designated as an area within which the rights of the Kingdom of Thailand with respect to the sea-bed and subsoil and their natural resources may be exercised;

d) The term "person" comprises an individual, a company and any other body of persons;

e) The term "company" means any body corporate or any entity or any group of persons which is treated as a body corporate for tax purposes;

f) The terms "enterprise of one of the States" and "enterprise of the other State" mean respectively an enterprise carried on by a resident of one of the States and an enterprise carried on by a resident of the other State;

g) The term "competent authority" means:

1. in the Netherlands the Minister of Finance or his duly authorized representative;
2. in Thailand the Minister of Finance or his duly authorized representative.

2. As regards the application of the Convention by either of the States any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that State relating to the taxes which are the subject of this Convention.

Article 4. FISCAL DOMICILE

1. For the purposes of this Convention, the term "resident of one of the States" means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

2. For the purposes of this Convention, an individual, who is a member of a diplomatic or consular mission of one of the States in the other State or in a third State and who is a national of the sending State, shall be deemed to be a resident of the sending State if he is submitted therein to the same obligations in respect of taxes on income and capital as are residents of that State.

3. Where by reason of the provisions of paragraph 1 an individual is a resident of both States, then this case shall be determined in accordance with the following rules:

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 closest (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 States shall settle the question by mutual agreement.
4. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both States, then the competent authorities of the States shall settle the question by mutual agreement.

Article 5. PERMANENT ESTABLISHMENT

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

2. The term "permanent establishment" shall include especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop;
- f) a mine, quarry or other place of extraction of natural resources.

3. Notwithstanding the provisions of paragraphs 1 and 2, the term "permanent establishment" shall include a building site or construction or assembly project only if it exists for more than

- a) six months, in the case of installation or setting up of plant equipment or machinery including the auxiliary construction as is necessary for such installation;
- b) three months, in all other cases.

4. The term "permanent establishment" shall not be deemed to include:

- a) the use of facilities solely for the purpose of storage, display or delivery 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, display or delivery;
- 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 for 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.

5. A person acting in one of the States on behalf of an enterprise of the other State—other than an agent of an independent status to whom paragraph 6 applies—shall be deemed to be a permanent establishment in the first-mentioned State if—

- a) he has, and habitually exercises in the first-mentioned State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or

- b) he habitually maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise; or
- c) he habitually secures orders in the first-mentioned 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.

6. An enterprise of one of the States shall not be deemed to have a permanent establishment in the other 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, where such persons are acting in the ordinary course of their business. This shall not apply if such broker or agent carries on in that other State an activity described in paragraph 5 wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises which are controlled by or have a controlling interest in it.

7. The fact that a company which is a resident of one of the States controls or is controlled by a company which is a resident of the other 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.

CHAPTER III. TAXATION OF INCOME

Article 6. INCOME FROM IMMOVABLE PROPERTY

1. Income from immovable property may be taxed in the State in which such property is situated.

2. The term "immovable property" shall be defined in accordance with the law of the 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, 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 professional services.

Article 7. BUSINESS PROFITS

1. The profits of an enterprise of one of the States shall be taxable only in that State unless the enterprise carries on business in the other State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Where an enterprise of one of the States carries on business in the other State through a permanent establishment situated therein, there shall in each State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar ac-

tivities under the same or similar conditions 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 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. In so far as it has been customary in one of the States 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 or, in the case of a person who does not claim taxation on the basis of the real net profits of the permanent establishment, on the basis of a certain reasonable percentage of the gross receipts of the permanent establishment, nothing in paragraph 2 shall preclude such State from determining the profits to be taxed by such a method; the method adopted shall, however, be such that the result shall be in accordance with the principles laid down in this Article.

5. No 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 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 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. Profits or income of an enterprise of one of the States from the operation of aircraft in international traffic shall be taxable only in that State.

2. If according to Article 7 an enterprise of one of the States operating ships in international traffic may be taxed in the other State, the tax charged 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 likewise apply to profits or income arising from participations in shipping or aircraft pools of any kind by such enterprises engaged in shipping or air transport.

Article 9. ASSOCIATED ENTERPRISES

Where

- a) an enterprise of one of the States participates directly or indirectly in the management, control or capital of an enterprise of the other State, or
- b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the States and an enterprise of the other 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 10. DIVIDENDS

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

2. However, such dividends may be taxed in the State of which the company paying the dividends is a resident but the tax so charged shall not exceed 25 per cent of the gross amount of the dividends.

3. Notwithstanding the provisions of paragraph 2,

A. Netherlands tax on dividends paid by a company which is a resident of the Netherlands to a company the capital of which is wholly or partly divided into shares and which is a resident of Thailand and holds directly at least 25 per cent of the capital of the company paying the dividends shall not exceed 5 per cent of the gross amount of the dividends;

B. Thai tax on dividends paid by a company which is a resident of Thailand to a company the capital of which is wholly or partly divided into shares and which is a resident of the Netherlands and holds directly at least 25 per cent of the capital of the company paying the dividends shall not exceed 10 per cent: Provided that

a) if the maximum Thai tax rate on company profits for the accounting period within which the dividends are distributed is not more than 30 per cent, the Thai tax on such dividends shall not exceed:

(i) 15 per cent of the gross amount of the dividends, if the company paying the dividends engages in an industrial undertaking;

(ii) 20 per cent of the gross amount of the dividends, in all other cases;

b) if the maximum Thai tax rate on company profits for the accounting period in which the dividends are distributed is more than 30 per cent, but not more than 40 per cent, the Thai tax on such dividends shall not exceed 15 per cent of the gross amount of the dividends, if the company paying the dividends does not engage in an industrial undertaking.

4. The competent authorities of the States shall settle the mode of application of paragraphs 2 and 3.

5. The term "dividends" as used in this Article means income from shares, *jouissance* rights, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident.

6. The term "industrial undertaking" as used in this Article means

a) any undertaking engaged in

1. manufacturing, assembling and processing,

2. construction, civil engineering and ship building,

3. mining and exploration for and exploitation of natural resources,

4. production of electricity, hydraulic power, gas or the supply of water, or

5. agriculture, forestry and fishery and the carrying on of a plantation, and

b) any other undertaking entitled to the privileges accorded under the laws of Thailand on the promotion of industrial investment, and

c) any other undertaking which may be declared to be an "industrial undertaking" for the purpose of this Article by the competent authority of Thailand.

7. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient of the dividends, being a resident of one of the States, has in the other State, of which the

company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of Article 7 shall apply, provided that under the law of that other State the dividends are taxed as part of the profits of that permanent establishment.

8. Where a company which is a resident of one of the States derives profits or income from the other State, that other State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11. INTEREST

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

2. However, such interest may be taxed in the State in which it arises, but the tax so charged shall not exceed:

- a) 10 per cent of the gross amount of the interest, if the interest is derived by a bank or any other financial institution (including an insurance company) which is a resident of the other State;
- b) 25 per cent of the gross amount of the interest, in all other cases.

3. The competent authorities of the States shall settle the mode of application of paragraph 2.

4. The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

5. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the interest, being a resident of one of the States, has in the other State in which the interest arises a permanent establishment with which the debt-claim from which the interest arises is effectively connected. In such a case, the provisions of Article 7 shall apply, provided that under the law of that other State the interest is taxed as part of the profits of that permanent establishment.

6. Interest shall be deemed to arise in one of the States 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 one of the States or not, has in one of the States 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, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each State, due regard being had to the other provisions of this Convention.

Article 12. ROYALTIES

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

2. However, such royalties may be taxed in the State in which they arise, but the tax so charged shall not exceed:

- a) 5 per cent of the gross amount of such payments if they are made as consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work;
- b) 15 per cent of the gross amount of such payments if they are made as consideration for the use of, or the right to use, any patent, trade mark, design or mode, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, or for the use of, or the right to use, cinematograph films or tapes for television or broadcasting.

3. The competent authorities of the States shall settle the mode of application of paragraph 2.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of one of the States, has in the other State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of Article 7 shall apply, provided that under the law of that other State the royalties are taxed as part of the profits of that permanent establishment.

5. Royalties shall be deemed to arise in one of the States 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 one of the States or not, has in one of the States a permanent establishment in connection with which the contract under which the royalties are paid was concluded, 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, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each State, due regard being had to the other provisions of this Convention.

Article 13. LIMITATION OF ARTICLES 10, 11 AND 12

International organizations, organs and officials thereof and members of a diplomatic or consular mission of a third State, being present in one of the States, are not entitled, in the other State, to the reductions or exemptions from tax provided for in Articles 10, 11 and 12 in respect of the items of income dealt with in these Articles and arising in that other State, if such items of income are not subject to a tax on income in the first-mentioned State.

Article 14. CAPITAL GAINS

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6, may be taxed in the State in which such property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of one of the States has in the other State, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise), may be taxed in the other State.

3. Notwithstanding the provisions of paragraph 2, gains from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in the State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of any property other than those mentioned in paragraphs 1, 2 and 3, shall be taxable only in the State of which the alienator is a resident.

5. The provisions of paragraph 4 shall not affect the right of each of the States to levy according to its own law a tax on gains from the alienation of shares of *jouissance* rights in a company, the capital of which is wholly or partly divided into shares, and which is a resident of that State, derived by an individual who is a resident of the other State and has been a resident of the first-mentioned State in the course of the last five years preceding the alienation of the shares or *jouissance* rights.

Article 15. PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, remuneration derived by a resident of one of the States in respect of personal services (including the practice of a liberal profession) shall be taxable only in that State unless the services are rendered in the other State. If the services are so rendered, 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 one of the States in respect of such services rendered in the other State shall be taxable only in the first-mentioned State if:

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and
- b) the remuneration is paid by, or on behalf of, a person who is not a resident of the other State, and
- c) the remuneration is not borne by a permanent establishment which the person paying the remuneration has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the State in which the place of effective management of the enterprise is situated.

Article 16. DIRECTOR'S FEES

1. Director's fees and similar payments derived by a resident of the Netherlands in his capacity as a member of the board of directors of a company which is a resident of Thailand may be taxed in Thailand.

2. Remuneration and other payments derived by a resident of Thailand in his capacity as a *bestuurder* or a *commissaris* of a company which is a resident of the Netherlands may be taxed in the Netherlands.

Article 17. ARTISTES AND ATHLETES

Notwithstanding the provisions of Articles 5, 7 and 15, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musi-

cians, and by athletes, from their personal activities as such, or income derived from the furnishing by an enterprise of the services of such public entertainers or athletes, may be taxed in the State in which these activities or services are exercised.

Article 18. PENSIONS AND ANNUITIES

1. Subject to the provisions of paragraph 2 of this Article and paragraph 1 of Article 19, pensions and other similar remuneration paid in consideration of past employment to a resident of one of the States and any annuity paid to such a resident shall be taxable only in that State.

2. However, such income may also be taxed in the other State in so far as it is charged as such against profits derived in that other State by an enterprise of that other State or by an enterprise having a permanent establishment therein.

3. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 19. GOVERNMENTAL FUNCTIONS

1. Remuneration, including pensions, paid by, or out of funds created by, one of the States or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof in the discharge of functions of a governmental nature may be taxed in that State.

2. However, the provisions of Articles 15, 16 and 18 shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by one of the States or a political subdivision or a local authority thereof.

Article 20. PROFESSORS AND TEACHERS

1. Payments which a professor or teacher who is a resident of one of the States and who is present in the other State for the purpose of teaching or scientific research for a maximum period of two years in a university, college or other establishment for teaching or scientific research owned by that other State or its political subdivisions or local authorities, or a non-profit organization of that other State, receives for such teaching or research shall be taxable only in the first-mentioned State.

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

Article 21. STUDENTS

1. An individual who is a resident of one of the States immediately before visiting the other State and who is temporarily present in that other State solely:

- a) as a student at a university, college or school in that other State,
 - b) as a business apprentice, or
 - c) as the recipient of a grant, allowance or award for the primary purpose of study or research from a religious, charitable, scientific or educational organization,
- shall not be taxed in that other State in respect of remittances from abroad for the purposes of his maintenance, education or training.

2. An individual, who is a resident of one of the States immediately before visiting the other State and who is present in that other State solely as a student at a

university, college or school in that other State or as a business apprentice, shall not be taxed in that other State for a period not exceeding three consecutive tax years in respect of remuneration from employment in such other State provided that:

- a) the remuneration constitutes earnings necessary for his maintenance and education, and
- b) the said remuneration does not exceed in the tax year 3,600 guilders or 21,000 Baht, as the case may be.

CHAPTER IV. TAXATION OF CAPITAL

Article 22. CAPITAL

1. Capital represented by immovable property, as defined in paragraph 2 of Article 6, may be taxed in the State in which such property is situated.

2. Capital represented by movable property forming part of the business property of a permanent establishment of an enterprise may be taxed in the State in which the permanent establishment is situated.

3. Notwithstanding the provisions of paragraph 2, ships and aircraft operated in international traffic, and movable property pertaining to the operation of such ships and aircraft shall be taxable only in the State in which the place of effective management of the enterprise is situated.

4. All other elements of capital of a resident of one of the States shall be taxable only in that State.

CHAPTER V. ELIMINATION OF DOUBLE TAXATION

Article 23. EXEMPTION AND CREDIT METHODS

1. The Netherlands, when imposing tax on its residents, may include, on the basis upon which such taxes are imposed, the items of income or capital, which according to the provisions of this Convention may be taxed in Thailand.

2. Where a resident of the Netherlands derives income or owns capital which in accordance with Articles 6, 7, 10, paragraph 7, 11, paragraph 5, 12, paragraph 4, 14, paragraphs 1 and 2, 15, paragraphs 1 and 3, 16, paragraph 1, 17, 19 and 22, paragraphs 1 and 2, of this Convention, may be taxed in Thailand, the Netherlands shall, subject to the provisions concerning the mode of application, including the provisions concerning the compensation of losses, in its unilateral regulations for the avoidance of double taxation, exempt such income or capital from tax.

3. Further, the Netherlands shall allow a deduction from the tax computed in accordance with the preceding paragraphs of this Article with respect to the items of income which may be taxed in Thailand according to Articles 8, paragraph 2, 10, paragraph 2, 11, paragraph 2, 12, paragraph 2, and 18, paragraph 2, and are included in the basis mentioned in paragraph 1 of this Article.

The amount of this deduction shall be the lesser of the following amounts:

- a) the amount equal to the Thai tax;
- b) the amount of that part of the Netherlands tax which is appropriate to the said items of income.

4. Thailand, when imposing tax on its residents, may include, on the basis upon which such taxes are imposed, all items of income or capital, except where express provisions to the contrary are made in this Convention.

5. Where a resident of Thailand derives income or owns capital which, in accordance with Articles 6, 7, 10, paragraph 7, 11, paragraph 5, 12, paragraph 4, 14, paragraphs 1 and 2, 15, paragraphs 1 and 3, 16, paragraph 2, 17, 19, and 22, paragraphs 1 and 2, of this Convention, may be taxed in the Netherlands, Thailand shall exempt such income or capital from tax, but may, in calculating tax on the remaining income or capital of that resident, apply the rate of tax which would have been applicable if the exempted income or capital had not been so exempted.

6. Thailand shall allow a deduction from the tax computed in accordance with paragraph 4 of this Article with respect to the items of income which may be taxed in the Netherlands according to Articles 8, paragraph 2, 10, paragraphs 2 and 3, 11, paragraph 2, 12, paragraph 2, and 18, paragraph 2, and with respect to all items of income not mentioned in this Convention which according to the laws of Thailand arise in the Netherlands. The amount of this deduction shall be the lesser of the following amounts:

- a) the amount equal to the Netherlands tax;
- b) the amount of that part of the Thai tax which is appropriate to the said items of income.

7. Where a resident of one of the States derives gains which may be taxed in the other State according to Article 14, paragraph 5, that other State shall allow a deduction from its tax on such gains to an amount equal to the tax levied in the first-mentioned State on the said gains.

CHAPTER VI. SPECIAL PROVISIONS

Article 24. NON-DISCRIMINATION

1. The nationals of one of the States, whether they are residents of that State or not, shall not be subjected in the other 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 term "nationals" means:

- a) all individuals possessing the nationality of one of the States;
- b) all legal persons, partnerships and associations deriving their status as such from the law in force in one of the States.

3. The taxation on a permanent establishment which an enterprise of one of the States has in the other State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging one of the States to grant to residents of the other 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 one of the States, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other 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 that first-mentioned State are or may be subjected.

5. In this Article the term "taxation" means taxes of every kind and description.

Article 25. MUTUAL AGREEMENT PROCEDURE

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

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 an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other State, with a view to the avoidance of taxation not in accordance with this Convention.

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

4. The competent authorities of the States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 26. EXCHANGE OF INFORMATION

1. The competent authorities of the States shall exchange such information (being information which such authorities have at their disposal in the normal course of administration) as is necessary for the carrying out of this Convention, in particular for the prevention of fraud, and for the administration of statutory provisions against legal avoidance concerning taxes covered by this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment, including judicial determination, or collection of the taxes which are the subject of this Convention.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the States the obligation:

- a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other State;
- b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

Article 27. LIMITATION OF RELIEF

Where under any provision of this Convention income is relieved from tax in one of the States and under the law in force in the other State, a person, in respect of the said income, is subject to tax by reference to the amount thereof which is remitted to or received in that other State and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the first-mentioned State shall apply only to so much of the income as is remitted to or received in the other State.

Article 28. DIPLOMATIC AND CONSULAR OFFICIALS

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

Article 29. TERRITORIAL EXTENSION

1. This Convention may by mutual agreement be extended, either in its entirety or with any necessary modifications, to either or both of the countries of Surinam or the Netherlands Antilles, if the country concerned imposes taxes substantially similar in character to those to which this Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed in notes to be exchanged through diplomatic channels.

2. Unless otherwise agreed the termination of the Convention shall not also terminate the application of the Convention to any country to which it has been extended under this Article.

CHAPTER VII. FINAL PROVISIONS

Article 30. ENTRY INTO FORCE

The present Convention shall be approved by the Netherlands and Thailand in accordance with their legal procedures, and shall enter into force upon the date of exchange of notes indicating such approval. Its provisions shall thereupon have effect:

- a) in the case of the Netherlands: for taxable years and accounting periods beginning on or after the first day of January of the year in which the exchange of notes takes place;
- b) in the case of Thailand:
 - 1. in respect of taxes on income, for taxable years and accounting periods beginning on or after the first day of January of the year in which the exchange of notes takes place;
 - 2. in respect of taxes on capital, for taxes the payment of which is required on or after the first day of January of the year in which the exchange of notes takes place.

Article 31. TERMINATION

The present Convention shall remain in force indefinitely. Either State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after a period of five years from the date on which the Convention enters into force. In such event the Convention shall cease to have effect:

- a) in the case of the Netherlands: for taxable years and accounting periods beginning after the end of the calendar year in which the notice of termination has been given;
- b) in the case of Thailand:
 - 1. in respect of taxes on income, for taxable years and accounting periods beginning after the end of the calendar year in which the notice of termination has been given;
 - 2. in respect of taxes on capital, for taxes the payment of which is required after the end of the calendar year in which the notice of termination has been given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Convention.

DONE at Bangkok, on September 11, 1975, in two originals, each in the Netherlands, Thai and English languages, the three texts being equally authentic. In case there is any divergence of interpretation between the Netherlands and Thai texts, the English text shall prevail.

For the Government
of the Kingdom
of the Netherlands:

[Signed]

ARIE BERNARDUS HOYTINK
Charge d'affaires a.i.

For the Government
of the Kingdom
of Thailand:

[Signed]

CHATICHA CHOONHAVAN
Minister of Foreign Affairs

PROTOCOL

At the moment of signing the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital, this day concluded between the Kingdom of the Netherlands and the Kingdom of Thailand, the undersigned, duly authorised thereto, have agreed that the following provisions shall form an integral part of the Convention.

I

Re Articles 10, 11 and 12

Applications for the refund of tax levied contrary to the provisions of Articles 10, 11 and 12 have to be lodged within a period of three years after the expiration of the calendar year in which the tax has been levied or, in the case of Article 27, after the expiration of the calendar year in which the income has been remitted.

II

Re Article 10

The provisions of Article 10, paragraph 3, part B, shall not apply, if the company which is a resident of the Netherlands suffers Netherlands company tax on the dividends which it receives from the company which is a resident of Thailand.

III

Re Article 15

It is understood that the provisions of Article 15, paragraphs 1 and 2, are not applicable in the case of remuneration derived by a legal person or by an individual as a member of a group of persons, which is organized in such a way that its activities can be considered as or assimilated to the carrying on of an enterprise; in such a case, the provisions of Article 7 are applicable.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Protocol.

DONE at Bangkok, on September 11, 1975, in two originals, each in the Netherlands, Thai and English languages, the three texts being equally authentic. In case there is any divergence of interpretation between the Netherlands and Thai texts, the English text shall prevail.

For the Government
of the Kingdom
of the Netherlands:

[Signed]

ARIE BERNARDUS HOYTINK
Chargé d'affaires a.i.

For the Government
of the Kingdom
of Thailand:

[Signed]

CHATICHAI CHOONHAVAN
Minister of Foreign Affairs
