

No. 27081

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**SWEDEN  
and  
THAILAND**

**Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with protocol). Signed at Bangkok on 19 October 1988**

*Authentic text: English.*

*Registered by Sweden on 29 January 1990.*

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**SUÈDE  
et  
THAÏLANDE**

**Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec protocole). Signée à Bangkok le 19 octobre 1988**

*Texte authentique : anglais.*

*Enregistrée par la Suède le 29 janvier 1990.*

## CONVENTION<sup>1</sup> BETWEEN SWEDEN AND THAILAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the Kingdom of Sweden 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,

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, as well as taxes on capital appreciation.

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

a) In Thailand:

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

b) In Sweden:

(i) the State income tax; including the sailors' tax and the coupon tax;

(ii) the tax on the undistributed profits of companies and the tax on distribution in connection with reduction of share capital or the winding up of a company;

(iii) the tax on public entertainers;

(iv) the profit sharing tax; and

(v) the communal income tax (hereinafter referred to as "Swedish tax").

4. The Convention shall also apply 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 taxes referred to above. The competent authorities of the Contracting States shall notify each other of any 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 "Thailand" means the Kingdom of Thailand and includes any area adjacent to the territorial waters of the Kingdom of Thailand which by Thai legislation, and in accordance with international law, has been or may hereafter be designated as an area within which the rights of the Kingdom of Thailand with respect to the seabed and subsoil and their natural resources may be exercised;

b) the term "Sweden" means the Kingdom of Sweden and includes any area outside the territorial sea of the Kingdom of Sweden within which under the laws of the Kingdom of Sweden and in accordance with international

<sup>1</sup> Came into force on 26 September 1989 by the exchange of the instruments of ratification, which took place at Stockholm, in accordance with article 28 (2).

law the rights of the Kingdom of Sweden with respect to the exploration and exploitation of the natural resources on the seabed or in its subsoil may be exercised;

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

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

e) the terms "a Contracting State" and "the other Contracting State" mean Thailand or Sweden, as the context requires;

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 "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;

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 "competent authority" means:

(i) in Thailand, the Minister of Finance or his authorized representative, and

(ii) in Sweden, the Minister of Finance, his authorized representative, or the authority designated to act as competent authority for the purposes of the Convention;

j) the term "tax" means Thai tax or Swedish tax, as the context requires. The term shall, however, not include penalties, surcharges or interest for late payments of taxes.

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 competent authorities of the Contracting 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 through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop;
- f) a warehouse in relation to a person providing storage facilities for others; and

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

3. The term "permanent establishment" likewise encompasses:

a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than

(i) 6 months, in the case of installation or setting up of plant equipment or machinery including the auxiliary construction as is necessary for such installation;

(ii) 3 months in all other cases;

b) the furnishing of services including consultancy services by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than 6 months within any twelvemonth period.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;

b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;

c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely

for the purpose of processing by another enterprise;

d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

5. 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, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or

b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly fills orders or delivers goods or merchandise on behalf of the enterprise; or

c) has no such authority, but habitually secures orders in the first-mentioned Contracting State wholly or almost wholly on behalf of the enterprise or on behalf of that enterprise and other enterprises which are controlled by it or have a controlling interest in it.

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 an independent status within the meaning of this paragraph but in such cases the provisions of paragraph 5 shall apply.

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.

8. Notwithstanding the provisions of paragraph 7, where an enterprise of a Contracting State sells to a resident of the other Contracting State goods manufactured, assembled, processed, packed or distributed in that other Contracting State by an industrial or commercial enterprise for, or at, or to the order of, that first-mentioned enterprise and

a) either enterprise participates directly or indirectly in the management, control or capital of the other enterprise; or

b) the same persons participate directly or indirectly in the management, control or capital of both enterprises,

then, for the purposes of this Convention, that first-mentioned enterprise shall be deemed to have a permanent establishment in that other Contracting State and to carry on business in that other Contracting State through that permanent establishment.

#### *Article 6*

##### *Income from immovable property*

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

2. The term "immovable property" shall have the meaning which it has under the law

of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the 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 independent personal services.

#### *Article 7*

##### *Business profits*

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

2. Notwithstanding the provisions of paragraph 1 where an enterprise of a Contracting State which has a permanent establishment in the other Contracting State

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

b) carries on other business activities in that other State of the same or similar kind as those effected through that permanent establishment,

then the income or profits from such sales or activities may be attributable to the permanent establishment unless the enterprise

shows that such activities could not have been reasonably undertaken by the permanent establishment.

3. Subject to the provisions of paragraph 4, 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.

4. In determining 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.

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. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of a certain percentage of the gross receipts of the enterprise or of the permanent establishment or on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 3 of this Article shall preclude that Contracting State from determining the profits to be taxed by such methods as may be customary; the methods adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

7. 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.

8. 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. With respect to income or profits derived by the the air transport consortium Scandinavian Airlines System (SAS), the provisions of paragraph 1 shall apply to such part of the income or profits as corresponds to the participation held in that consortium by AB Aerotransport (ABA), the Swedish partner of Scandinavian Airlines System (SAS).

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

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

#### *Article 9*

##### *Associated enterprises*

###### 1. Where

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which dif-

fer 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.

2. Where a Contracting State includes in the profits of an enterprise of that State — and taxes accordingly — profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall, subject to the time limits provided for in the domestic laws of that other State, make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall, if necessary, consult each other.

#### *Article 10*

##### *Dividends*

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State, but if the recipient is the beneficial owner of the dividends and is a company, other than a partnership, which holds directly at least 25 per cent of the capital of the company paying the dividends, the tax so charged shall not exceed:

- a) 15 per cent of the gross amount of the dividends if the company paying the dividends engages in an industrial undertaking;
- b) 20 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. a) The term "dividends" as used in this Article means income from shares, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

b) The term "industrial undertaking" means:

- 1) any undertaking engaged in
  - (i) manufacturing, assembling and processing,
  - (ii) construction, civil engineering and shipbuilding,
  - (iii) production of electricity, hydraulic power, gas or the supply of water, or

(iv) agriculture, forestry and fishery and the carrying on of a plantation, and

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

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

4. Notwithstanding the provisions of paragraph 1, dividends paid by a company being a resident of Thailand to a company which is a resident of Sweden shall be exempt from Swedish tax to the extent that the dividends would have been exempt under Swedish law if both companies had been Swedish companies.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or per-

forms in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. 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 or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

#### *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 a bank, an insurance company or any other financial institution;

b) 25 per cent of the gross amount of the interest if it is received by any other company.

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

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to the Government of the other Contracting State or the Central Bank

of that other State shall be exempt from tax in the first-mentioned State.

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. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with

a) such permanent establishment or fixed base, or with

b) sales or other business activities referred to under paragraph 2 of Article 7.

In such cases the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is



paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of 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 15 per cent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the alienation of, or the use of, or the right to use, any copyright of literary, artistic or scientific work including 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, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in

respect of which the royalties are paid is effectively connected with

a) such permanent establishment or fixed base, or with

b) sales or other business activities referred to under paragraph 2 of Article 7.

In such cases the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a 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 or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

#### *Article 13*

##### *Gains from the alienation of property*

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

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an

enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3 of this Article and paragraph 3 of Article 12, shall be taxable only in the Contracting State of which the alienator is a resident.

5. Notwithstanding the provisions of paragraph 4, gains from the alienation of shares or similar rights in a company which is a resident of a Contracting State may be taxed in that State.

#### Article 14

##### *Independent personal services*

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

a) If he has a fixed base available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or

b) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 90 days within any twelve-month period; in that case, only so

much of the income as is derived from his activities performed in that other State may be taxed in that other State; or

c) If the remuneration for his activities in the other Contracting State is paid by a resident of that Contracting State or is borne by a permanent establishment or a fixed base situated in that Contracting State; in that case, only so much of the remuneration as is derived therefrom may be taxed in that other State.

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

#### Article 15

##### *Dependent personal services*

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21 salaries, wages and other similar remuneration, other than a pension, derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days within any twelve-month period, and

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a

ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that State. Where a resident of Sweden derives remuneration in respect of an employment exercised aboard an aircraft operated in international traffic by the air transport consortium Scandinavian Airlines System (SAS), such remuneration shall be taxable only in Sweden.

#### *Article 16*

##### *Directors' fees and remuneration of top-level managerial officials*

1. 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.

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

#### *Article 17*

##### *Income earned by entertainers and athletes*

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as 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, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of Articles 7 and 14, where the activities mentioned

in paragraph 1 are provided in a Contracting State by an enterprise of the other Contracting State the profits derived from providing these activities by such an enterprise may be taxed in the first-mentioned State unless the enterprise is substantially supported by public funds of the other Contracting State, including any political subdivision or local authority in connection with the provision of such activities.

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

#### *Article 18*

##### *Government service*

1. a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that 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 subdivision or authority shall be taxable only in that State.

b) However, such pension shall be taxable only in the other Contracting State if the

individual is a resident of, and a national of, that other State.

3. The provisions of Articles 15, 16 and 21 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 and trainees*

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, college or school or other recognised educational institution; or

b) securing training to qualify him to practice 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 organisation; shall be exempt from tax in the first-mentioned Contracting State on;

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

(ii) the grant, allowance or award; and

(iii) income from personal services rendered in that State, provided the income does not exceed 15,000 Swedish Kronor or its equivalent in Thai currency for any calendar year or such other amounts as the competent authorities of the Contracting States may from time to time agree upon.

#### *Article 20*

##### *Professors, teachers and researchers*

1. An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State, and who, at the invitation of any university, college, school or other similar educational

institution, which is recognised by the due authority in that other Contracting State, visits that other Contracting State for a period not exceeding two years solely for the purpose of teaching or research or both at such educational institution shall be exempt from tax in that other Contracting State on any remuneration for such teaching or research.

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

#### *Article 21*

##### *Other income*

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

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may be taxed in that other State.

#### *Article 22*

##### *Undivided estate*

1. Where under the provisions of this

Convention a resident of a Contracting State is exempt or entitled to relief from tax in the other Contracting State, similar exemption or relief shall be applied to the undivided estate of a deceased person in so far as one or more of the beneficiaries is a resident of the first-mentioned Contracting State. Such exemption or relief shall however be applied only to the part of income to which such beneficiary is entitled.

2. Where the undivided estate of a deceased person has been subject to tax on income in a Contracting State in accordance with the provisions of paragraph 1 of this Article, a beneficiary who is a resident of the other Contracting State shall be granted relief from tax in that other State in accordance with the provisions of Article 23.

### *Article 23*

#### *Elimination of double taxation*

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

2. In the case of Thailand, where a resident of Thailand derives income which, under the laws of Sweden and in accordance with the provisions of this Convention, may be taxed in Sweden, Thailand shall allow as a deduction from Thai tax on such income, an amount equal to the tax paid in Sweden. Such deduction shall not, however, exceed that part of the Thai tax, as computed before the deduction is given, which is appropriate to the income derived from Sweden.

3. In the case of Sweden, double taxation shall be avoided as follows:

a) Where a resident of Sweden derives income which under the laws of Thailand and in accordance with the provisions of this Convention may be taxed in Thailand, Sweden shall allow — subject to the provisions of the law of Sweden concerning credit for foreign tax (as it may be amended from time to time without changing the general principle hereof) — as a deduction from the tax on

such income, an amount equal to the Thai tax paid in respect of such income.

For the application of this subparagraph, the following rules shall apply:

(i) The Thai tax paid on dividends which are not exempted from Swedish tax under the provisions of paragraph 4 of Article 10 and received by a company, other than a partnership, which is a resident of Sweden shall, in any case, be deemed to have been paid at the rate of 25 per cent of the gross amount of the dividends;

(ii) The Thai tax paid on royalties, in accordance with the provisions of paragraph 2 of Article 12, shall, in any case, be deemed to have been paid at the rate of 20 per cent of the gross amount of the royalties;

(iii) The term "Thai tax paid", as used in this subparagraph, shall be deemed to include the amount of Thai tax which would have been paid if exemption from or reduction of Thai tax had not been granted in accordance with the special incentive laws, effective on the date of signature of this Convention, or which, subject to the agreement by the competent authorities of the Contracting States, may be introduced hereafter in modification of, or in addition to the existing laws.

b) Notwithstanding the provisions of subparagraph (a) of this paragraph where a resident of Sweden derives income or gains which, in accordance with the provisions of Articles 7 or 14 or paragraph 2 of Article 13 may be taxed in Thailand, Sweden shall exempt such income or gains from tax provided that the principal part of the income or gains arises from independent personal services or business activities, other than the management of securities and other similar property.

(c) Where a resident of Sweden derives income which, in accordance with the provisions of Article 18, shall be taxable only in Thailand, or income or gains which, in accordance with the provisions of subparagraph (b) of this paragraph, shall be exempted from Swedish tax, Sweden may, when determining the graduated rate of Swedish tax, take into

account the income which shall be taxable only in Thailand or the income or gains which shall be exempted from Swedish tax, respectively.

#### Article 24

##### *Non-discrimination*

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

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

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

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterpri-

ses of the first-mentioned State are or may be subjected.

#### Article 25

##### *Mutual agreement procedure*

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention.

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

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities shall, through consultations, develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article.

*Article 26**Exchange of information*

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall through consultation develop appropriate conditions, methods, and techniques concerning the matters in respect of which such exchanges of information shall be made, including, where appropriate, exchanges of information regarding tax avoidance.

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

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

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

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

*Article 27**Diplomatic agents and consular officers*

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

*Article 28**Entry into force*

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Stockholm as soon as possible.

2. Upon the exchange of instruments of ratification this Convention shall enter into force in both Contracting States and its provisions shall have effect:

a) in respect of taxes withheld at the source, on amounts paid or remitted to non-residents on or after the first day of January next following the exchange of instruments of ratification;

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 the exchange of instruments of ratification.

3. The Agreement between Thailand and Sweden for the avoidance of double taxation with respect to taxes on income and capital signed at Bangkok on October 20, 1961,<sup>1</sup> shall terminate and cease to have effect:

a) in respect of taxes to which this Convention applies as from the time when the provisions of this Convention begin to have effect;

b) in respect of taxes on capital

(i) in Thailand, for taxes the payment of which is required in or after the second calendar year next following the exchange of instruments of ratification of this Convention;

<sup>1</sup>United Nations, *Treaty Series*, vol. 428, p. 275.

(ii) in Sweden, for taxes which are assessed in or after the second calendar year next following the exchange of instruments of ratification of this Convention.

*Article 29*

*Termination*

This Convention shall remain in force indefinitely, but either of the Contracting States may, on or before 30th June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through diplomatic channels, written notice of termination.

In such event the Convention shall cease to have effect:

a) in respect of taxes withheld at the source, on amounts paid or remitted to non-residents on or after the first day of January next following the submission of such notice;

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 the submission of such notice.

*IN WITNESS WHEREOF* the undersigned, being duly authorized thereto, have signed this Convention.

Done at Bangkok, this nineteenth day of October, 1988, in duplicate in the English language.

For the Government of Sweden:

STEN ANDERSSON  
Minister of Foreign Affairs

For the Government of Thailand:

SIDDHI SAVETSILA  
Minister of Foreign Affairs



## PROTOCOL

At the time of signing the Convention between the Government of Thailand and the Government of Sweden for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, the undersigned have agreed that the following provisions shall form an integral part of the Convention:

1. Nothing in this Convention shall be construed as preventing Thailand from imposing income tax, according to the laws of Thailand, on the profits remitted from or disposed out of Thailand by a permanent establishment situated therein.

2. With reference to the provisions of paragraphs 5 and 6 of Article 5, the term "almost wholly", as used in relation to the activities of a person, who habitually secures orders in a Contracting State for or on behalf of an enterprise of the other Contracting State or for or on behalf of the enterprise and other enterprises which are controlled by it or have a controlling interest in it, shall be interpreted according to the following rules:

(1) Where a person has been habitually securing orders in the way mentioned above for one year he shall be considered to have secured orders almost wholly on behalf of the enterprise or enterprises in question during this year if

a) 75 per cent or more of the commissions received by him or accrued to him during this year are attributable to orders secured for or on behalf of such enterprise or enterprises, or

b) 75 per cent or more of the gross amount of the total contract sums of all orders secured by him during this year are attributable to orders secured for or on behalf of such enterprise or enterprises.

(2) Where a person has been habitually securing orders in the way mentioned above for two years he shall be considered to have secured orders almost wholly on behalf of the enterprise or enterprises in question during the second year if

a) the yearly average for the two years of the commissions received by him or accrued to him for securing orders for or on behalf of such enterprise or enterprises amounts to 75 per cent or more of the yearly average for these two years of the total commissions received by him or accrued to him, or

b) the yearly average for these two years of the gross amounts of the aggregate contract sums of orders secured by him for or on behalf of such enterprise or enterprises amounts to 75 per cent or more of the yearly average for these two years of the gross amounts of the total contract sums of all orders secured by him, or

c) 75 per cent or more of the commissions received by him or accrued to him during the second year are attributable to orders secured for or on behalf of such enterprise or enterprises, or

d) 75 per cent or more of the gross amount of the total contract sums of all orders secured by him during the second year are attributable to orders secured for or on behalf of such enterprise or enterprises.

(3) Where a person has been habitually securing orders in the way mentioned above for three or more years he shall be considered to have secured orders almost wholly on behalf of the enterprise or enterprises in question during the last year if

a) the yearly average for the last three years of the commissions received by him or accrued to him for securing orders for or on behalf of such enterprise or enterprises amounts to 75 per cent or more of the yearly average for these three years of the total commissions received by him or accrued to him, or

b) the yearly average for the last three years of the gross amounts of the aggregate contract sums of orders secured by him for or on behalf of such enterprise or enterprises amounts to 75 per cent or more of the yearly average for the last three years of the gross amounts of the total contract sums of all orders secured by him, or

c) 75 per cent or more of the commissions received by him or accrued to him during the last year or the year preceding the last year are attributable to orders secured for or on behalf of such enterprise or enterprises, or

d) 75 per cent or more of the gross amount of the total contract sums of all orders secured by him during the last year or during the year preceding the last year are attributable to orders secured for or on behalf of such enterprise or enterprises.

(4) The term "commissions" as used in this paragraph means compensations of any kind for the services of securing orders.

(5) For the purpose of calculating the average under (2) and (3), these rules shall also apply to the commissions and the contract sums of orders secured during the two taxable years or accounting periods immediately preceding the taxable year or accounting period for which the relevant provisions of this Convention begin to have effect.

*IN WITNESS WHEREOF* the undersigned, being duly authorized thereto, have signed this Convention.

Done at Bangkok, this nineteenth day of October, 1988, in duplicate in the English language.

For the Government of Sweden:

STEN ANDERSSON  
Minister of Foreign Affairs

For the Government of Thailand:

SIDDHI SAVETSILA  
Minister of Foreign Affairs