



Double Taxation Avoidance Agreement between Thailand and Denmark

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DEZAN SHIRA & ASSOCIATES

Corporate Establishment, Tax, Accounting & Payroll Throughout Asia

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CONVENTION
BETWEEN
THE GOVERNMENT OF THE KINGDOM OF THAILAND
AND
THE GOVERNMENT OF THE KINGDOM OF DENMARK
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME

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

Desiring to conclude a new 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 in particular:
 - (a) In the case of Denmark:
 - (i) the income tax to the State (indkomstkatten til staten);
 - (ii) the income tax to the municipalities (den kommunale indkomstskat);
 - (iii) the income tax to the county municipalities (den amtskommunale indkomstskat);
 - (iv) taxes imposed under the Hydrocarbon Tax Act (skatter i henhold til kulbrinteskatteloven):
(hereinafter referred to as "Danish tax").
 - (b) In the case of Thailand:
 - (i) the income tax;
 - (ii) the petroleum income tax.
(hereinafter referred to as "Thai tax").

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of substantial 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 terms "a Contracting State" and "the other Contracting State" mean Denmark or Thailand, as the context requires;

- (b) the term "Denmark" means the Kingdom of Denmark including any area outside the territorial sea of Denmark which in accordance with international law has been or may hereafter be designated under Danish laws as an area within which Denmark may exercise sovereign rights with respect to the exploration and exploitation of the natural resources of the sea·bed or its subsoil and the superjacent waters and with respect to other activities for the exploration and economic exploitation of the area; the term does not comprise the Faeroe Islands and Greenland;
- (c) 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 the 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 or its subsoil and the superjacent waters and their natural resources may be exercised;
- (d) the term "person" includes an individual, a company, any other body of persons and any entity taxable under the taxation laws in force in either Contracting State;
- (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the 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, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (h) the term "competent authority" means:

- (i) in Denmark: the Minister for Taxation or his authorized representative;
 - (ii) in Thailand: The Minister of Finance or his authorized representative;
- (i) the term "tax" means Danish tax or Thai tax as the context requires;
- (j) the term "national" means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership, or association deriving its status as such from the laws in force in a Contracting State.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State for the purposes of the tax 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 management, place of incorporation 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 only 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 the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement and determine the mode of application of the Convention to such person. In the absence of such agreement, for the purposes of the Convention, the person shall in each Contracting State be deemed not to be a resident of the other Contracting State.

ARTICLE 5

Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
 - (a) a place of management;
 - (b) a branch;
 - (c) an office;

- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a farm or plantation;
- (h) a warehouse, in relation to a person providing storage facilities for others;
- (i) a building site, a construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities continue for a period or periods aggregating more than 6 months;
- (j) the furnishing of services including consultancy services by a resident of one of the Contracting States through employees or other personnel, where activities of that nature continue for the same or a connected project within the other Contracting State for a period or periods aggregating more than 6 months within any twelve-month period.

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

- (a) the use of facilities solely for the purpose of storage or display 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 or 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 of collecting information, for the enterprise;

- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise;
 - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned
- in sub—paragraphs (a) to (e) provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person — other than an agent of an independent status to whom paragraph 5 applies — is acting in a Contracting State on behalf of the enterprise of the other Contracting State, the enterprise shall be deemed to have a permanent establishment in the first—mentioned Contracting State if such a person:

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

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status,

provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise or on behalf of that enterprise and other enterprises, which are controlled by it or have a controlling interest in it, he will not be considered an agent of independent status within the meaning of this paragraph.

6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

Income From Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (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. Where the ownership of shares or other corporate rights in a company entitles the owner of such shares or corporate rights to the enjoyment of immovable property held by the company,

the income from the direct use, letting, or use in any other form of such right to enjoyment may be taxed in the Contracting State in which the immovable property is situated.

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

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

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

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from

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

5. No 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. Income or profits derived by an enterprise of a Contracting State from the operation of aircraft in international traffic shall be taxable only in that Contracting State.

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

3. Income or profits of an enterprise of a Contracting State from the use, demurrage or rental of containers (including trailers, barges, and related equipment for the transport of containers) that are incidental to income from the operation of ships or aircraft in international traffic shall be treated for purposes of paragraphs 1 and 2 as income from the operation of ships or aircraft in international traffic.

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

5. With respect to profits derived by the Danish, Norwegian and Swedish air transport consortium, known as the Scandinavian Airlines System (SAS), the provisions of paragraphs 1 and 4 shall apply only to such proportion of the profits as corresponds to the participation held in that consortium by SAS Danmark A/S, the Danish partner of Scandinavian Airlines System (SAS).

ARTICLE 9

Associated Enterprises

1 Where

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

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

2. Where a Contracting State includes in the profits of an enterprise of that State &mdot; and taxes accordingly &mdot; 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&mdot;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 may make an appropriate adjustment to the amount of the tax charged therein on those profits if that other State considers the adjustment justified. 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, the tax so charged shall not exceed 10 percent of the gross amount of the dividends.

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

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt & shy; claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively

connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives income or profits from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of income or profits arising in such other State. Nothing in this paragraph shall be construed as preventing a Contracting State from imposing income tax, according to the laws of that State, on the disposal of profits made by a permanent establishment situated therein, but the tax charged shall in no case exceed the tax charged on dividends in a Contracting State in accordance with the provisions of paragraph 2 of this Article.

ARTICLE 11

Interest

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

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

(a) 10 percent of the gross amount of the interest if it is received by any financial institution (including an insurance company);

(b) 15 percent of the gross amount of the interest in other cases.

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

3. Notwithstanding the provisions of paragraphs 1 and 2, interest arising in a Contracting State and paid in respect of a loan made by or guaranteed or insured by the Government of the other Contracting State, the central bank of that other State or any agency or instrumentality (including a financial institution) which is wholly owned or is controlled by that Government 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.

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

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

by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this 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 be taxed in the Contracting State in which they arise, but the tax so charged shall not exceed:
 - (a) 5 percent of the gross amount of royalties if they are made as a consideration for the use of, or the right to use any copyright of literary, artistic or scientific work;
 - (b) 15 percent of the gross amount of other 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 use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films and tapes for television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, and for the use of, or the right to use, industrial, commercial or scientific equipment in connection therewith.
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 such permanent establishment or fixed base. In such cases the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

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

ARTICLE 13

Capital Gains

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

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State 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 derived by an enterprise of a Contracting State from the alienation of containers (including trailers, barges and related equipment for the transport of containers) as mentioned in paragraph 3 of Article 8 shall be taxable only in that State.

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

6. With respect to gains derived by the Danish, Norwegian and Swedish air transport consortium Scandinavian Airlines System (SAS), the provisions of paragraph 3 shall apply only to such proportion of the gains as corresponds to the participation held in that consortium by SAS Denmark A/S, the Danish partner of Scandinavian Airlines System (SAS).

ARTICLE 14

Independent Personal Services

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

- (a) if he has a fixed base available to him in the other Contracting State for the purpose of performing his activities, for a period or periods amounting to or exceeding in the aggregate 90 days within any twelve-month period; in that case, only so much of the income as is attributable to

that fixed base may be taxed in that other State; or

- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 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.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, dentists, lawyers, engineers, architects and accountants.

ARTICLE 15

Dependent Personal Services

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
 - (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days within any twelve·month period, and
 - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
 - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that State.

4. Where a resident of Denmark derives remuneration in respect of an employment exercised aboard an aircraft operated in international traffic by the consortium Scandinavian Airlines System (SAS), such remuneration shall be taxable only in Denmark.

ARTICLE 16

Directors' Fees

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

Artistes and Sportsmen

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply to income derived from activities performed in a Contracting State if the visit to that Contracting State is substantially supported by public funds of the other Contracting State or a political subdivision or a local authority thereof.

ARTICLE 18

Pensions and Annuities

1.
 - (a) Pensions (and another similar remunerations) arising in a Contracting State and paid to a resident of the other Contracting State;
 - (b) Any payments, whether periodic or non-periodic, made under the social security legislation of a Contracting State or under any public scheme organized by a Contracting State for social welfare purposes;
 - (c) Any annuity arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in both Contracting States.

2. The term "annuities" as used in this Article means stated sums 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 (other than services rendered).

ARTICLE 19

Government Service

1.
 - (a) Salaries, wages and other similar 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 salaries, wages and other similar 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 State.
3. The provisions of Articles 15, 16 and 18 shall apply to salaries, wages and other similar remuneration, and to 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 20

Students

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

- (a) studying at a university or other recognized educational institution; or
- (b) securing training to qualify him to practise a profession or

trade; or

- (c) studying or carrying out research as a recipient of a grant, allowance or award from a governmental, religious, charitable, scientific, literary or educational organization; shall not be taxed in the first·mentioned State on:
- (i) remittances from abroad for the purposes of his maintenance, education, study, research or training;
 - (ii) the grant, allowance or award; and
 - (iii) income from personal services rendered in that State for a period not exceeding 5 years provided the income constitutes earnings reasonably necessary for his maintenance and education.

ARTICLE 21

Professors, teachers and researchers

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

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

ARTICLE 22

Activities in Connection with Preliminary Surveys,

Exploration or Extraction of Hydrocarbons

1. Notwithstanding the provisions of Articles 5 and 14, a resident of a Contracting State who carries on activities in connection with preliminary surveys, exploration or extraction of hydrocarbons situated in the other Contracting State shall be deemed to be carrying on in respect of such activities a business in that other Contracting State through a permanent establishment or fixed base situated therein.

2. The provisions of paragraph 1 shall not apply where the activities are carried on for a period or periods not exceeding 30 days in aggregate in any twelve month period. However, for the purpose of this paragraph, activities carried on by an enterprise associated with another enterprise within the meaning of Article 9 shall be regarded as carried on by the enterprise with which it is associated if the activities in question are substantially the same as those carried on by the last-mentioned enterprise.

3. Notwithstanding the provisions of paragraphs 1 and 2, drilling rig activities carried on offshore shall constitute a permanent establishment only if the activities are carried on for a period or periods exceeding 183 days in aggregate in any twelve month period. However, for the purpose of this paragraph, activities carried on by an enterprise associated with another enterprise within the meaning of Article 9 shall be regarded as carried on by the enterprise with which it is associated if the activities in question are substantially the same as those carried on by the last-mentioned enterprise.

ARTICLE 23

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 also be taxed in that other State.

ARTICLE 24

Elimination of Double Taxation

1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting States except when an express provision to the contrary is made in this Convention. When income is subject to tax in both Contracting States, relief from double taxation shall be given in accordance with the following paragraphs of this Article.

2. In Denmark:

- (a) Subject to the provisions of sub-paragraph (c), where a resident of Denmark derives income which, in accordance with the provisions of this Convention, may be taxed in Thailand, Denmark shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Thailand;
- (b) such deduction shall not, however, exceed that part of the Danish income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Thailand;
- (c) where a resident of Denmark derives income which, in accordance with the provisions of this Convention shall be taxable only in Thailand, Denmark may include this income in the tax base, but shall allow as a deduction from the

income tax that part of the income tax, which is attributable to the income derived from Thailand.

- (d) Where exemption from or reduction of Thai tax payable in accordance with the provisions of Article 7 in respect of profits derived by a Danish enterprise from a permanent establishment situated in Thailand has been granted under Thai law, then, for the purposes of sub-paragraph (a) and sub-paragraph (b), deduction from Danish tax for Thai tax shall be allowed as if no such exemption or reduction had been granted, provided the permanent establishment is engaged in business activities (other than business activities in the financial sector) and that no more than 25 per cent of such profits consist of interest and gains from the alienation of shares and bonds or consist of profits derived from third States.
- (e) Where dividends are paid by a company which is a resident of Thailand to a person (being a company) which is a resident of Denmark, and which owns directly or indirectly not less than 25 per cent of the share capital of the first-mentioned company, then such dividends shall be exempt from tax in Denmark, provided that the company paying the dividends is engaged in business activities (other than business activities in the financial sector) and that no more than 25 per cent of the company's profits consist of interest and gains from the alienation of shares and bonds or consist of profits derived from third States.
- (f) For the purposes of sub-paragraphs (a) and (b) of this paragraph, in the case of royalties paid as a consideration for the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience, and for the use of, or the right to use, industrial, commercial or

scientific equipment in connection therewith, Thai tax shall be deemed to be paid at the rate provided for in paragraph 2 of Article 12, where the assets for which the royalties are paid have been used in an activity (other than business activities in the financial sector) which has been carried out in Thailand. However, Thai tax shall in no case be deemed to be paid at a rate exceeding the tax rate applicable to royalties under Thai law. This provision shall not apply where royalties are paid between associated enterprises within the meaning of Article 9 or where royalties are paid in respect of assets which have been sold and leased back by the person paying the royalties.

- (g) The provisions in sub-paragraphs (d) - (f) shall apply for the first ten years for which the Convention is effective. The competent authorities shall consult each other in order to determine whether this period shall be extended. 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 between the Contracting States in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures.

3. In the case of Thailand, Danish tax payable in accordance with this Convention in respect of income from sources within Denmark shall be allowed as a credit against Thai tax payable in respect of that income. The credit shall not, however, exceed that part of the Thai tax, as computed before the credit is given, which is appropriate to such item of income.

4. Where under any provision of this Convention income is relieved from Danish tax and, under the law in force in Thailand, an individual in respect of the said income is subject to tax by reference to the amount thereof which is remitted to or received in Thailand and not by reference to the full amount thereof, then the relief to be allowed under this Convention in Denmark shall apply only to so much of the income as is taxed in Thailand.

ARTICLE 25

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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. Stateless persons who are residents of a Contracting State shall not be subjected in either 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 the State concerned in the same circumstances, in particular with respect to residence, are or may be subjected.

3. 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.

4. 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.

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

6. The provisions of this Article shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

7. The provisions of this Article shall only apply to the taxes which are the subject of this Convention.

ARTICLE 26

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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

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

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

ARTICLE 27

Exchange of Information

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

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

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or

trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

ARTICLE 28

Members of Diplomatic Missions and Consular Posts

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

ARTICLE 29

Territorial Extension

1. This Convention may be extended, either in its entirety or with any necessary modification to the territories under Denmark's sovereignty which are specifically excluded from the application of the Convention or to any territory for whose international relations Denmark is responsible, and which imposes taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions of termination, as may be specified and agreed between the Contracting States in notes to be exchanged through diplomatic channels after the completion of their internal constitutional procedures.

2. Unless otherwise agreed by both Contracting States, the termination of the Convention by one of them under Article 31 shall also terminate, in the manner provided for in that Article, the application of the Convention to any territory to which it has been extended under this Article.

ARTICLE 30

Entry into Force

1. The Governments of the Contracting States shall notify each other that the constitutional requirements for the entry into force of this Convention have been complied with.

2. The Convention shall enter into force thirty days after the date of the latter of the notifications referred to in paragraph 1 and its provisions shall have effect:

(a) In Thailand

(i) in respect of taxes withheld at the source, on amounts paid or remitted on or after the first day of January next following that in which the Convention enters into force;

(ii) in respect of other taxes on income, for taxable years or accounting periods beginning on or after the first day of January next following that in which the Convention enters into force.

(b) In Denmark

(i) in respect of taxes withheld at the source, on income derived on or after the first day of January in the calendar year next following the year in which the Convention enters into force;

(ii) in respect of other taxes on income, for taxes chargeable for any tax year beginning on or after the first day of January in the calendar year next following the year in which the Convention enters into force.

3. The Convention between the Royal Government of Thailand and the Royal Government of Denmark for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, signed at Bangkok on April 14, 1965, shall terminate and cease to have effect in respect of income to which this Convention applies under the provisions of paragraph 2.

ARTICLE 31

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 Thailand
 - (i) in respect of taxes withheld at the source, on amounts paid or remitted on or after the first day of January next following that in which the notice is given;
 - (ii) in respect of other taxes on income, for taxable years or accounting periods beginning on or after the first day of January next following that in which the notice is given.
- (b) In Denmark
 - (i) in respect of taxes withheld at the source, on income derived on or after the first day of January in the calendar year next following the year in which the notice is given;
 - (ii) in respect of other taxes on income, for taxes chargeable for the tax year beginning on or after the first day of January in the calendar year next following the year in which the notice is given.

In witness whereof the undersigned, duly authorized thereto by their respective Governments, have signed this Convention.

Done in duplicate at Bangkok this 23rd day of February 1998, in the English language.

**For the Government of the Kingdom of
Thailand**

**For the Government of the Kingdom of
Denmark**

Surin Pitsuwan

Niels Dyrlund

(Surin Pitsuwan)

(Niels Dyrlund)

Minister of Foreign Affairs

Ambassador Extraordinary

and Plenipotentiary

PROTOCOL

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

1. (1) With reference to paragraph 3 of Article 5, if a person who is a resident of a Contracting State, provides a warehouse or any facilities in one of the Contracting States for other persons to store goods or merchandise, he shall be deemed to be carrying on a business in that Contracting State through a permanent establishment.
- (2) With reference to paragraph 3 (a) and (b) of Article 5, it is understood that the use of facilities for delivery shall be deemed to constitute a permanent establishment if they are used as a sales outlet.
2. With reference to Article 7 it is understood that nothing in the Article shall affect the application of any tax law of a Contracting State relating to the tax assessment of a person in cases where the information available to the tax authorities of that State is inadequate to determine the taxable profits of that person, provided that the result shall be in accordance with

the principles contained in the Article. The term “profit” in Article 7 shall refer to income or profit.

3. With reference to paragraph 2 of Article 8, it is understood that the lesser of the tax rate applied by Thailand on income derived by an enterprise of any other country from the operation of ships in international traffic shall apply to this Convention.

4. With reference to paragraph 5 of Article 10, if after the signature of this Convention Thailand concludes a Convention for the avoidance of double taxation with a third State, in which tax on disposal of profits as referred to in the said paragraph is not provided for, or is provided for at a lower rate than in this Convention, then such exemption or lower tax rate shall apply to this Convention.

5. With reference to paragraph 4 of Article 11 it is understood that the term “interest” includes interest paid in connection with sales on credit as well as fees and commissions paid in connection with the granting of loans.­

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

Done in duplicate at Bangkok this 23rd day of February 1998 in the English language.

For the Government of the Kingdom of

Thailand

Surin Pitsuwan

(Surin Pitsuwan)

Minister of Foreign Affairs

For the Government of the Kingdom of

Denmark

Niels Dyrland

(Niels Dyrland)

Ambassador Extraordinary

and Plenipotentiary