

No. 27081

**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.

**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.

CONVENTION¹ 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

¹ 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 sole-

ly 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