

**SYNTHESISED TEXT  
OF THE MLI AND THE CONVENTION  
BETWEEN JAPAN AND THAILAND  
FOR THE AVOIDANCE OF DOUBLE TAXATION  
AND THE PREVENTION OF FISCAL EVASION  
WITH RESPECT TO TAXES ON INCOME**

This document presents the synthesised text for the application of the Convention between Japan and Thailand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on April 7, 1990 (hereinafter referred to as “the Convention”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by Japan on June 7, 2017 and by Thailand on February 9, 2022 (hereinafter referred to as “the MLI”).

This document was prepared on the basis of the reservations and notifications submitted to the Depositary (the Secretary-General of the Organisation for Economic Co-operation and Development) by Japan on September 26, 2018 and April 21, 2022 and by Thailand on March 31, 2022 respectively.

The sole purpose of this document is to facilitate the understanding of the application of the MLI to the Convention and the document does not constitute a source of law. The authentic texts of the Convention and the MLI are the only legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Convention are included in boxes throughout this document in the context of the relevant provisions of the Convention.

In this document, changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Convention (such as changes from “Covered Tax Agreement” to “Convention” and changes from “Contracting Jurisdiction” to “Contracting State”). Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Convention by replacing such descriptive language with the article and paragraph numbers or language of the existing provisions. These changes are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI.

Unless the context otherwise requires, references made to the provisions of the Convention will be understood as referring to the provisions of the Convention as modified by the provisions of the MLI.

Entry into force and entry into effect of the MLI

The MLI enters into force for Japan on January 1, 2019 and for Thailand on July 1, 2022 and has effect as follows:

The provisions of the MLI shall have effect in each Contracting State with respect to the Convention:

- (a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after January 1, 2023; and
- (b) with respect to all other taxes levied by that Contracting State, for taxes levied with respect to taxable periods beginning on or after January 1, 2023.

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

The Government of Japan and the Government 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,~~

*The following preamble text described in paragraph 1 of Article 6 of the MLI replaces the preamble language of the Convention referring to “Desiring to conclude a new Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,”:*

*Article 6 – Purpose of a Covered Tax Agreement*

**Intending to eliminate double taxation with respect to the taxes covered by the Convention without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the Convention for the indirect benefit of residents of third jurisdictions),**

Have agreed as follows:

Article 1

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

Article 2

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

(a) In Japan:

(i) the income tax; and

(ii) the corporation tax

(hereinafter referred to as “Japanese tax”);

(b) In Thailand:

(i) the income tax; and

(ii) the petroleum income tax

(hereinafter referred to as "Thai tax").

2. This Convention shall also apply to any identical or substantially similar taxes, which are imposed after the date of signature of this Convention in addition to, or in place of, those referred to in paragraph 1. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

### Article 3

1. For the purposes of this Convention, unless the context otherwise requires:

- (a) the term "Japan", when used in a geographical sense, means all the territory of Japan, including its territorial sea, in which the laws relating to Japanese tax are in force, and all the area beyond its territorial sea, including the seabed and subsoil thereof, over which Japan has jurisdiction in accordance with international law and in which the laws relating to Japanese tax are in force;
- (b) the term "Thailand" means the Kingdom of Thailand and includes any area adjacent to the territorial waters of the Kingdom of Thailand which, under the Thai legislation and international law, falls under the jurisdiction of the Kingdom of Thailand;
- (c) the terms "a Contracting State" and "the other Contracting State" mean Japan or Thailand, as the context requires;
- (d) the term "tax" means Japanese tax or Thai tax, as the context requires;
- (e) the term "person" includes an individual, a company and any other body of persons and in the case of Thailand also includes an undivided estate and a deceased person treated as a taxable unit under Thai taxation laws;
- (f) the term "company" means any body corporate or

any entity which is treated as a body corporate for tax purposes;

- (g) 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;
- (h) the term "nationals" means:
  - (i) in relation to Japan, all individuals possessing the nationality of Japan and all juridical persons created or organized under the laws of Japan and all organizations without juridical personality treated for the purposes of Japanese tax as juridical persons created or organized under the laws of Japan; and
  - (ii) in relation to Thailand, all individuals possessing the nationality of Thailand and all legal persons, partnerships, associations and any other entities deriving their status as such from the laws in force in Thailand;
- (i) 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; and
- (j) the term "competent authority" means:
  - (i) in the case of Japan, the Minister of Finance or his authorized representative; and
  - (ii) in the case of Thailand, the Minister of Finance or his authorized representative.

2. As regards the application of this Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State concerning the taxes to which this Convention applies.

#### Article 4

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who,

under the laws of that Contracting State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of head or main office or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that Contracting State in respect only of income from sources in that Contracting State.

2. Where by reason of the provisions of paragraph 1 a person is a resident of both Contracting States, then the competent authorities of the Contracting States shall determine by mutual agreement the Contracting State of which that person shall be deemed to be a resident for the purposes of this Convention.

#### Article 5

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; and
- (h) a warehouse in relation to a person providing storage facilities for others.

3. A building site, a construction, installation or assembly project or supervisory activities in connection therewith, constitute a permanent establishment if such site, project or activities last more than 3 months.

4. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it furnishes in that other Contracting State, services including consultancy services through employees or other personnel provided that such activities last (for

the same project or two or more connected projects) for a period or periods aggregating more than 6 months within any twelve-month period.

~~5. Notwithstanding the provisions of the preceding paragraphs 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.~~

*The following paragraph 2 of Article 13 of the MLI replaces paragraph 5 of Article 5 of the Convention:*

*Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions*

**2. Notwithstanding the provisions of Article 5 of the Convention, the term "permanent establishment" shall be deemed not to include:**

- a) i) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;**
- ii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;**
- iii) the maintenance of a stock of goods or**

merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

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

b) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in subparagraph a);

c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and b),

provided that such activity or, in the case of subparagraph c), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

*The following paragraph 4 of Article 13 of the MLI applies to the Convention:*

*Article 13 – Artificial Avoidance of Permanent Establishment Status through the Specific Activity Exemptions*

4. Paragraph 5 of Article 5 of the Convention shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and:

a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of Article 5 of the Convention; or

b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive



**business operation.**

6. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 7 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, if such a person:

- ~~(a) has and habitually exercises in the first-mentioned Contracting State, an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to those mentioned in paragraph 5 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;~~
- (b) has no such authority, but habitually maintains in the first-mentioned Contracting 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 Contracting 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.

*The following paragraph 1 of Article 12 of the MLI replaces subparagraph (a) of paragraph 6 of Article 5 of the Convention:*

*Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies*

1. Notwithstanding the provisions of Article 5 of the Convention, but subject to paragraph 2 of Article 12 of the MLI, where a person is acting in a Contracting State on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are:

- a) in the name of the enterprise; or

- b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use; or
- c) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that Contracting State in respect of any activities which that person undertakes for the enterprise unless these activities, if they were exercised by the enterprise through a fixed place of business of that enterprise situated in that Contracting State, would not cause that fixed place of business to be deemed to constitute a permanent establishment under the definition of permanent establishment included in the provisions of Article 5 of the Convention.

~~7. 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 Contracting 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.~~

*The following paragraph 2 of Article 12 of the MLI replaces paragraph 7 of Article 5 of the Convention and paragraph 1 of the Protocol to the Convention:*

*Article 12 – Artificial Avoidance of Permanent Establishment Status through Commissionnaire Arrangements and Similar Strategies*

2. Paragraph 1 of Article 12 of the MLI shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first-mentioned Contracting State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

8. 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 Contracting State

(whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

*The following paragraph 1 of Article 15 of the MLI applies to the Convention:*

*Article 15 – Definition of a Person Closely Related to an Enterprise*

1. For the purposes of the provisions of Article 5 of the Convention, a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.

Article 6

1. Income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other Contracting State.

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

1. The income or profits of an enterprise of a Contracting State shall be taxable only in that Contracting 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 that other Contracting 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 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.

3. In determining 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 Contracting 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 income or 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 provisions of the preceding paragraphs of this Article, 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 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.

8. For the purposes of this Article, the term "income or profits" does not include payments of any kind received as a consideration for the use of, or the right to use, any property (other than immovable property), which is not property in respect of which the royalties referred to in paragraph 3 of Article 12 are paid.

#### Article 8

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 so charged in that other Contracting State shall be reduced by an amount equal to 50 per cent thereof.

3. 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.

#### Article 9

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 accordance with the provisions of paragraph 1, in the income or profits of an enterprise of that Contracting State - and taxes accordingly - income or profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and where the competent authorities of the Contracting States agree, upon consultation, that all or part of the income or profits so included are income or profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of the tax charged therein on those agreed income or profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention.

#### Article 10

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 Contracting 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 Contracting State, but if the recipient is the beneficial owner of the dividends and is a company which owns at least 25 per cent of the voting shares of the company paying the dividends during the period of six months immediately before the end of the accounting period for which the distribution of profits takes place, the tax so charged shall not exceed:

- (a) 15 per cent of the gross amount of the dividends in the case of the dividends paid by a company engaged in an industrial undertaking; or
- (b) 20 per cent of the gross amount of the dividends in other cases.

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 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 taxation laws of the Contracting State of which the company making the distribution is a resident.

- (b) The term "industrial undertaking" as used in paragraph 2 means:
  - (i) any undertaking engaged in
    - (aa) manufacturing, assembling and processing,
    - (bb) construction, civil engineering and shipbuilding,
    - (cc) production of electricity or gas or the supply of water, or
    - (dd) agriculture, forestry, fishery, and the carrying on of a plantation, and
  - (ii) any other undertaking which may be declared to be an "industrial undertaking" for the purposes of this Article by the competent authority of the Contracting State in which the undertaking is situated.

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, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting 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 Contracting State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other Contracting 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 that other Contracting State.

## Article 11

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

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that Contracting 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 per cent of the gross amount of the interest if it is received by any financial institution (including an insurance company);
- (b) 25 per cent of the gross amount of the interest in other cases.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to the Government of the other Contracting State, a local authority thereof, the Central Bank of that other Contracting State or any financial institution wholly owned by the Government of that other Contracting State, shall be exempt from tax in the first-mentioned Contracting 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, as well as income assimilated to income from money lent by the taxation laws of the Contracting State in which the income arises.

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, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a local authority thereof or a resident of that Contracting 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 in



connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment 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

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

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that Contracting 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.

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 or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

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

5. The provisions of paragraphs 1, 2 and 4 of this

Article shall likewise apply to proceeds arising from the alienation of any copyright of literary, artistic or scientific work including cinematograph films, and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, or secret formula or process, except when the provisions of paragraph 2 of Article 13 are applicable to the gains to be derived from such proceeds.

6. The provisions of paragraphs 1, 2 and 5 shall not apply if the beneficial owner of the royalties or proceeds, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or proceeds arise, through a permanent establishment situated therein, and the right or property in respect of which the royalties or proceeds are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

7. Where, by reason of special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties or proceeds, 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

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 Contracting State.

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

3. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic and any property, other than immovable property, pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State.

4. Gains derived by a resident of a Contracting State from the alienation of any property other than that referred to in paragraphs 1 to 3 of this Article and paragraph 5 of Article 12 and arising in the other Contracting State may be taxed in that other Contracting State.

#### Article 14

1. Subject to the provisions of Articles 15 to 19, remuneration or income, other than a pension or similar remuneration, derived by a resident of one of the Contracting States in respect of personal (including professional) services rendered in the other Contracting State may be taxed in that other Contracting State. However, such remuneration or income shall be exempt from tax in that other Contracting State if:

- (a) the recipient is present in that other Contracting State for a period or periods not exceeding in the aggregate 180 days in the calendar year concerned;
- (b) the remuneration or income is paid by, or on behalf of, a person who is a resident of the first-mentioned Contracting State; and
- (c) the remuneration or income is not borne by an enterprise chargeable to tax in that other Contracting State.

2. Notwithstanding the provisions of paragraph 1, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by a resident of a Contracting State may be taxed in that Contracting State.

#### Article 15

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 Contracting State.

#### Article 16

1. Income derived by an individual who is a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste, and a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed

in that other Contracting State.

Such income shall, however, be exempt from tax in that other Contracting State if such activities are exercised by an individual who is a resident of the first-mentioned Contracting State pursuant to a special programme for cultural exchange agreed upon between the Governments of the two Contracting States.

2. Where income in respect of personal activities exercised in a Contracting State by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person who is a resident of the other Contracting State, that income may, notwithstanding the provisions of Article 7, be taxed in the first-mentioned Contracting State.

Such income shall, however, be exempt from tax in the first-mentioned Contracting State if such activities are exercised pursuant to a special programme for cultural exchange agreed upon between the Governments of the two Contracting States.

#### Article 17

1. (a) Remuneration, other than a pension, paid by a Contracting State or a local authority thereof to an individual in respect of services rendered to that Contracting State or local authority thereof, in the discharge of functions of a governmental nature, shall be taxable only in that Contracting State.  
  
(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other Contracting State and the individual is a resident of that other Contracting State who:
  - (i) is a national of that other Contracting State; or
  - (ii) did not become a resident of that other Contracting State solely for the purpose of rendering the services.
2. (a) Any pension paid by, or out of funds to which contributions are made by, a Contracting State or a local authority thereof to an individual in respect of services rendered to that Contracting State or local authority thereof shall be taxable only in that Contracting 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 Contracting State.

3. The provisions of this Article shall not apply to remuneration or a pension in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof.

#### Article 18

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

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

#### Article 19

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 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 be exempt from tax in the first-mentioned Contracting 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 Contracting State for a period not exceeding five years, provided the income constitutes earnings necessary for his maintenance and education.

#### Article 20

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 Contracting 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, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 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 Contracting State.

#### Article 21

1. Subject to the laws of Thailand regarding the allowance as a credit against Thai tax of tax payable in any country other than Thailand, where a resident of Thailand derives income from Japan which may be taxed in Japan in accordance with the provisions of this Convention, the amount of Japanese tax payable in respect of that income shall be allowed as a credit against the Thai tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Thai tax which is appropriate to that income.

2. Subject to the laws of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan:

- (a) Where a resident of Japan derives income from Thailand which may be taxed in Thailand in accordance with the provisions of this

Convention, the amount of Thai tax payable in respect of that income shall be allowed as a credit against the Japanese tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Japanese tax which is appropriate to that income.

- (b) Where the income derived from Thailand is a dividend paid by a company which is a resident of Thailand to a company which is a resident of Japan and which owns not less than 25 per cent either of the voting shares of the company paying the dividend, or of the total shares issued by that company, the credit shall take into account the Thai tax payable by the company paying the dividend in respect of its income.

3. Subject to the provisions of paragraph 4, for the purposes of the credit referred to in paragraph 2 (a) above, the term "Thai tax payable" shall be deemed to include the amount of the Thai tax which would have been paid if the Thai tax had not been reduced in accordance with the provisions of paragraph 2 of Article 10 or paragraph 2 or 5 of Article 12.

- 4. (a) For the purposes of the credit referred to in paragraph 2 above, the term "Thai tax payable" shall be deemed to include the amount of the Thai tax which would have been paid under the laws of Thailand if the Thai tax had not been reduced or exempted in accordance with:

- (i) the provisions of the sections 31, 33, 34, 35 (2), 35 (3), 35 (4) or 36 (4) of the Investment Promotion Act, B. E. 2520 (1977), as effective on the date of the signature of this Convention; or
- (ii) any provision referred to in (i) above as modified after the date of signature of this Convention or any other special incentive measure designed to promote economic development in Thailand which may be introduced in future in the Thai tax laws in modification of, or in addition to, the existing measures referred to in (i) above, provided that an agreement is made between the two Governments in respect of the scope of the benefit accorded to the taxpayer by the said provision so modified or the said measure.

- (b) The provisions of sub-paragraph (a) (i) above

shall not, to the extent that the section 35 (3) or 36 (4) of the Investment Promotion Act, B. E. 2520 (1977) is concerned, apply in each individual case in respect of income arising after the thirteenth taxable year since the exemption from, or reduction of, Thai tax is first granted in accordance with the provisions of such sections, or since this Convention has effect, whichever is later.

5. For the purposes of paragraphs 3 and 4 above, with respect to dividends, royalties or proceeds to which the provisions of paragraph 2 of Article 10 or paragraph 2 or 5 of Article 12, as the case may be, are applicable, any credit against Japanese tax granted in accordance with the provisions of paragraph 2 (a) and paragraph 3 or 4 (a) above shall not exceed 25 per cent of the gross amount thereof.

## Article 22

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 Contracting 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 Contracting State than the taxation levied on enterprises of that other Contracting 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 Article 9, paragraph 7 of Article 11, or paragraph 7 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 Contracting 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 Contracting 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 Contracting State are or may be subjected.

5. In this Article the term "taxation" means taxes which are the subject of this Convention.

## Article 23

1. Where a resident 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 laws of those Contracting States, present his case to the competent authority of the Contracting State of which he is a resident. 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 this 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 not in accordance with the provisions of this Convention.

*The following second sentence of paragraph 2 of Article 16 of the MLI applies to the Convention:*

### *Article 16 – Mutual Agreement Procedure*

**Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.**

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 this Convention. They may also consult together for the elimination of double taxation in cases not provided for in this Convention.

4. The competent authorities of the Contracting States

may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs of this Article.

#### Article 24

1. The competent authorities of both Contracting States may exchange such information available under their respective tax laws in the normal course of administration as is necessary for carrying out the provisions of this Convention or for the prevention of fraud or for the administration of statutory provisions against tax avoidance in relation to the tax. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those, including a court, concerned with the assessment and collection of the tax or the determination of appeal in relation thereto.

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 the 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.

#### Article 25

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.

*The following paragraph 1 of Article 7 of the MLI applies to the Convention:*

#### *Article 7 – Prevention of Treaty Abuse*

**1. Notwithstanding any provisions of the Convention, a benefit under the Convention shall not be granted in respect of an item of income if it is reasonable to**

conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Convention.

#### Article 26

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

2. This Convention shall enter into force on the thirtieth day after the date of the exchange of instruments of ratification and shall have effect:

(a) in Japan:

as regards income for any taxable year beginning on or after the first day of January of the calendar year next following that in which this Convention enters into force; and

(b) in Thailand:

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

(ii) in respect of other taxes on income for any taxable year or accounting period beginning on or after the first day of January of the calendar year next following that in which this Convention enters into force.

3. The Convention between Japan and Thailand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Bangkok on March 1, 1963, shall terminate and cease to have effect in respect of income to which this Convention applies under the provisions of paragraph 2.

#### Article 27

This Convention shall continue in effect indefinitely but either Contracting State may, on or before the thirtieth day of June of 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 the diplomatic channel, written notice of termination and, in such event, this Convention shall cease to have effect:

(a) in Japan:

as regards income for any taxable year beginning on or after the first day of January of the calendar year next following that in which the notice of termination is given; and

(b) in Thailand:

(i) in respect of taxes withheld at the source, on amounts paid or remitted to non-residents on or after the first day of January of the calendar year next following that in which the notice of termination is given;

(ii) in respect of other taxes on income for any taxable year or accounting period beginning on or after the first day of January of the calendar year next following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, duly authorized thereto by their respective Governments, have signed this Convention.

DONE in duplicate at Tokyo on this seventh day of April, 1990 in the English language.

For the Government  
of Japan:

Taro Nakayama

For the Government  
of Thailand:

Siddhi Savetsila

## PROTOCOL

At the signing of the Convention between Japan and Thailand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (hereinafter referred to as "the Convention"), the undersigned have agreed upon the following provisions which shall form an integral part of the Convention.

~~1. With reference to paragraph 7 of Article 5 of the Convention, the term "a broker, general commission agent or any other agent of an independent status" is understood not to include a person who is engaged in one of the Contracting States in such activities as prescribed in sub-paragraphs (a), (b) or (c) of paragraph 6 of the said Article wholly or almost wholly for or on behalf of an enterprise of the other Contracting State or for or on behalf of such enterprise and other enterprises which are controlled by or have a controlling interest in such enterprise.<sup>1</sup>~~

2. With reference to paragraph 3 of Article 7 of the Convention, no deduction shall be allowed in respect of amounts paid or charged (other than reimbursement of actual expenses) by a permanent establishment of an enterprise to the head office of the enterprise or any other offices thereof, by way of:

- (a) royalties, fees or other similar payments in return for the use of patents or other rights;
- (b) commission, for specific services performed or for management; and
- (c) interest on moneys lent to the permanent establishment; except where the enterprise is a banking institution.

3. With reference to paragraphs 2, 3 and 4 of Article 7 of the Convention, in the case of a resident of Japan who does not claim taxation in Thailand on the basis of the actual net profits of the permanent establishment in Thailand, nothing in the said paragraphs shall preclude Thailand from determining the profits to be attributed to that permanent establishment on the basis of a certain reasonable percentage of the gross receipts of that permanent establishment, provided that the result shall be in accordance with the principles contained in the said

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<sup>1</sup> Paragraph 1 of the Protocol to the Convention is replaced by paragraph 2 of Article 12 of the MLI (see [page 10](#)).

Article.

4. With reference to paragraph 3 (b) of Article 10 of the Convention, the term "industrial undertaking" also means any undertaking entitled to the privileges accorded under the laws of Thailand on the promotion of industrial investment.

5. Nothing in the Convention shall be construed as preventing Thailand from imposing tax on the disposal out of Thailand of profits made by a permanent establishment in accordance with Section 70 Bis of the Thai Revenue Code, B. E. 2481 (1938).

6. With reference to Article 16 of the Convention, it is understood that income derived from the provision of activities mentioned in paragraph 1 of the Article in a Contracting State by an enterprise of the other Contracting State may be taxed in the first-mentioned Contracting State in the same manner as prescribed by paragraph 2 of the Article.

7. With reference to paragraph 4 (a) of Article 21 of the Convention, it is understood that any section referred to in sub-paragraph (i) of the said paragraph, as modified after the date of signature of the Convention, is covered by the provisions of the said sub-paragraph and the provisions of sub-paragraph (ii) of the said paragraph do not apply to such modified section, so long as such modification is made only to such an extent that the scope of the benefit accorded by such section as effective on the date of the signature of the Convention is not altered.

8. Notwithstanding the provisions of paragraph 2 of Article 26 of the Convention, the provisions of paragraph 4 (a) (i) of Article 21 shall be applicable as regards income for any taxable year ending on or after the first day of January 1988.

IN WITNESS WHEREOF the undersigned, duly authorized thereto by their respective Governments, have signed this Protocol.

DONE in duplicate at Tokyo on this seventh day of April, 1990 in the English language.

For the Government  
of Japan:

Taro Nakayama

For the Government  
of Thailand:

Siddhi Savetsila