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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

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No. 571/16 — FRIDAY, AUGUST 18, 1989

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## PART I: SECTION (I) — GENERAL

### Government Notifications

THE INLAND REVENUE ACT, No. 28 OF 1979

#### Notice

IT is hereby notified under Section 82(1) (b) of the Inland Revenue Act, No. 28 of 1979 that the Convention for affording relief from double taxation and for the prevention of fiscal evasion with respect to taxes on income, entered into on 14th December, 1988, between the Government of the Kingdom of Thailand and Government of the Democratic Socialist Republic of Sri Lanka and set out in the Schedule hereto has been approved by Parliament by resolution passed on 05.07.1989.

R. PASKARALINGAM,  
Secretary,  
Ministry of Finance.

2nd August, 1989.  
Ministry of Finance,  
Colombo 1.

CONVENTION BETWEEN THE GOVERNMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA AND THE GOVERNMENT OF THE KINGDOM OF THAILAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

THE Government of the Democratic Socialist Republic of Sri Lanka 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 each Contracting State, or of its 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 this Convention shall apply are—
  - (a) in Sri Lanka—

the income tax, including the income tax based on the turnover of enterprises licensed by the Greater Colombo Economic Commission,  
(hereinafter referred to as "Sri Lanka tax") ;
  - (b) in Thailand—
    - (i) the income tax ; and
    - (ii) the petroleum income tax,  
(hereinafter referred to as "Sri Lanka tax") ;
4. This Convention shall also apply to any identical or substantially similar taxes on income which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any important changes which have been made in their respective taxation laws.

Article 3  
*General Definitions*

1. In this Convention, unless the context otherwise requires :
  - (a) the term "Sri Lanka" means the Democratic Socialist Republic of Sri Lanka, including any area outside the territorial sea of Sri Lanka which in accordance with international law has been or may hereafter be designated, under the laws of Sri Lanka concerning the Continental Shelf, as an area within which the rights of Sri Lanka with respect to the waters, sea bed and subsoil and the natural resources may be exercised ;
  - (b) 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 sea bed and subsoil and their natural resources may be exercised ;
  - (c) the terms "a Contracting State" and "the other Contracting State" mean Sri Lanka or Thailand as the context requires ;
  - (d) the term "person" includes an individual, an estate, a company and any other body of persons which is treated as an entity for tax purposes ;
  - (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 operated by an enterprise of a Contracting State, except where the ship or aircraft is operated solely between places in the other Contracting State ;

(h) the term “nationals” means:

- (i) all individuals possessing the nationality of a Contracting State;
- (ii) all legal persons, partnerships, associations and any other entities deriving their status as such from the laws in force in a Contracting State;
- (i) the term “competent authority” means:
  - (i) in the case of Sri Lanka, the Commissioner-General of Inland Revenue,
  - (ii) in the case of Thailand, the Minister of Finance or his authorised representative;

(j) the term “tax” means Sri Lanka tax or Thai tax, as the context requires.

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 relating to the taxes which are the subject of this Convention.

#### 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.

2. Whereby reason of the provisions of paragraph 1 of this Article any 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 Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the Contracting 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 Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
- (d) if he is a national of both Contracting 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 of this Article 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” shall include especially:

- (a) a place of management;
- (b) a branch;

- (c) an office ;
- (d) a factory ;
- (e) a workshop ; and
- (f) a mine, an oil or gas well, a quarry or other place of extraction of natural resources.

3. The term "permanent establishment" likewise encompasses :

- (a) a building site, a construction, assembly or installation project, but only where such site, project or activities continue for a period of more than 183 days ;
- (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 183 days within any 12 months period.

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

- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise ;
- (b) the maintenance of a stock of goods or merchandise belonging to, the enterprise solely for the purpose of storage or display ;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise ;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise ;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character ;
- (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.

5. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, where a person other than an agent of an independent status to whom paragraph 7 of this Article 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 the first-mentioned Contracting 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 ; or
- (b) habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise belonging to the enterprise or to other enterprises which are controlled by it or have a controlling interest in it, from which he regularly fills orders or makes deliveries on behalf of the enterprise ; or
- (c) 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.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of one of the States shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

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 State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph, if it is shown that the transactions between the agent and the enterprise were not made under arms length conditions.

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 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 from immovable property (including income from agriculture or forestry) may be taxed in the Contracting State in which such property is situated.

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 of this Article 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 of this Article 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 (a) that permanent establishment; (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

2. Subject to the provisions of paragraph (3) of this Article 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 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. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

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 a certain percentage of the gross receipt of the enterprise or of the permanent establishment or on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 of this Article 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 will 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 preceding paragraphs, the income or 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.

#### 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 Contracting State shall be reduced by an amount equal to 50 per cent thereof.

3. The provisions of paragraphs 1 and 2 shall likewise apply in respect of participation in pools of any kind by enterprises engaged in the operation of ships or aircraft in international traffic.

#### Article 9

##### *Associated Enterprises*

Where :

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

#### 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 be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State, but—

(a) in the case of Sri Lanka, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends ;

(b) in the case of Thailand, if the recipient of the dividends is a company, excluding partnership, which holds directly at least 25 per cent of the capital of the former company, the tax so charge shall not exceed :

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

(ii) 20 per cent of the gross amount of the dividends in other cases.

For the purpose of sub-paragraph (b) of this paragraph, the term “industrial undertaking” means—

(1) any undertaking engaged in—

- (i) manufacturing, assembling and processing,
- (ii) construction, civil engineering and ship-building,
- (iii) production of electricity, hydraulic power, gas or the supply of water, or
- (iv) agriculture, forestry, and fishery and the carrying on of a plantation, and

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

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

3. The term “dividends” as used in this Article means income from shares, mining shares, founders’ shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the taxation law of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 of this Article 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 a 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 profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State. Nothing in this paragraph shall be construed as preventing either Contracting State from imposing income tax on disposal of profits according to the laws of that State.

#### Article 11

##### Interest

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest 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) ; and
- (b) 25 per cent of the gross amount of the interest in all 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 shall be exempt from tax in the first-mentioned Contracting State.

For the purposes of this paragraph, the term "Government" means..

- (a) in the case of Sri Lanka, the Government of the Democratic Socialist Republic of Sri Lanka and shall include ;
  - (i) the Central Bank of Ceylon,
  - (ii) the local authorities,
  - (iii) any agency or instrumentality (including a financial institution) wholly owned by the Government or local authority thereof, as may be agreed from time to time between the Governments of the two Contracting States,
- (b) in the case of Thailand, the Royal Government of Thailand and shall include :
  - (i) the Bank of Thailand,
  - (ii) the local authorities, and
  - (iii) such institutions, the capital of which is wholly owned by the Royal Government of Thailand or any local authorities as may be agreed from time to time between the Governments of the two Contracting States.

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

5. The provisions of paragraphs 1, 2, and 3 of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the

interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein and the debt-claim in respect of which the interest is paid is effectively connected with (a) such permanent establishment or fixed base, or with (b) business activities referred to under (c) of paragraph 1 of Article 7. In such cases the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, an administrative subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting 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 law of each Contracting State, due regard being had to the other provisions of this Convention.

## Article 12

### *Royalties*

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 15 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payment 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, or tapes for television or broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 of this Article, shall not apply if the beneficial owner of the Royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with (a) such permanent establishment or fixed base, or with (b) business activities referred to under (c) of paragraph 1 of Article 7. In such cases, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself 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 paid having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the 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 professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in that other State.

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

4. Gains from the alienation of any property or assets, other than those referred to in Paragraphs 1, 2 and 3 of this Article shall be taxable only in the Contracting State of which the alienator is a resident. Nothing in this paragraph shall prevent either Contracting State from taxing the gains or income from the sale or transfer of shares or other securities.

5. For the purposes of this Article, the term "alienation" shall have the meaning which it has under the laws of that Contracting State relating to the taxes in question. The meaning of the term shall in any case include the sale, exchange, transfer, or relinquishment of property or the extinguishment of any rights therein or the compulsory acquisition thereof under any law in force in the respective Contracting State.

### Article 14

#### *Independent Personal Services*

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

- (a) if he has a fixed base available to him for a period or periods amounting to or exceeding in the aggregate 183 days within any twelve month period in the other Contracting State for the purpose of performing his activities in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days within any twelve month period; in that case, only so much of the income as is derived from his activities performed in the other State may be taxed in that other State; or
- (c) if the remuneration for his activities in the other Contracting State is paid by a resident of that Contracting State or is borne by a permanent establishment or a fixed base situated in that

Contracting State ; in that case, only so much of the remuneration as is derived therefrom may be taxed in that other State.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, 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 of this Article, 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.

#### 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 or any other similar organization 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 Athletes*

1. Notwithstanding the provisions of Articles 14 and 15, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, any by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

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

3. Notwithstanding the provisions of Article 7, where the activities mentioned in paragraph 1 of this Article are provided in a Contracting State by an enterprise of the other Contracting State the profits derived from providing these activities by such an enterprise may be taxed in the first-mentioned Contracting State unless the enterprise is wholly or substantially supported from the public funds of the Government of the other Contracting State, in connection with the provisions of such activities.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply to remuneration or profits, salaries, wages and similar income derived from activities performed in a Contracting State by public entertainers or athletes if the visit to that Contracting State is wholly or substantially supported by public funds of the Government of the other Contracting State.

5. For the purposes of this Article, the term "Government" includes a local authority or a statutory body of either Contracting State.

#### Article 18

##### *Pensions*

Subject to the provisions of paragraph 2 of Article 19 pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment may be taxed in that State.

#### Article 19

##### *Government Service*

1. (a) Remuneration, other than a pension, paid by the Government of a Contracting State to an individual in respect of services rendered to that Government shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

- is a national of that State, or
- 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 the Government of a Contracting State to an individual in respect of services rendered to that Government 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 remuneration and pensions in respect of services rendered in connection with a business carried on by the Government of a Contracting State.

4. For the purposes of this Article, the term "Government" includes a local authority of either Contracting State.

#### Article 20

##### *Professors, Teachers and Researchers*

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

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

## Article 21

### *Students and Apprentices*

An individual who, immediately before visiting a Contracting State, was a resident of the other Contracting State and is temporarily present in the first-mentioned Contracting State solely—

- (a) as a student at a recognised university, college or school in the first-mentioned State; or
- (b) as a business apprentice; or
- (c) as the recipient of a grant, allowance or award for the primary purpose of study or research from a governmental, religious, charitable, scientific, literary or educational organization.

shall be exempt from tax in the first-mentioned State in respect of—

- (i) the remittances from abroad for the purpose of his maintenance, education, study, research or training;
- (ii) the grant, allowance or award; and
- (iii) the remuneration from employment in that State provided the remuneration constitutes earnings reasonably necessary for his maintenance and education.

## Article 22

### *Income not expressly mentioned*

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Convention may be taxed in the Contracting State where the income arises.

## Article 23

### *Elimination of Double Taxation*

1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting States except when 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. Tax payable in a Contracting State in respect of income derived from that State shall be allowed as a credit against any tax payable in the other Contracting State in respect of that income. The credit shall not, however, exceed that part of the tax payable in the other Contracting State as computed before the credit is given, which is appropriate to such item of income.

3. For the purpose of allowance as a credit in a Contracting State the tax paid in the other Contracting State shall be deemed to include the tax which is otherwise payable in that other State but has been reduced or waived in accordance with the special incentive laws designed to promote economic development in that other State.

## Article 24

### *Non-discrimination*

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

2. The enterprises of a Contracting State shall not be subjected in the other Contracting State, in respect of profits attributable to their permanent establishments in that other State, to any taxation which is other or more burdensome than the taxation to which the enterprises of that other State, are or may be subjected in respect of the like profits.

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

4. Nothing in this Article shall be construed as obliging either Contracting State to grant to residents of the other Contracting State, those personal allowances, reliefs and reductions for the tax purposes which it grants to its own residents.

#### Article 25

##### *Mutual Agreement Procedure*

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

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

#### Article 26

##### *Exchange of information*

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States covered by this Convention insofar as the taxation thereunder is not contrary to the Convention, as well as to prevent fiscal evasion. 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 person 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 appeal in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes but 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 27

*Diplomatic Agents and Consular Officials*

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

Article 28

*Entry into Force*

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

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect :

(a) In Sri Lanka :

in respect of taxes on income for any year of assessment commencing on or after the first day of April next following that in which the exchange of instruments of ratification takes place.

(b) 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 exchange of instruments of ratification takes place ;

(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 exchange of instruments of ratification takes place.

Article 29

*Termination*

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

In such event Convention shall cease to have effect :

(a) In Sri Lanka :

in respect of taxes on income for any year of assessment commencing on or after the first day of April next following that in which the notice is given ;

(b) 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.

In witness whereof the undersigned duly authorised thereto here signed this Convention.

Done in duplicate at Colombo on this 14th day of December 1988, in Sinhala, Thai and English Languages, all texts being equally authentic. In the case of divergence of interpretation the English text shall prevail.

Sgd. W. M. P. WEERASINGHE,  
For the Government of the  
Democratic Socialist Republic of  
Sri Lanka.

Sgd. KHAJORN SOHNOU,  
For the Government of the  
Kingdom of Thailand.

#### *Protocol*

The Government of the Democratic Socialist Republic of Sri Lanka and the Government of the Kingdom of Thailand, having entered into a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed, at the time of signing the said Convention, that in connection with paragraph 4 of Article 19 "Government Services", the term "Government" shall also be deemed to include the Central Bank of Ceylon and the Bank of Thailand but only for so long as the remuneration derived from the Central Bank of Ceylon by its employees is exempt from Sri Lanka tax.

Sgd. W. M. P. WEERASINGHE,  
For the Government of the  
Democratic Socialist Republic of  
Sri Lanka.

Sgd. KHAJORN SOHNOU,  
For the Government of the  
Kingdom of Thailand.