



## SYNTHESISED TEXT OF THE MLI AND THE AGREEMENT BETWEEN AUSTRALIA AND THE KINGDOM OF THAILAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

*If you follow the information in this document, and it turns out to be incorrect, or it is misleading and you make a mistake as a result, the ATO will take that into account when determining what action, if any, we should take.*

### General disclaimer on this synthesised text document

This document presents the synthesised text for the application of the *Agreement between Australia and the Kingdom of Thailand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income* signed on 31 August 1989 (the “Agreement”), as modified by the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (the “MLI”) signed by Australia on 7 June 2017 and by Thailand on 9 February 2022.

This document was prepared by the Australian Taxation Office and represents its understanding of the modifications made to the Agreement by the MLI.

The document was prepared on the basis of the MLI position of Australia submitted to the Depositary upon ratification on 26 September 2018 and of the MLI position of Thailand submitted to the Depositary upon ratification on 31 March 2022. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the Agreement.

The sole purpose of this document is to facilitate the understanding of the application of the MLI to the Agreement and it does not constitute a source of law. The authentic legal texts of the Agreement and the MLI take precedence and remain the legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Agreement are included in boxes throughout the text of this document in the context of the relevant provisions of the Agreement. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the 2017 OECD Model Tax Convention.

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 Agreement (such as “Covered Tax Agreement” and “Agreement”, “Contracting Jurisdictions” and “Contracting States”), to ease the comprehension of the provisions of the MLI. The changes in terminology are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI. Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Agreement: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

In all cases, references made to the provisions of the Agreement or to the Agreement must be understood as referring to the Agreement as modified by the provisions of the MLI, provided such provisions of the MLI have taken effect.

### References

[Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting](#) [2019] ATS 1 (provides the authentic legal text of the MLI).

[Agreement between Australia and The Kingdom of Thailand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income](#) [1989] ATS 36 (provides, in the case of Australia, the authentic legal text of the Agreement signed on 31

August 1989).

[Signatories and parties to the Multilateral Convention to Implement Tax Treaty related Measures to Prevent Base Erosion and Profit Shifting](#) (provides the MLI position of Australia submitted to the Depositary upon ratification on 26 September 2018 and the MLI position of Thailand submitted to the Depositary upon ratification on 31 March 2022).

### **Entry into Effect of the MLI Provisions**

The provisions of the MLI applicable to the Agreement do not take effect on the same dates as the original provisions of the Agreement. Each of the provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by Australia and Thailand in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval:

26 September 2018 for Australia and 31 March 2022 for Thailand.

Entry in force of the MLI:

1 January 2019 for Australia and 1 July 2022 for Thailand.

In accordance with paragraph 1 of Article 35 of the MLI, the provisions of the MLI have effect with respect to this Agreement:

- 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 1 January 2023; and
- b) with respect to all other taxes levied by each Contracting State, for taxes levied with respect to taxable periods beginning on or after 1 January 2023.

**AGREEMENT BETWEEN AUSTRALIA AND THE KINGDOM OF THAILAND FOR THE  
AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION  
WITH RESPECT TO TAXES ON INCOME**

**AUSTRALIA AND THE KINGDOM OF THAILAND,**

**[REPLACED by paragraph 1 of Article 6 of the MLI] *DESIRING to conclude an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income,***

*The following paragraph 1 of Article 6 of the MLI replaces the text referring to an intent to eliminate double taxation in the preamble of this Agreement:*

**ARTICLE 6 OF THE MLI – PURPOSE OF A COVERED TAX AGREEMENT**

Intending to eliminate double taxation with respect to the taxes covered by [*the Agreement*] 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 [*the Agreement*] for the indirect benefit of residents of third jurisdictions),

**HAVE AGREED as follows:**

**Article 1**

**PERSONAL SCOPE**

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

**Article 2**

**TAXES COVERED**

1. The existing taxes to which this Agreement applies are-
  - a) in the case of Thailand:
    - (i) the income tax; and
    - (ii) the petroleum income tax;
  - b) in the case of Australia:

the income tax, and the resource rent tax in respect of offshore projects relating to exploration for or exploitation of petroleum resources, imposed under the federal law of the Commonwealth of Australia.
2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective laws relating to the taxes to which this Agreement applies.

### **Article 3**

#### **GENERAL DEFINITIONS**

1. In this Agreement, unless the context otherwise requires-
  - a) the term "Thailand" means the Kingdom of Thailand and includes any area adjacent to the territorial waters of the Kingdom of Thailand which by Thai legislation, and in accordance with international law, has been or may hereafter be designated as an area within which the rights of the Kingdom of Thailand with respect to the seabed and subsoil and their natural resources may be exercised;
  - b) the term "Australia", when used in a geographical sense, excludes all external territories other than:
    - (i) the Territory of Norfolk Island;
    - (ii) the Territory of Christmas Island;
    - (iii) the Territory of Cocos (Keeling) Islands;
    - (iv) the Territory of Ashmore and Cartier Islands;
    - (v) the Territory of Heard Island and McDonald Islands; and
    - (vi) the Coral Sea Islands Territory,and includes any area adjacent to the territorial limits of Australia or of the said Territories in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploitation of any of the natural resources of the seabed and subsoil of the continental shelf;
  - c) the terms "Contracting State", "one of the Contracting States" and "the other Contracting State" mean, as the context requires, Thailand or Australia;
  - 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 or company under the taxation laws of the respective Contracting States;
  - f) the terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean an enterprise carried on by a resident of Australia or an enterprise carried on by a resident of Thailand, as the context requires;
  - g) the term "tax" means Australian tax or Thai tax as the context requires;
  - h) the term "Australian tax" means tax imposed by Australia, being tax to which this Agreement applies by virtue of Article 2;
  - i) the term "Thai tax" means tax imposed by Thailand, being tax to which this Agreement applies by virtue of Article 2;
  - j) the term "competent authority" means, in the case of Australia, the Commissioner of Taxation or the authorized representative of the Commissioner, and in the case of Thailand, the Minister of Finance or the authorized representative of the Minister.
2. In this Agreement, in relation to the taxes to which this Agreement applies by virtue of Article 2, the term "Australian tax" does not include any penalty or interest imposed under the law of Australia and the term "Thai tax" does not include any surcharge for late payment or any penalty imposed under the law of Thailand.

3. In the application of this Agreement by a Contracting State, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State from time to time in force relating to the taxes to which this Agreement applies.

4. Where under this Agreement income is relieved from tax in one of the Contracting States and, under the law in force in the other Contracting State a person, in respect of the said income, is subject to tax by reference to the amount thereof which is remitted to or received in that other State and not by reference to the full amount thereof, then the relief to be allowed under this Agreement in the first mentioned State shall apply only to so much of the income as is remitted to or received in the other State.

#### **Article 4**

##### **RESIDENCE**

1. For the purposes of this Agreement, a person is a resident of one of the Contracting States:

- a) in the case of Australia, if the person is a resident of Australia for the purposes of Australian tax; and
- b) in the case of Thailand, if the person is a resident of Thailand for the purposes of Thai tax.

2. A person is not a resident of a Contracting State for the purposes of this Agreement if the person is liable to tax in that State in respect only of income from a source in that State.

3. Where by reason of the preceding provisions, an individual is a resident of both Contracting States, the status of the person shall be determined in accordance with the following rules, applied in the order in which they are set out :

- a) the person shall be deemed to be a resident solely of the Contracting State in which a permanent home is available to the person;
- b) if a permanent home is available to the person in both Contracting States, or in neither of them, the person shall be deemed to be a resident solely of the Contracting State in which the person has an habitual abode;
- c) if the person has an habitual abode in both Contracting States, or in neither of them, the person shall be deemed to be a resident solely of the Contracting State with which the person's personal and economic relations are the closer.

4. For the purposes of the last preceding paragraph, an individual's citizenship or nationality of a Contracting State shall be a factor in determining the degree of the person's personal and economic relations with that Contracting State.

5. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, it shall be deemed to be a resident solely of the Contracting State in which it is incorporated, created or organized.

#### **Article 5**

##### **PERMANENT ESTABLISHMENT**

1. For the purposes of this Agreement, 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;
  - f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
  - g) **[MODIFIED by paragraph 1 of Article 14 of the MLI]** *a building site, a construction project, an installation project, an assembly project, or supervisory activities in connection therewith where such site, project or activities or any two or more of them continues or continue for more than 6 months;*
  - h) a warehouse in relation to a person providing storage facilities for others;
  - i) the furnishing of services, including consultancy services, by a resident of one of the Contracting States through employees or other personnel, provided activities of that nature continue (for the same or a connected project) within the other Contracting State for a period or periods aggregating more than 183 days within any 12 month period;
  - j) an agricultural, pastoral or forestry property.

*The following paragraph 1 of Article 14 of the MLI applies and supersedes the provisions of this Agreement:*

ARTICLE 14 OF THE MLI – SPLITTING-UP OF CONTRACTS

For the sole purpose of determining whether the [6 month period] referred to in [subparagraph g) of paragraph 2 of Article 5 of the Agreement] has been exceeded:

- a) where an enterprise of a [Contracting State] carries on activities in the other [Contracting State] at a place that constitutes *[a building site, a construction project, an installation project or an assembly project]*, or carries on *[supervisory activities]* in connection with such a place, and these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days without exceeding *[6 months]*; and
- b) where connected activities are carried on in that other [Contracting State] at *[or in connection with]* the same *[building site, construction project, installation project or assembly project]* during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,

these different periods of time shall be added to the aggregate period of time during which the first-mentioned enterprise has carried on activities *[at (or in connection with) that building site, construction project, installation project or assembly project]*.

3. **[MODIFIED by paragraph 2 of Article 13 of the MLI]** *An enterprise shall not be deemed to have a permanent establishment merely by reason of :*

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

- b) *the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;*
- c) *the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;*
- d) *the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise; or*
- e) *the maintenance of a fixed place of business solely for the purpose of activities which have a preparatory or auxiliary character for the enterprise, such as advertising or scientific research.*

*The following paragraph 2 of Article 13 of the MLI modifies paragraph 3 of Article 5 of this Agreement:*

ARTICLE 13 OF THE MLI – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH THE SPECIFIC ACTIVITY EXEMPTIONS

*(Option A)*

Notwithstanding [Article 5 of the Agreement], the term “permanent establishment” shall be deemed not to include:

- a) the activities specifically listed in [paragraph 3 of Article 5 of the Agreement] as activities deemed not to constitute a permanent establishment, whether or not that exception from permanent establishment status is contingent on the activity being of a preparatory or auxiliary character;
- 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 paragraph 3 of Article 5 of this Agreement as modified by paragraph 2 of Article 13 of the MLI:*

[Paragraph 3 of Article 5 of the Agreement, as modified by paragraph 2 of Article 13 of the MLI] 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 Agreement]; 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.

4. An enterprise shall be deemed to have a permanent establishment in one of the Contracting States and to carry on business through that permanent establishment if substantial equipment is being used in that State by, for or under contract with the enterprise.

5. A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State - other than a broker, general commission agent or any other agent of an independent status to whom paragraph 6 applies - shall be deemed to be a permanent establishment of that enterprise in the first mentioned State if the person:

- a) has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless the person's activities are limited to the purchase of goods or merchandise for the enterprise;
- b) in so acting, manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise;
- c) habitually maintains in the first mentioned State a stock of goods or merchandise belonging to the enterprise from which the person regularly fills orders on behalf of the enterprise; or
- d) 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. An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where that person is acting in the ordinary course of the person's business. For this purpose, an agent shall not be considered to be an agent of an independent status if the agent carries on in that other State an activity described in paragraph 5 wholly or almost wholly for the enterprise or for the enterprise and any one or more enterprises which are controlled by it or have a controlling interest in it.

7. The fact that a company which is a resident of one of the Contracting States 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 make either company a permanent establishment of the other.

8. The principles set forth in paragraphs 1 to 7 inclusive shall be applied in determining for the purposes of paragraph 5 of Article 11 and paragraph 6 of Article 12 whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of one of the Contracting States, has a permanent establishment in one of the Contracting States.

*The following paragraph 1 of Article 15 of the MLI applies to the provisions of this Agreement:*

**ARTICLE 15 OF THE MLI – DEFINITION OF A PERSON CLOSELY RELATED TO AN ENTERPRISE**

For the purposes of the provisions of [Article 5 of the Agreement], 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**

### **INCOME FROM REAL PROPERTY**

1. Income from real property may be taxed in the Contracting State in which the real property is situated.
2. In this Article, the term "real property":
  - a) in the case of Australia, has the meaning which it has under the laws of Australia, and shall also include:
    - (i) a lease of land and any other interest in or over land, whether improved or not; and
    - (ii) a right to receive variable or fixed payments as consideration for the exploitation of or the right to explore for or exploit, or in respect of the exploitation of, mineral deposits, oil or gas wells, quarries or other places of extraction or exploitation of natural resources; and
  - b) in the case of Thailand, means immovable property according to the laws of Thailand, and shall also include:
    - (i) property accessory to immovable property;
    - (ii) rights to which the provisions of the general law respecting landed property apply;
    - (iii) usufruct of immovable property; and
    - (iv) a right to receive variable or fixed payments as consideration for the exploitation of or the right to explore for or exploit, or in respect of the exploitation of, mineral deposits, oil or gas wells, quarries or other places of extraction or exploitation of natural resources.

Ships, boats and aircraft shall not be regarded as real property.

3. A lease of land, any other interest in or over land and any right referred to in any of the subparagraphs of paragraph 2, shall be regarded as situated where the land, mineral deposits, oil or gas wells, quarries or natural resources, as the case may be, are situated, or where the exploration may take place.
4. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of real property.
5. The provisions of paragraphs 1, 3 and 4 shall also apply to the income from real property of an enterprise and to income from real property used for the performance of professional services.

## **Article 7**

### **BUSINESS PROFITS**

1. The profits of an enterprise of one of the Contracting States 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 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; or

- b) sales within that other Contracting State of goods or merchandise of the same or a similar kind as those sold, or other business activities of the same or a similar kind as those carried on, through that permanent establishment if the sale or the business activities had been made or carried on in that way with a view to avoiding taxation in that other State.

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

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise, being expenses which are incurred for the purposes of the permanent establishment (including executive and general administrative expenses so incurred) and which would be deductible if the permanent establishment were an independent entity which paid those expenses, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. If the information available to the taxation authority of a Contracting State is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person provided that that law shall be applied, so far as the information available to the taxation authority permits, consistently with the principles of this Article.

6. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

7. The profits of an enterprise of one of the Contracting States from the carrying on in the other Contracting State of a business of any form of insurance may be taxed in the other Contracting State in accordance with the law of that other State relating specifically to the taxation of any person who carries on such business, and Article 24 shall apply for the elimination of double taxation as if the profits so taxed were attributable to a permanent establishment of the enterprise in the State imposing the tax.

8. Where:

- a) a resident of a Contracting State is beneficially entitled, whether directly or indirectly through one or more trusts, to a share of the business profits of an enterprise carried on in the other Contracting State by the trustee of a trust estate other than a trust estate which is treated as a company for tax purposes; and
- b) in relation to that enterprise, that trustee has, in accordance with the principles of Article 5, a permanent establishment in that other State,

the enterprise carried on by the trustee shall be deemed to be a business carried on in that other State by that resident through a permanent establishment situated therein and the resident's share of business profits shall be attributed to that permanent establishment.

## **Article 8**

### **SHIPS AND AIRCRAFT**

1. Income or profits from the operation of aircraft derived by a resident of one of the Contracting States shall be taxable only in that State.
2. Income or profits from the operation of ships derived by a resident of one of the Contracting States may be taxed in that Contracting State and may also be taxed in the other State, but the tax so charged in the other State shall be reduced by an amount equal to one half of the amount which would be payable in respect of that income or those profits but for this paragraph.
3. Notwithstanding the provisions of paragraph 1, such income or profits may be taxed in the other Contracting State, where they are income or profits from the operation of aircraft confined solely to places in that other State; and notwithstanding the provisions of paragraph 2 such income or profits may be taxed in the other Contracting State without reduction, where they are income or profits from the operation of ships confined solely to places in that other State.
4. The provisions of paragraphs 1, 2 and 3 shall apply in relation to the share of income or profits from the operation of ships or aircraft derived by a resident of one of the Contracting States through participation in a pool service, in a joint transport operating organisation or in an international operating agency.
5. For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise shipped in a Contracting State for discharge at another place in that State shall be treated as profits from the operation of ships or aircraft confined solely to places in that State.

## **Article 9**

### **ASSOCIATED ENTERPRISES**

1. Where:
  - a) an enterprise of one of the Contracting States 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 one of the Contracting States and an enterprise of the other Contracting State,

and in either case conditions operate between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing wholly independently with one another, then any profits which, but for those conditions, might have been expected to accrue to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Notwithstanding the provisions of this Article, an enterprise of one of the Contracting States may be taxed by that State as if this Article had not come into effect but, so far as it is practicable to do so, in accordance with the principles of this Article.
3. Where profits on which an enterprise of one of the Contracting States has been charged to tax in that State are also included, by virtue of paragraph 1 or 2, in the profits of an enterprise of the other Contracting State and taxed accordingly, and the profits so included are profits which might have been expected to have accrued to that enterprise of the other State if the conditions operative between the enterprises had been those which might have been expected to have operated between independent enterprises dealing wholly

independently with one another, then the first mentioned State shall make an appropriate adjustment to the amount of tax charged on those profits in the first mentioned State. In determining such an adjustment, due regard shall be had to the other provisions of this Agreement in relation to the nature of the income, and for this purpose the competent authorities of the Contracting States shall if necessary consult each other.

## **Article 10**

### **DIVIDENDS**

1. Dividends paid by a company which is a resident of one of the Contracting States for the purposes of its tax, being dividends to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. 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, if the beneficial owner of the dividends is a company, excluding a partnership, which holds directly at least 25 per cent of the capital of the former company, the tax so charged shall not exceed:

- a) 15 per cent of the gross amount of the dividends if the company paying the dividends engages in an industrial undertaking; and
- b) 20 per cent of the gross amount of the dividends in other cases.

3. The term "dividends" in this Article means income from shares and other income assimilated to income from shares by the taxation law of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the dividends, being a resident of one of the Contracting States, 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. Dividends paid by a company which is a resident of one of the Contracting States, being dividends to which a person who is not a resident of the other Contracting State is beneficially entitled, shall be exempt from tax in that other State except insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or fixed base situated in that other State. However, this paragraph shall not apply in relation to dividends paid by any company which is a resident of Australia for the purposes of Australian tax and which is also a resident of Thailand for the purposes of Thai tax.

6. Nothing in this Agreement shall be construed as preventing one of the Contracting States from imposing, in accordance with its domestic law, a tax on profits remitted by a permanent establishment of an enterprise of the other Contracting State situated in the first mentioned Contracting State.

7. The term "industrial undertaking" means-

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

- (v) agriculture, forestry or fisheries or the carrying on of a plantation;
- b) any other undertaking entitled to the privileges accorded under the laws of Thailand on the promotion of industrial investment; and
- c) any other undertaking which may be declared to be an "industrial undertaking" for the purpose of this Article by the competent authority of Thailand.

## **Article 11**

### **INTEREST**

1. Interest arising in one of the Contracting States, being interest to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.
2. Such interest may be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed:
  - a) 10 per cent of the gross amount of the interest if it is interest to which any financial institution (including an insurance company) is beneficially entitled; and
  - b) in all other cases, 25 per cent of the gross amount of the interest.
3. The term "interest" in this Article includes interest from Government securities or from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and interest from any other form of indebtedness as well as all other income assimilated to income from money lent by the taxation law of the Contracting State in which the income arises.
4. The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the interest, being a resident of one of the Contracting States, 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 indebtedness in respect of which the interest is 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. Interest shall be deemed to arise in a Contracting State when the payer is that State itself or a political or administrative subdivision of that State or a local authority of that State or a person who is a resident of that State for the purposes of its tax. Where, however, the person paying the interest, whether a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a permanent establishment or fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
6. Where, owing to a special relationship between the payer and the person beneficially entitled to the interest, or between both of them and some other person, the amount of the interest paid, having regard to the indebtedness for which it is paid, exceeds the amount which might have been expected to have been agreed upon by the payer and the person so entitled in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In that case, the excess part of the amount of the interest paid shall remain taxable according to the law of each Contracting State, but subject to the other provisions of this Agreement.
7. Interest derived from the investment of official reserves by the Government of a Contracting State or by a bank performing central banking functions in a Contracting State, shall be exempt from tax in the other Contracting State.

## **Article 12**

### **ROYALTIES**

1. Royalties arising in one of the Contracting States, being royalties to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

2. Such royalties may be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the royalties.

3. The term "royalties" in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:

- a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark or other like property or right;
- b) the use of, or the right to use, any industrial, commercial or scientific equipment;
- c) the supply of scientific, technical, industrial or commercial knowledge or information;
- d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph (a), any such equipment as is mentioned in subparagraph (b) or any such knowledge or information as is mentioned in subparagraph (c);
- e) the use of, or the right to use-
  - (i) motion picture films;
  - (ii) films or video tapes for use in connection with television; or
  - (iii) tapes for use in connection with radio broadcasting; or
- f) total or partial forbearance in respect of the use of a property or right referred to in this paragraph.

4. Income derived from the alienation of property or rights mentioned in paragraph 3 may be taxed in the Contracting State in which the income arises, but the tax so charged shall not exceed 15 per cent of the gross amount of the income.

5. The provisions of paragraphs 1, 2 and 4 shall not apply if the person beneficially entitled to the royalties or the income mentioned in paragraph 4, being a resident of one of the Contracting States, carries on business in the other Contracting State, in which the royalties or income 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 or income 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.

6. Royalties and the income mentioned in paragraph 4 shall be deemed to arise in a Contracting State when the payer is that State itself or a political or administrative subdivision of that State or a local authority of that State or a person who is a resident of that State for the purposes of its tax. Where, however, the person paying the royalties or income, whether the person is a resident of one of the Contracting States or not has in a Contracting State or outside both Contracting States a permanent establishment or fixed base in connection with which the liability to pay the royalties or income was incurred, and such royalties or income are borne by the permanent establishment or fixed base, then such royalties or income shall

be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, owing to a special relationship between the payer and the person beneficially entitled to the royalties or the income mentioned in paragraph 4, or between both of them and some other person, the amount of the royalties or income paid, having regard to what they are paid for, exceeds the amount which might have been expected to have been agreed upon by the payer and the person so entitled in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In that case, the excess part of the amount of the royalties or income paid shall remain taxable according to the law of each Contracting State, but subject to the other provisions of this Agreement.

8. For the purposes of this Article "paid" includes credited and "payer" and "person paying" have the corresponding meanings.

### **Article 13**

#### **ALIENATION OF PROPERTY**

1. Income or gains derived by a resident of a Contracting State from the alienation of real property referred to in Article 6 and, as provided in that Article, situated in the other Contracting State may be taxed in that other State.

2. Income or gains from the alienation of property, other than real property referred to in Article 6, that forms part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or pertains to a fixed base available to a resident of the first mentioned State in that other State for the purpose of performing independent personal services, including income or gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.

3. Income or gains from the alienation of ships or aircraft operated in international traffic, or of property other than real property referred to in Article 6 pertaining to the operation of those ships or aircraft, shall be taxable only in the Contracting State of which the enterprise which operated those ships or aircraft is a resident.

4. Income or gains derived by a resident of a Contracting State from the alienation of shares or comparable interests in a company, the assets of which consist wholly or principally of real property in the other Contracting State of a kind referred to in Article 6, may be taxed in that other State.

5. Nothing in this Agreement affects the application of a law of a Contracting State relating to the taxation of gains of a capital nature derived from the alienation of property other than that to which any of paragraphs 1, 2, 3 and 4 apply.

### **Article 14**

#### **INDEPENDENT PERSONAL SERVICES**

1. Income derived by an individual who is a resident of one of the Contracting States in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless the services or activities are performed in the other Contracting State. If the services or activities are so performed, such income as is derived in respect thereof may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, income derived by an individual who is a resident of one of the Contracting States in respect of professional services or other independent activities of a similar character performed 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 in the tax year or year of income, as the case may be, of that other State;
  - b) the recipient does not have a fixed base available in the other State for the purpose of performing the activities of the recipient for a period or periods exceeding in the aggregate 183 days in such year; and
  - c) the income is not deductible in determining taxable profits of an enterprise or a permanent establishment situated in that other State.
3. The term "professional services" includes services performed in the exercise of independent scientific, literary, artistic, educational or teaching activities as well as in the exercise of the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

## **Article 15**

### **DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by an individual who is a resident of one of the Contracting States 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 from that exercise may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by an individual who is a resident of one of the Contracting States 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 that other State for a period or periods not exceeding in the aggregate 183 days in the tax year or year of income, as the case may be, of that other State;
  - b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other State; and
  - c) the remuneration is not deductible in determining taxable profits of a permanent establishment or a fixed base which the employer has in that other State.
3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by a resident of one of the Contracting States may be taxed in that Contracting State.

## **Article 16**

### **DIRECTORS' FEES**

Directors' fees and similar payments derived by a resident of one of the Contracting States in the capacity of the resident as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

## **Article 17**

### **ENTERTAINERS**

1. Notwithstanding the provisions of Articles 14 and 15, income derived by entertainers (such as theatrical, motion picture, radio or television artistes, musicians and 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 the personal activities of an entertainer as such accrues not to that entertainer 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 are exercised.

3. Notwithstanding the provisions of Article 7, where the activities mentioned in paragraph 1 are provided in one of the Contracting States by an enterprise of the other Contracting State, the profits derived from providing these activities by such an enterprise may be taxed in the first mentioned State unless the enterprise is substantially supported by public funds of the other State, including any political subdivision, local authority or statutory body thereof, in connection with the provision of such activities.

4. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by entertainers if the visit to that Contracting State is substantially supported by public funds of the other Contracting State, including any political subdivision, local authority or statutory body thereof.

## **Article 18**

### **PENSIONS AND ANNUITIES**

1. Subject to the provisions of Article 19, pensions and annuities paid to a resident of one of the Contracting States shall be taxable only in that State.

2. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

## **Article 19**

### **GOVERNMENT SERVICE**

1. Remuneration (other than a pension) paid by one of the Contracting States or a political subdivision of that State or a local authority of that State to any individual in respect of services rendered in the discharge of governmental functions shall be taxable only in that State. However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the recipient is a resident of that other State who:

- a) is a citizen or national of that other State; or
- b) did not become a resident of that other State solely for the purpose of performing the services.

2. Any pension paid to an individual in respect of services rendered in the discharge of governmental functions to one of the Contracting States or a political subdivision of that State or a local authority of that State shall be taxable only in that State. Such pension shall, however, be taxable only in the other Contracting State if the recipient is a resident of, and a citizen or national of, that other State.

3. The provisions of paragraphs 1 and 2 shall not apply to remuneration or a pension in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political subdivision of one of the States or a local authority of one of the States. In such a case, the provisions of Article 15, 16 or 18, as the case may be shall apply.

## **Article 20**

### **PROFESSORS AND TEACHERS**

1. A professor or teacher who is a resident of one of the Contracting States and who visits the other Contracting State, at the invitation of any university, college, school or other similar educational institution situated in the other Contracting State and which is recognised by the competent authority of that other State, for a period not exceeding two years solely for the purpose of teaching or research or both at such educational institution shall be taxable only in the first mentioned State on any remuneration for such teaching or research.
2. This Article shall not apply to remuneration which a professor or teacher receives for conducting research if the research is undertaken primarily for the private benefit of a specific person or persons.

## **Article 21**

### **STUDENTS AND TRAINEES**

Where a student or trainee, who is a resident of one of the Contracting States or who was a resident of that State immediately before visiting the other Contracting State and who is temporarily present in the other State solely for the purpose of education or training, receives payments from sources outside the other State for the purposes of maintenance, education or training of the student or trainee, those payments shall be exempt from tax in the other State.

## **Article 22**

### **INCOME NOT EXPRESSLY MENTIONED**

1. Items of income of a resident of one of the Contracting States which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that Contracting State.
2. However, if such income is derived by a resident of one of the Contracting States from sources in the other Contracting State, such income may also be taxed in the Contracting State in which it arises.
3. The provisions of paragraph 1 shall not apply to income derived by a resident of one of the Contracting States where that income is effectively connected with a permanent establishment or fixed base situated in the other Contracting State. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

## **Article 23**

### **SOURCE OF INCOME**

Income derived by a resident of one of the Contracting States which, under any one or more of Articles 6 to 8, 10 to 17 and 22, may be taxed in the other Contracting State shall, for the purposes of Article 24 and of the income tax law of that other State, be deemed to be income from sources in that other State.

## **Article 24**

### **METHODS OF ELIMINATION OF DOUBLE TAXATION**

1. Subject to the provisions of the law of Australia from time to time in force which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia

(which shall not affect the general principle hereof), Thai tax paid under the law of Thailand and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in Thailand shall be allowed as a credit against Australian tax payable in respect of that income.

2. Where a company, which is a resident of Thailand and is not a resident of Australia for the purposes of Australian tax, pays a dividend to a company which is a resident of Australia and which controls directly or indirectly not less than 10 per cent of the voting power of the first mentioned company, the credit referred to in paragraph 1 shall include the Thai tax paid by that first mentioned company in respect of that portion of its profits out of which the dividend is paid.

3. For the purposes of paragraphs 1 and 2, Thai tax paid shall include an amount equivalent to the amount of any tax forgone which, under the law of Thailand and in accordance with this Agreement, would have been payable as tax on income but for an exemption from, or a reduction of, tax on that income resulting from the operation of:

- a) sections 31, 33, 34, 35(2), (3), (4), or 36(4) of the Investment Promotion Act B.E. 2520 insofar as those provisions were in force on, and have not been modified since, the date of signature of this Agreement, or have been modified only in minor respects so as not to affect their general character; or
- b) any other provision which may subsequently be made granting an exemption from or reduction of tax which the authorised representatives of the Government of Australia and of the Government of the Kingdom of Thailand agree in writing to be of a substantially similar character, provided that such provisions are not modified thereafter or are modified only in minor respects so as not to affect their general character.

4. The provisions of paragraph 3 shall apply only in relation to income derived in any of the first 10 years of income in relation to which this Agreement has effect by virtue of subparagraph (a)(ii) of Article 28 and in any later year of income that may be agreed in an exchange of letters for this purpose by the authorised representatives of the Government of Australia and of the Government of the Kingdom of Thailand.

5. In the case of Thailand, Australian tax payable in respect of income from sources within Australia shall be allowed as a credit against Thai tax payable in respect of that income. The credit shall not, however, exceed that part of the Thai tax, as computed before the credit is given which is appropriate to such item of income.

## **Article 25**

### **MUTUAL AGREEMENT PROCEDURE**

1. Where a person who is a resident of one of the Contracting States considers that the actions of the taxation authority of one or both of the Contracting States result or will result for the person in taxation not in accordance with this Agreement, the person may, notwithstanding the remedies provided by the domestic laws of those States, present a case to the competent authority of the Contracting State of which the person is a resident. The case must be presented within three years from the first notification of the action.

2. *The competent authority shall endeavour, if the taxpayer's claim appears to be justified and if the competent authority is unable to arrive at an appropriate 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 this Agreement.*

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

#### ARTICLE 16 OF THE MLI – 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 jointly endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement.*

*The following second sentence of paragraph 3 of Article 16 of the MLI applies to this Agreement:*

#### ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

They may also consult together for the elimination of double taxation in cases not provided for in [the Agreement].

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Agreement.

### Article 26

#### EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement or of the domestic laws of the Contracting States concerning the taxes to which this Agreement applies insofar as the taxation thereunder is not contrary to this Agreement. The exchange of information is not restricted by Article 1. Any information received by the competent authority of a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes to which this Agreement applies and shall be used only for such purposes.

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

### Article 27

#### DIPLOMATIC AND CONSULAR OFFICIALS

Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officials 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 and supersedes the provisions of this Agreement:*

**ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE**  
(Principal purposes test provision)

Notwithstanding any provisions of [the Agreement], a benefit under [the Agreement] 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 Agreement].

**Article 28**

**ENTRY INTO FORCE**

1. This Agreement shall enter into force upon the last of the dates on which the Contracting States have exchanged notes through the diplomatic channel indicating that the necessary procedures to give this Agreement the force of law have been completed in Australia and Thailand, as the case may be, and thereupon the Agreement shall have effect-

- a) in Australia:
  - (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 January in the calendar year next following that in which the notes are exchanged;
  - (ii) in respect of other Australian tax, in relation to income of any year of income beginning on or after 1 July in the calendar year next following that in which the notes are exchanged;
- b) in Thailand:
  - (i) in respect of withholding taxes, on income derived by a non-resident on or after 1 January in the calendar year next following that in which the notes are exchanged;
  - (ii) in respect of other taxes, on income of the calendar years or accounting periods beginning on or after 1 January in the calendar year next following that in which the notes are exchanged.

**Article 29**

**TERMINATION**

This Agreement shall continue in effect indefinitely, but either of the Contracting States, may, on or before 30 June in any calendar year after the fifth year following that in which the Agreement entered into force, give to the other Contracting State through the diplomatic channel written notice of termination and, in that event, this Agreement shall cease to have effect-

- a) in Australia:
  - (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 January in the calendar year next following that in which the notice of termination is given;

- (ii) in respect of other Australian tax, in relation to income of any year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given;
- b) in Thailand:
  - (i) in respect of withholding taxes, on income derived by a non-resident on or after 1 January in the calendar year next following that in which the notice of termination is given;
  - (ii) in respect of other taxes, on income of the calendar years or accounting periods beginning on or after 1 January in the calendar year next following that in which the notice of termination is given.

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

**DONE** in duplicate at Canberra this 31st day of August One thousand nine hundred and eighty-nine in the English and Thai languages, each text being equally authentic.

|                       |                                     |
|-----------------------|-------------------------------------|
| <b>FOR AUSTRALIA:</b> | <b>FOR THE KINGDOM OF THAILAND:</b> |
| PAUL KEATING          | SUBIN PINKAYAN                      |