

## **TREATY USA - THAILAND**

*CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA 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, SIGNED AT BANGKOK, NOVEMBER 26, 1996*

GENERAL EFFECTIVE DATE UNDER ARTICLE 30: 1 JANUARY 1998

### **ARTICLE 18 Limitation on Benefits**

- 1) A person that is a resident of a Contracting State and derives income from the other Contracting State shall be entitled in that other Contracting State, to all the benefits of this Convention only if such person is:
  - a) an individual;
  - b) a Contracting State or a political subdivision or local authority thereof;
  - c) a person:
    - i) more than 50 percent of the beneficial interest in which (or in the case of a company, more than 50 percent of the number of shares of each class of shares) is owned, directly or indirectly, by persons entitled to the benefits of this Convention under subparagraphs (a), (b), (d), (e), or (f) or who are citizens of the United States; and
    - ii) more than 50 percent of the gross income of which is not used, directly or indirectly, to meet liabilities (including liabilities for interest or royalties) to persons not entitled to the benefits of this Convention under subparagraphs (a), (b), (d), (e) or (f) or who are not citizens of the United States;
  - d) a company in whose principal class of shares there is substantial and regular trading on a recognized stock exchange;
  - e) a company that is wholly owned, directly or indirectly, by a company referred to in subparagraph (d), provided that each company in the chain of ownership that is used to satisfy the control requirement of this subparagraph is a resident of a Contracting State; or
  - f) an entity that is a not-for-profit organization and that, by virtue of that status, is generally except from income taxation in its Contracting State of residence, provided that more than half of the beneficiaries, members or participants, if

any, in such organization are persons that are entitled, under this Article, to the benefits of this Convention.

- 2) A person that is a resident of a Contracting State and that is engaged in the active conduct of a trade or business in that Contracting State (other than the business of making or managing investments, unless these activities are banking or insurance activities carried on by a bank or insurance company), shall, notwithstanding the provisions of paragraph 1, be entitled to benefits of the Convention with respect to any item of income derived from the other Contracting State, if:
  - a)
    - i) the income derived from that other Contracting State is derived in connection with the trade or business carried on in the first-mentioned Contracting State; and
    - ii) the trade or business carried on in the first-mentioned Contracting State is substantial in relation to the business or activity giving rise to the income in the other Contracting State; or
  - b) the income derived from the other Contracting State is incidental to the trade or business carried on in the first-mentioned Contracting State.
- 3) A resident of Thailand that is an "international banking facility" as that term is defined under the laws of Thailand (or any other resident of Thailand that is subject to the same taxation treatment under the laws of Thailand), shall not be entitled to any U.S. benefits under this Convention with respect to any income that such facility receives from the United States.
- 4) A person that is not entitled to the benefits of the Convention pursuant to the provisions of the preceding paragraphs, may, nevertheless, be granted the benefits of the Convention if the competent authority of the State in which the income in question arises so determines.
- 5) For purposes of paragraph 1, the term "recognized stock exchange" means:
  - a) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a National Securities Exchange for purposes of the Securities Exchange Act of 1934;
  - b) any securities exchange recognized by the Securities and Exchange Commission of Thailand; and
  - c) any other stock exchange agreed upon by the competent authorities of the Contracting States.

- 6) Where under any provision of this Convention income arising in one of the Contracting States is relieved in whole or in part from tax in that Contracting State 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 of the income which is remitted to or received in the other Contracting State and not by reference to the full amount of the income, then the relief to be allowed under this Convention in the first-mentioned Contracting State shall apply only to so much of the income as is remitted to or received in the other Contracting State during the calendar year such income accrues or the next succeeding year.
- 7) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Article.