

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 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 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 Contracting 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 laws of that Contracting State, but if the recipient is the beneficial owner of the dividends and is a company, excluding 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;
- (b) 20 per cent of the gross amount of the dividends in other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. (a) The term "dividends" as used in this Article means income from shares, 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 Contracting State of which the company making the distribution is a resident;

(b) The term "industrial undertaking" as used in this Article means:

1. any undertaking engaged in
 - (i) manufacturing, assembling and processing,
 - (ii) construction, civil engineering and shipbuilding,
 - (iii) production of electricity, hydraulic power, gas or the supply of water,
 - (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 the Kingdom of Thailand on the promotion of industrial investment, and

i 3. any other undertaking which may be declared to be an "industrial undertaking" for the purposes of this Article by the competent authority of the Kingdom of Thailand.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other Contracting 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 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 Contracting State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other Contracting State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other Contracting State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Contracting 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 the Contracting 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 Contracting State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the interest and is a company which is a resident of the other Contracting State, the tax so charged shall not exceed:

- (a) 10 per cent of the gross amount of the interest if it is received by any financial institution (including an insurance company);
- (b) 25 per cent of the gross amount of the interest in other cases.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to the Government of the other Contracting State, shall be exempt from tax in the first-mentioned Contracting State.

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

(a) in the case of the German Democratic Republic, means the Government of the German Democratic Republic and shall include the State Bank of the German Democratic Republic (Staatsbank der Deutschen Demokratischen Republik) and the German Foreign Trade Bank (Deutsche Außenhandelsbank A. G., Berlin) to the extent that their activities are carried on within the scope of the normal authority of a central bank;

(b) in the case of the Kingdom of Thailand, means the Government of the Kingdom 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 Government of the Kingdom 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 debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income assimilated to income from money lent by the taxation laws of the Contracting State in which the income arises. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.