

Draft Order laid before the House of Commons under section 788(10) of the Income and Corporation Taxes Act 1988 and section 173(7) of the Finance Act 2006, for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2008 No.

CAPITAL GAINS TAX

CORPORATION TAX

INCOME TAX

**The Double Taxation Relief and International Tax Enforcement
(Taxes on Income and Capital) (Netherlands) Order 2008**

Made - - - - - *******

At the Court at Buckingham Palace, the ******* day of *******

Present,

The Queen's Most Excellent Majesty in Council

A draft of this Order was laid before the House of Commons in accordance with section 788(10) of the Income and Corporation Taxes Act 1988**(a)** and section 173(7) of the Finance Act 2006**(b)** and approved by a resolution of that House.

Accordingly, Her Majesty, in exercise of the powers conferred upon Her by section 788(1) of the Income and Corporation Taxes Act 1988 and section 173(1) of the Finance Act 2006, by and with the advice of Her Privy Council, orders as follows—

Citation

1. This Order may be cited as the Double Taxation Relief and International Tax Enforcement (Taxes on Income and Capital) (Netherlands) Order 2008.

Double taxation arrangements to have effect

2. It is declared that—

(a) 1988 c. 1: Section 788 was extended by section 277 of the Taxation of Chargeable Gains Act 1992 (c. 12). It has also been amended. The relevant amendments are as follows: Subsection (1) was amended by section 88(1) of the Finance Act 2002 (c. 23). Subsection (10) was substituted by section 176 of the Finance Act 2006 (c. 25).
(b) 2006 c. 25.

- (a) the arrangements specified in the Convention set out in Part 1 of the Schedule to this Order and in the Protocol set out in Part 2 of that Schedule have been made with the Government of the Kingdom of the Netherlands with a view to affording relief from double taxation in relation to income tax, corporation tax and capital gains tax and taxes of a similar character imposed by the laws of the Kingdom of the Netherlands;
- (b) those arrangements include provisions with respect to the exchange of information foreseeably relevant to the administration, enforcement or recovery of the taxes, and debts relating to the taxes, covered by the arrangements including, in particular, provisions about the prevention of fiscal evasion with respect to those taxes;
- (c) those arrangements also include provisions with respect to the assistance in the collection of taxes; and
- (d) it is expedient that those arrangements should have effect.

Clerk of the Privy Council

PART 1**CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of the Netherlands;

Desiring to conclude a new Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains;

Have agreed as follows:

ARTICLE 1

Persons Covered

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 and on capital gains imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.

(2) There shall be regarded as taxes on income and on capital gains all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property.

(3) The existing taxes to which this Convention shall apply are in particular:

- (a) in the Netherlands:
 - (i) de inkomstenbelasting (income tax);
 - (ii) de loonbelasting (wages tax);
 - (iii) de vennootschapsbelasting (company tax) including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mijnbouwwet (the Mining Act);
 - (iv) de dividendbelasting (dividend tax);
(hereinafter referred to as “Netherlands tax”);
- (b) in the United Kingdom:
 - (i) the income tax;
 - (ii) the corporation tax;
 - (iii) the capital gains tax;
 - (iv) the petroleum revenue tax;
 - (v) the supplementary charge in respect of ring fence trades;
(hereinafter referred to as “United Kingdom tax”).

(4) This Convention shall also apply to any identical or substantially similar taxes that are imposed by either Contracting State 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 significant changes that have been made in their taxation laws.

ARTICLE 3

General Definitions

- (1) For the purposes of this Convention, unless the context otherwise requires:
- (a) the terms “a Contracting State” and “the other Contracting State” mean the Kingdom of the Netherlands (Netherlands) or the United Kingdom of Great Britain and Northern Ireland (United Kingdom) as the context requires;
 - (b) the term “Netherlands” means the part of the Kingdom of the Netherlands that is situated in Europe, including its territorial sea, and any area beyond the territorial sea within which the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights;
 - (c) the term “United Kingdom” means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom designated under its laws concerning the Continental Shelf and in accordance with international law as an area within which the rights of the United Kingdom with respect to the seabed and subsoil and their natural resources may be exercised;
 - (d) the term “person” includes an individual, a company and any other body of persons;
 - (e) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - (f) the term “enterprise” applies to the carrying on of any business;
 - (g) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (h) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - (i) the term “competent authority” means:
 - (i) in the Netherlands, the Minister of Finance or his authorised representative;
 - (ii) in the United Kingdom, the Commissioners for Her Majesty’s Revenue and Customs or their authorised representative;
 - (j) the term “national” means:
 - (i) in relation to the Netherlands, any individual possessing the nationality of the Netherlands and any legal person, partnership or association deriving its status as such from the law in force in the Netherlands;
 - (ii) in relation to the United Kingdom, any British citizen, or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided he has the right of abode in the United Kingdom; and any legal person, partnership, association or other entity deriving its status as such from the law in force in the United Kingdom;
 - (k) the term “business” includes the performance of professional services and of other activities of an independent character;
 - (l) the term “a pension scheme” means any plan, scheme, fund, trust or other arrangement established in a Contracting State which is:
 - (i) generally exempt from income taxation in that State; and
 - (ii) operated principally to administer or provide pension or retirement benefits or to earn income for the benefit of one or more such arrangements.

(2) As regards the application of this Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which this Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

Residence

(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 management, place of incorporation or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income or capital gains from sources in that State.

(2) The term “resident of a Contracting State” also includes:

- (a) a pension scheme; and
- (b) an organisation that is established and is operated exclusively for religious, charitable, scientific, cultural, or educational purposes (or for more than one of those purposes) and that is a resident of a Contracting State according to its laws and all or part of its income or gains are exempt from tax under the domestic law of that State.

(3) Where by reason of the provisions of paragraph 1 of this Article an 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 only 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 States, he shall be deemed to be a resident only of the 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 does not have a permanent home available to him in either State, he shall be deemed to be a resident only of the 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 only of the 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.

(4) 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 determine by mutual agreement the Contracting State of which that person shall be deemed to be a resident for the purposes of this Convention. In the absence of a mutual agreement by the competent authorities of the Contracting States, the person shall not be considered a resident of either Contracting State for the purposes of claiming any benefits provided by the Convention, except those provided by Article 21, Article 24 and Article 25.

(5) Notwithstanding paragraph (4) of this Article, where by reason of paragraph (1) of this Article a company, which is a participant in a dual listed company arrangement, is a resident of both Contracting States then it shall be deemed to be a resident only of the Contracting State in which it is incorporated, provided it has its primary stock exchange listing in that State.

(6) The term “dual listed company arrangement” as used in this Article means an arrangement pursuant to which two publicly listed companies, while maintaining their separate legal entity status, shareholdings and listings, align their strategic directions and the economic interests of their respective shareholders through:

- (a) the appointment of identical or almost identical boards of directors;
- (b) management of the operations of the two companies on a unified basis;

- (c) equalised distributions to shareholders in accordance with an equalisation ratio applying between the two companies, including in the event of a winding up of one or both of the companies;
- (d) the shareholders of both companies generally voting in practice as a single decision-making body on substantial issues affecting their combined interests; and
- (e) the existence of arrangements for cross-guarantees as to, or similar financial support for, each other's material obligations or operations.

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” includes 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 any other place of extraction of natural resources.

(3) A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

(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, 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 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) of this paragraph, 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 (6) of this Article applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 of this Article which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

(6) An enterprise shall not be deemed to have a permanent establishment in a 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, provided that such persons are acting in the ordinary course of their business.

(7) 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 derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

(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 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.

ARTICLE 7

Business Profits

(1) The 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 profits of the enterprise may be taxed in the other State but only so much of them as is attributable to 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 profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

(3) In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere.

(4) 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) For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

(6) Where profits include items of income or capital gains 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) Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

(2) For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include:

- (a) profits from the rental on a bareboat basis of ships or aircraft; and
- (b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise;

where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

(3) The provisions of paragraph (1) of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency, but only to so much of the profits so derived as is attributable to the participant in proportion to its share in the joint operation.

ARTICLE 9

Associated Enterprises

(1) Where

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any 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.

(2) Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and 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 a Contracting State to a resident of the other Contracting State may be taxed in that other State.

(2) However, such dividends:

- (a) may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:
 - (i) 10 per cent of the gross amount of the dividends, except as provided in sub-paragraph (a) (ii);
 - (ii) 15 per cent of the gross amount of the dividends where those dividends are paid out of income or gains derived directly or indirectly from immovable property within the

meaning of Article 6 by an investment vehicle which distributes most of this income annually and whose income from such immovable property is exempted from tax;

(b) shall, notwithstanding the provisions of sub-paragraph (a), be exempt from tax in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is:

(i) a company which is a resident of the other Contracting State and controls, directly or indirectly, at least 10 per cent of the voting power in the company paying the dividends (other than where the dividends are paid by an investment vehicle as mentioned in sub-paragraph (a) (ii)); or

(ii) a pension scheme; or

(iii) an organisation falling within sub-paragraph (b) of paragraph 2 of Article 4.

(3) No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with an assignment of the dividends, or with the creation or assignment of the shares or other rights in respect of which the dividend is paid, or with the establishment, acquisition or maintenance of the company that is the beneficial owner of the dividends and the conduct of its operations, to take advantage of this Article. In any case where a Contracting State intends to apply this paragraph, its competent authority shall in advance consult with the competent authority of the other Contracting State.

(4) The term “dividends” as used in this Article means income from shares, or other rights, not being debt-claims, participating in profits, as well as any other item which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident.

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

(6) 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 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 that other State.

ARTICLE 11

Interest

(1) Interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

(2) 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. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article. The term shall not include any item which is treated as a dividend under the provisions of Article 10 of this Convention.

(3) The provisions of paragraph (1) 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 and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 of this Convention shall apply.

(4) 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 exceeds, for whatever reason, 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.

(5) No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the assignment of the interest, or with the creation or assignment of the debt-claim in respect of which the interest is paid, or with the establishment, acquisition or maintenance of the company that is the beneficial owner of the interest and the conduct of its operations, to take advantage of this Article. In any case where a Contracting State intends to apply this paragraph, its competent authority shall in advance consult with the competent authority of the other Contracting State.

ARTICLE 12

Royalties

(1) Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

(2) The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

(3) The provisions of paragraph (1) 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 and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 of this Convention shall apply.

(4) 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 exceeds, for whatever reason, 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.

(5) No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with an assignment of the royalties, or with the creation or assignment of the rights in respect of which the royalties are paid, or with the establishment, acquisition or maintenance of the company that is the beneficial owner of the royalties and the conduct of its operations, to take advantage of this Article. In any case where a Contracting State intends to apply this paragraph, its competent authority shall in advance consult with the competent authority of the other Contracting State.

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 of this Convention 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, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) may be taxed in that other State.

(3) Gains derived by a resident 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 derived by a resident of a Contracting State from the alienation of shares, other than shares which are traded on a recognised stock exchange, or other comparable interests deriving more than 75 per cent of their value directly or indirectly from immovable property situated in the other Contracting State, other than immovable property in which that company or the holders of those interests carry on their business, may be taxed in that other Contracting State. However, such gains shall be taxable only in the first-mentioned State where:

- (a) the resident owned less than 50 per cent of the shares or other comparable interests prior to the first alienation;
- (b) the gains are derived in the course of a corporate reorganisation, amalgamation, division or similar transaction; or
- (c) the resident is a pension scheme, provided that the gains are not derived from the carrying on of a business, directly or indirectly, by that pension scheme.

(5) Gains from the alienation of any property other than that referred to in paragraphs (1), (2), (3) and (4) of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.

(6) Notwithstanding the provisions of paragraph (5) of this Article, a Contracting State may, in accordance with its laws, levy tax on gains derived by an individual who is a resident of the other Contracting State from the alienation or deemed alienation of shares or other rights in a company which, under the laws of the first-mentioned Contracting State, is a resident of that State, and from the alienation or deemed alienation of part of the rights attached to the said shares or other rights, if that individual, either alone or with other connected individuals according to the laws of that State, directly or indirectly holds at least 20 per cent of the issued capital of a particular class of shares in that company. This provision shall apply only if the individual who derives the gains has been a resident of the first-mentioned State at any time during the ten year period preceding the year in which the gains are derived and provided that, at the time he became a resident of the other Contracting State, the above-mentioned conditions regarding ownership in the said company were satisfied.

In cases where, under the laws of the first-mentioned State, an assessment has been issued to the individual in respect of the above-mentioned alienation deemed to have taken place at the time of his emigration from the first-mentioned State, the provisions of this paragraph shall apply only insofar as part of the assessment is still outstanding.

(7) The provisions of paragraph (5) shall not affect the right of a Contracting State to levy according to its law a tax chargeable in respect of gains from the alienation of any property on a person who is, and has been at any time during the previous six fiscal years, a resident of that Contracting State or on a person who is a resident of that Contracting State at any time during the fiscal year in which the property is alienated.

ARTICLE 14

Income from Employment

(1) Subject to the provisions of Articles 15, 17 and 18 of this Convention, 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 in any twelve month period commencing or ending in the fiscal year concerned; 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 which the employer has in the other State.

(3) Notwithstanding the preceding provisions of this Article, remuneration described in paragraph (1) of this Article that is derived by a resident of a Contracting State in respect of an employment as a member of the crew of a ship or aircraft operated in international traffic shall be taxable only in that State.

ARTICLE 15

Directors' Fees

Directors' fees or other remuneration derived by a resident of a Contracting State in his capacity as a member of the board of directors, a "*bestuurder*" or a "*commissaris*" of a company which is a resident of the other State may be taxed in that other State to the extent that such remuneration is attributable to services rendered in that other State.

ARTICLE 16

Entertainers and Sportspersons

(1) Notwithstanding the provisions of Articles 7 and 14 of this Convention, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

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

(3) The provisions of paragraphs (1) and (2) of this Article shall not apply to income derived by a resident of a Contracting State from activities exercised in the other Contracting State, if the visit to that other State is wholly or almost wholly supported by public funds of the first-mentioned Contracting State or political subdivisions or local authorities thereof, or takes place under a cultural agreement between the Governments of the Contracting States. In such a case, the income shall be taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

ARTICLE 17

Pensions

(1) Pensions and other similar remuneration (including pensions provided under a social security system and annuities) paid to a resident of a Contracting State shall be taxable only in that State.

(2) Notwithstanding the provisions of paragraph (1) of this Article, payments falling within that paragraph may also be taxed in the Contracting State from which they are derived, in accordance with the laws of that State, where:

- (a) the right to claim the payments has been exempted from tax in that State, or contributions associated with the payments have been taken into account for the purposes of tax relief in that State; and
- (b) the payments are not taxed in the Contracting State of which the recipient is a resident or in a third state, at the generally applicable rate for income derived from employment, or less than 90 per cent of the gross amount of the payments are taxed.

The preceding provisions of this paragraph shall apply only if the total gross payments which, pursuant to the preceding provisions, would be taxable in the Contracting State in which they arise, exceed an amount of 25,000 euros during the fiscal year concerned.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, if a lump-sum payment is paid before the date on which the pension commences, it may be taxed in the Contracting State from which it is derived. However, if the lump sum is paid on or around the commencement of a periodic pension, it shall be taxable only in that State.

(4) For the purposes of paragraph (2) of this Article, payments shall be deemed to be derived from a Contracting State to the extent that the right to claim the payments has been exempted from tax in that State or the contributions associated with them have been taken into account for the purposes of tax relief in that State. The transfer of a pension from a pension scheme in a Contracting State to a pension scheme in another state shall not restrict the taxing rights of the first-mentioned State under this Article.

(5) The competent authorities of the Contracting States may by mutual agreement settle the mode of application of paragraph (2) of this Article.

(6) Contributions made by or on behalf of an individual who exercises employment or self-employment in a Contracting State (“the host state”) to a pension scheme that is recognised for tax purposes in the other Contracting State (“the home state”) shall, for the purposes of:

- (a) determining the individual’s tax payable in the host state; and
- (b) determining the profits of his employer which may be taxed in the host state;

be treated in that State in the same way and subject to the same conditions and limitations as contributions made to a pension scheme that is recognised for tax purposes in the host state, to the extent that they are not so treated by the home state.

(7) Paragraph (6) applies only if the following conditions are met:

- (a) the individual was not a resident of the host state, and was participating in the pension scheme (or in another similar pension scheme for which the first-mentioned pension scheme was substituted), immediately before he began to exercise employment or self-employment in the host state; and
- (b) the pension scheme is accepted by the competent authority of the host state as generally corresponding to a pension scheme recognised as such for tax purposes by that State.

(8) For the purposes of paragraphs (6) and (7):

- (a) the term “pension scheme” means an arrangement in which the individual participates in order to secure retirement benefits, including benefits for widow and orphan support, payable in respect of the employment or self-employment referred to in paragraph (6);
- (b) a pension scheme is recognised for tax purposes in a Contracting State if the contributions to the scheme would qualify for tax relief in that State and if payments made to the scheme by the individual’s employer are not deemed in that State to be taxable income of the individual.

ARTICLE 18

Government Service

(1) (a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

- (b) However, such salaries, wages and other similar 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:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.

(2) The provisions of Articles 14, 15 and 16 of this Convention shall apply to salaries, wages and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 19

Students

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that first-mentioned State provided that such payments arise from sources outside that State.

ARTICLE 20

Other Income

(1) Items of income beneficially owned by a resident of a Contracting State, wherever arising, which are not dealt with in the foregoing Articles of this Convention, other than income paid out of trusts or in the estates of deceased persons in the course of administration, shall be taxable only in that State.

(2) The provisions of paragraph 1 of this Article shall not apply to income, other than income from immovable property as defined in paragraph (2) of Article 6 of this Convention, if the beneficial owner of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 of this Convention shall apply.

(3) Where, by reason of a special relationship between the resident referred to in paragraph (1) of this Article and some other person, or between both of them and some third person, the amount of the income referred to in that paragraph exceeds the amount (if any) which would have been agreed upon between them in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the income shall remain taxable according to the laws of each Contracting State, due regard being had to the other applicable provisions of this Convention.

(4) No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the income is paid, or with the establishment, acquisition or maintenance of the company that is the beneficial owner of the income and the conduct of its operations, to take advantage of this Article by means of that creation or assignment. In any case where a Contracting State intends to apply this paragraph, its competent authority shall in advance consult with the competent authority of the other Contracting State.

ARTICLE 21

Elimination of Double Taxation

(1) The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed the items of income which, according to the provisions of this Convention, may be taxed in the United Kingdom.

(2) However, where a resident of the Netherlands derives items of income which according to Article 6, Article 7, paragraph (5) of Article 10, paragraph (3) of Article 11, paragraph (3) of Article 12, paragraphs (1) and (2) of Article 13, paragraph (1) of Article 14, paragraph (2) of Article 17, sub-paragraph (a) of paragraph (1) of Article 18 and paragraph (2) of Article 20 of this Convention may be taxed in the United Kingdom and are included in the basis referred to in paragraph (1), the Netherlands shall exempt such items of income by allowing a reduction of its tax. This reduction shall be computed in conformity with the provisions of the Netherlands law for

the avoidance of double taxation. For that purpose the said items of income shall be deemed to be included in the amount of the items of income which are exempt from Netherlands tax under those provisions.

(3) In respect of items of income which according to paragraphs (2) and (3) of Article 10, paragraph (5) of Article 11, paragraph (5) of Article 12, paragraphs (4) and (6) of Article 13, Article 15, paragraphs (1) and (2) of Article 16, the first sentence of paragraph (3) of Article 17 and paragraph (4) of Article 20 of this Convention may be taxed in the United Kingdom, the Netherlands shall allow a deduction from the Netherlands tax to the extent that these items are included in the basis referred to in paragraph (1). The amount of this deduction shall be equal to the tax paid in the United Kingdom on those items of income, but shall not exceed the amount of the deduction which would be allowed if the items of income so included were the sole items of income which are exempt from Netherlands tax under the provisions of the Netherlands law for the avoidance of double taxation.

This paragraph shall not restrict any allowance accorded by the provisions of the Netherlands law for the avoidance of double taxation to the extent that the calculation of the amount of the deduction of Netherlands tax concerns the aggregation of income from more than one country and the carry forward of the tax paid in the United Kingdom on the said items of income to subsequent years.

(4) Notwithstanding the provisions of paragraph (2), the Netherlands shall allow a deduction from the Netherlands tax for the tax paid in the United Kingdom on items of income which according to Article 7, paragraph (5) of Article 10, paragraph (3) of Article 11, paragraph (3) of Article 12 and paragraph (2) of Article 20 of this Convention may be taxed in the United Kingdom to the extent that these items are included in the basis referred to in paragraph (1), if and insofar as the Netherlands, under the provisions of the Netherlands law for the avoidance of double taxation, allows a deduction from the Netherlands tax of the tax levied in another country on such items of income. For the computation of this deduction the provisions of paragraph (3) of this Article shall apply accordingly.

(5) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof):

- (a) Netherlands tax payable under the laws of the Netherlands and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within the Netherlands (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the Netherlands tax is computed;
- (b) in the case of a dividend paid by a company which is a resident of the Netherlands to a company which is a resident of the United Kingdom and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Netherlands tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph) the Netherlands tax payable by the company in respect of its profits out of which such dividend is paid.

(6) For the purposes of the preceding provisions of this Article, profits, income and capital gains owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other State.

(7) Notwithstanding the preceding provisions of this Article:

- (a) where gains may be taxed by a Contracting State by reason only of paragraph (7) of Article 13, that Contracting State and not the other Contracting State shall eliminate double taxation in accordance with the methods set out in this Article as if the gains arose from sources in the other Contracting State;
- (b) where gains may be taxed by a Contracting State by reason of paragraphs (1), (2), (4) or (6) of Article 13, the other Contracting State and not the first-mentioned Contracting State, shall eliminate double taxation in accordance with the methods set out in paragraphs (1) to (5) of this Article.

ARTICLE 22

Miscellaneous Provisions

(1) Where under any provision of this Convention any item of income or gains is relieved from tax in a Contracting State, either in full or in part, and under the laws in force in the other Contracting State a person is subject to tax in respect of that item of income or those gains by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the first-mentioned State shall apply only to so much of the item of income or gains as is taxed in the other State.

(2) Where a resident of a Contracting State is a member of a partnership established under the laws of the other Contracting State, nothing in the Convention shall prevent the first-mentioned Contracting State from taxing that resident on his share of any income, profits or gains of that partnership.

(3) In the case of an item of income, profit or gain derived through a person that is fiscally transparent under the laws of either State, such item shall be considered to be derived by a resident of a State to the extent that the item is treated for the purposes of the taxation law of such State as the income, profit or gain of a resident.

(4) Where, by virtue of paragraph (3) of this Article, an item of income, profit or gain is considered by a State to be derived by a person who is a resident of that State and the same item is considered by the other State to be derived by a person who is a resident of that other State, that paragraph shall not prevent either State from taxing the item as the income, profit or gain of the person considered by that State to have derived the item of income.

(5) The competent authority of a State may grant the benefits of the Convention to a resident of the other State with respect to an item of income, profit or gain, even though it is not treated as income, profit or gain of the resident under the laws of that other State, in cases where such income would have been exempt from tax if it had been treated as the income of that resident.

ARTICLE 23

Offshore Activities

(1) The provisions of this Article shall apply notwithstanding any other provisions of this Convention.

(2) In this Article the term “offshore activities” means activities which are carried on offshore in a Contracting State in connection with the exploration or exploitation of the seabed and its subsoil and their natural resources, situated in that Contracting State.

(3) An enterprise of a Contracting State which carries on offshore activities in the other Contracting State shall, subject to paragraph (4) of this Article, be deemed to carry on, in respect of those activities, business in that other State through a permanent establishment situated therein, unless the offshore activities in question are carried on in the other State for a period or periods not exceeding in the aggregate 30 days in any twelve month period.

For the purposes of this paragraph:

- (a) where an enterprise carrying on offshore activities in the other Contracting State is associated with another enterprise and that other enterprise carries on substantially similar offshore activities to those which are or were being carried on by the first-mentioned enterprise, and the aforementioned activities carried on by both enterprises when added together exceed a period of 30 days, then each enterprise shall be deemed to be carrying on its activities for a period exceeding 30 days in any twelve month period;
- (b) an enterprise shall be regarded as associated with another enterprise if one holds directly or indirectly at least one third of the capital of the other enterprise or if a person holds directly or indirectly at least one third of the capital of both enterprises.

(4) However, for the purposes of paragraph (3) of this Article the term “offshore activities” shall be deemed not to include:

- (a) one or any combination of the activities mentioned in paragraph (4) of Article 5 of this Convention;
- (b) towing or anchor handling by ships primarily designed for that purpose;
- (c) the transport of supplies or personnel by ships or aircraft.

(5) Gains derived by a resident of one of the States from the alienation of rights to assets to be produced by the exploration or exploitation of the sea bed and subsoil and their natural resources situated in the other State, including rights to interest in or to the benefit of such assets, or from the alienation of shares deriving their value or the greater part of their value directly or indirectly from such rights, may be taxed in that other State.

(6) (a) Subject to sub-paragraph (b) of this paragraph, salaries, wages and other similar remuneration derived by a resident of one of the States in respect of an employment connected with offshore activities in the other State may, to the extent that the employment is exercised offshore in that other State, be taxed in that other State.

- (b) Salaries, wages and other similar remuneration derived by a resident of one of the States in respect of an employment exercised aboard a ship or aircraft, to the profits from the operation of which subparagraphs (b) or (c) of paragraph (4) of this Article applies, shall be taxable only in the State of which the employee is a resident.

(7) Where tax has been paid in the United Kingdom on the items of income or gains which may be taxed in the United Kingdom according to Articles 7 and 14 of this Convention in connection with paragraph (3) of this Article and according to paragraph (5) and (6), sub-paragraph (a), of this Article, the Netherlands shall allow a reduction of its tax which shall be computed in conformity with the rules laid down in paragraph (2) of Article 21 of this Convention.

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 nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected.

(2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

(3) Except where the provisions of paragraph (1) of Article 9, paragraphs (4) or (5) of Article 11, paragraphs (4) or (5) of Article 12 or paragraphs (3) or (4) of Article 20, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

(4) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

(5) Nothing contained in this Article shall be construed as obliging either State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident.

(6) Subject to the provisions of paragraph (8) of this Article, individuals who are residents of the Netherlands shall be entitled to the same personal allowances, reliefs and reductions for the purposes of United Kingdom taxation as British subjects not resident in the United Kingdom.

(7) Subject to the provisions of paragraph (8) of this Article, individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Netherlands tax as Netherlands nationals not resident in the Netherlands.

(8) Nothing in this Convention shall entitle an individual who is a resident of one of the States and whose income from the other State consists solely of dividends, interest or royalties (or solely of any combination thereof) to the personal allowances, reliefs and reductions of the kind referred to in this Article for the purpose of taxation in that other State.

ARTICLE 25

Mutual Agreement Procedure

(1) Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph (1) of Article 24 of this Convention, to that of the Contracting State of which he is a national. 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 the Convention or, if later, within six years from the end of the taxable year or chargeable period in respect of which that taxation is imposed or proposed.

(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 which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States, except such limitations as apply for the purpose of giving effect to such an agreement.

(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 the Convention and to consider measures to counteract improper use of provisions of this Convention.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

(5) Where,

(a) under paragraph (1) of this Article, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and

(b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph (2) of this Article within two years from the presentation of the case to the competent authority of the other Contracting State,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

(6) The provisions of paragraph 5 shall not apply to cases falling within paragraph (4) of Article 4 of this Convention.

ARTICLE 26

Exchange of Information

(1) The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws of the Contracting States concerning taxes of every kind and

description imposed on behalf of the Contracting States, insofar as the taxation thereunder is not contrary to this Convention, in particular, to prevent fraud and to facilitate the administration of statutory provisions against legal avoidance. The exchange of information is not restricted by Articles 1 and 2 of this Convention.

(2) Any information received under paragraph 1 of this Article 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 persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to, the taxes referred to in paragraph (1) of this Article, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

(3) In no case shall the provisions of paragraphs (1) and (2) of this Article 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.

(4) If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph (3) of this Article but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

(5) In no case shall the provisions of paragraph (3) of this Article be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

ARTICLE 27

Assistance in the Collection of Taxes

(1) The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2 of this Convention. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

(2) The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

(3) When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

(4) When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensuring its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That

other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

(5) Notwithstanding the provisions of paragraphs (3) and (4) of this Article, a revenue claim accepted by a Contracting State for purposes of paragraph (3) or (4) shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such, and unless otherwise agreed between the competent authorities, cannot be enforced by imprisonment. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph (3) or (4) shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

(6) Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

(7) Where, at any time after a request has been made by a Contracting State under paragraph (3) or (4) of this Article and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:

- (a) in the case of a request under paragraph (3), a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
- (b) in the case of a request under paragraph (4), a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

(8) In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy;
- (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- (d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State;
- (e) to provide assistance if that State considers that the taxes with respect to which assistance is requested are imposed contrary to generally accepted taxation principles.

ARTICLE 28

Members of Diplomatic or Permanent Missions and Consular Posts

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic or permanent missions or consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 29

Territorial Extension

(1) This Convention may be extended, either in its entirety or with any necessary modifications, to parts of the Kingdom of the Netherlands which are not situated in Europe, if the part concerned imposes taxes substantially similar in character to those to which the Convention applies. Any

such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed in notes to be exchanged through diplomatic channels.

(2) Unless otherwise agreed the termination of the Convention shall also terminate any extension of the Convention to any part to which it has been extended under this Article.

ARTICLE 30

Entry into Force

(1) Each of the Contracting States shall notify to the other, through diplomatic channels, the completion of the procedures required by its law for bringing into force this Convention. This Convention shall enter into force on the fifth day after the date of the later of these notifications and shall thereupon have effect:

- (a) in the United Kingdom:
 - (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which this Convention enters into force;
 - (ii) in respect of the corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which this Convention enters into force;
- (b) in the Netherlands:
 - (i) in respect of taxes withheld at source on amounts paid or credited on or after the first day of January in the calendar year next following that in which the Convention enters into force;
 - (ii) in respect of other taxes for taxable years and periods beginning on or after the first day of January in the calendar year next following that in which the Convention enters into force.

(2) The Convention between the Government of the United Kingdom and Government of the Netherlands signed at The Hague on 7 November 1980 as amended by the first Protocol signed at London on 12 July 1983 and the second Protocol signed at The Hague 24 August 1989 ('the prior Convention') shall cease to have effect in respect of any tax with effect from the date upon which this Convention has effect in respect of that tax in accordance with the provisions of paragraph 1 of this Article and shall terminate on the last such date.

(3) Notwithstanding paragraph (2) of this Article and the provisions of paragraph (3) of Article 14 of this Convention, where, immediately before the entry into force of this Convention, an individual was in receipt of remuneration described in paragraph (3) of Article 15 of the prior Convention, that individual may elect that the provisions of the latter paragraph shall continue to apply to that remuneration for a period of three calendar years after that date.

(4) Notwithstanding paragraph (2) of this Article and the provisions of Articles 17 and 21 of this Convention, where, immediately before the entry into force of this Convention, an individual was in receipt of payments falling within sub-paragraph (a) of paragraph (2) of Article 19 of the prior Convention, that individual may elect that the provisions of sub-paragraph (a) of paragraph (2) of Article 19 and Article 22 of the prior Convention shall continue to apply to those payments.

ARTICLE 31

Termination

This Convention shall remain in force until terminated by one of the Contracting States. Either State may terminate this Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the expiry of five years from the date of its entry into force. In such event the Convention shall cease to have effect:

- (a) in the United Kingdom:

- (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the notice has been given;
 - (ii) in respect of the corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the notice has been given.
- (b) in the Netherlands:
- (i) in respect of taxes withheld at source on amounts paid or credited on or after the first day of January in the calendar year next following that in which the notice has been given;
 - (ii) in respect of other taxes for taxable years and periods beginning on or after the first day of January in the calendar year next following that in which the notice has been given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Convention.
 DONE at London this 26th day of September 2008, in duplicate, in the English and Netherlands languages, both texts being equally authoritative.

For the Government of
 the United Kingdom of Great
 Britain and Northern Ireland

For the Government of the Kingdom
 of the Netherlands

Jim Murphy

J.L. Westhoff

PART 2 PROTOCOL

At the moment of signing the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, this day concluded between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of the Netherlands, the undersigned have agreed that the following provisions shall form an integral part of the Convention.

I. With reference to paragraph (3) of Article 2 (Taxes covered)

It is understood that the inclusion of the petroleum revenue tax and the supplementary charge in respect of ring fence trades in sub-paragraph (b) is solely for the purpose of permitting the Netherlands to give relief for these taxes under Article 21.

II. With reference to paragraph (1) of Article 4 (Residence)

It is understood that in the case of an individual living aboard a ship “any other criterion of a similar nature” shall include the home harbour of that ship.

III. With reference to paragraph (1), sub-paragraph (l) of Article 3 (General definitions), paragraph 2, sub-paragraph (a) of Article 4 (Residence) paragraph 2, sub-paragraph (b) (ii) of Article 10 (Dividends) and paragraph (4), sub-paragraph (c) of Article 13 (Capital gains)

It is understood that the term “pension scheme” includes:

(a) in the case of the Netherlands, a pension fund that is established and regulated as such under the laws of the Netherlands and the income of which is generally exempt from tax in the Netherlands;

(b) in the case of the United Kingdom, pension schemes (other than a social security scheme) registered under Part 4 of the Finance Act 2004, including pension funds or pension schemes

arranged through insurance companies and unit trusts where the unit holders are exclusively pension schemes.

The competent authorities may agree to include in the above, pension schemes of identical or substantially similar economic or legal nature which are introduced by way of statute or legislation in either State after the date of signature of the Convention.

IV. With reference to paragraph (1) of Article 9 (Associated enterprises)

It is understood that the mere fact that associated enterprises have concluded arrangements such as cost sharing arrangements or general services agreements, for or based on the allocation of executive, general administrative, technical and commercial expenses, research and development expenses and other similar expenses, is not in itself a condition as meant in that paragraph.

V. With reference to Articles 10 (Dividends) and 11 (Interest)

It is understood that an authorised representative of an investment fund established in a Contracting State may submit a claim relating to the benefits afforded by the provisions of these Articles. The competent authorities may consult together with a view to putting arrangements in place which facilitate claims and resolving any doubts concerning eligibility.

VI. With reference to Articles 10 (Dividends) and 13 (Capital Gains)

It is understood that income received in connection with the liquidation (in whole or in part) of a company or a purchase of own shares by a company is treated, for Netherlands tax purposes, as income from shares and not as capital gains.

VII. With reference to Articles 11 (Interest) and 12 (Royalties)

It is understood that no relief under these Articles shall be available where:

- (i) interest or royalties, as the case may be, are paid to a company of the Netherlands;
- (ii) that interest or those royalties are attributable to a permanent establishment of that company located in a third state with whom the Netherlands has a double taxation convention;
- (iii) under that convention, the Netherlands eliminates double taxation by applying the exemption method with respect to such interest or royalties rather than allowing a deduction that would otherwise be granted under its domestic law; and
- (iv) the tax levied in that third state is less than 60 per cent of the tax that would have been levied by the Netherlands had that interest or those royalties not been attributable to that permanent establishment.

VIII. With reference to Article 15 (Directors' fees)

It is understood that “bestuurder” or “commissaris” of a Netherlands company means persons who are nominated as such by the general meeting of shareholders or by any other competent body of such company and are charged with the general management of the company and the supervision thereof, respectively.

IX. With reference to Article 17 (Pensions)

It is understood that the pensions referred to in section 641(1)(a) to (g) of the Income Tax (Earnings and Pensions) Act 2003 and benefits paid by reason of illness or injury following the

termination of service in the armed forces or reserve forces referred to in section 641(1)(h) of the Income Tax (Earnings and Pensions) Act 2003 and injury and disablement pensions payable under any scheme made under the Personal Injuries (Emergency Provisions) Act 1939 shall be exempt from Netherlands tax, regardless of the nationality of the pensioner, so long as they are exempt from United Kingdom tax. It is understood that above-mentioned exempted pensions paid to a resident of the Netherlands will be taken into account when granting personal allowances and benefits under the income-related regulations of the Netherlands.

X. With reference to paragraph 3 of Article 17 (Pensions)

It is understood that where a lump sum is paid to a resident of the Netherlands, the amount of the lump sum will be taken into account when granting personal allowances and benefits under the income-related regulations of the Netherlands in the fiscal year in which the lump sum is received.

XI. With reference to Article 18 (Government service)

It is understood that the provisions of sub-paragraph (a) of paragraph (1) of this Article do not prevent the Netherlands from applying paragraph (1) of Article 21 of this Convention.

XII. With reference to paragraph (2) of Article 21 (Elimination of double taxation)

It is understood that if, in the case of a pipeline between the Contracting States, the income relating to such pipeline may, in accordance with the Convention, be taxed in the United Kingdom, the Netherlands shall allow a deduction from its tax with respect to such income according to paragraph (2) of Article 21, provided that such income is taxed in the United Kingdom.

XIII. With reference to paragraph (3) of Article 30 (Entry into force)

It is understood that the Netherlands will apply the exemption method as mentioned in paragraph (2) of Article 21 of this Convention to the remuneration referred to in paragraph (3) of Article 30 of this Convention.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Protocol.

DONE at London this 26th day of September 2008, in duplicate, in the English and Netherlands languages, both texts being equally authoritative.

For the Government of
the United Kingdom of Great
Britain and Northern Ireland

Jim Murphy

For the Government of the Kingdom
of the Netherlands

J.L. Westhoff

EXPLANATORY NOTE

(This note is not part of the Order)

A Convention concerning the avoidance of double taxation and prevention of fiscal evasion between the United Kingdom and the Kingdom of the Netherlands (“the Convention”) is set out in Part 1 of the Schedule to this Order.

Article 2 of this Order makes a declaration as to the effect and content of arrangements set out in the Convention and in the Protocol contained in Part 2 of the Schedule to this Order, and declares that it is expedient that those arrangements should have effect.

A detailed explanation of the Convention can be found in the Explanatory Memorandum published with the Convention and which may be accessed on the website of the Office of Public Sector Information at <http://www.opsi.gov.uk/stat.htm>

The Convention will enter into force on the fifth day after the date of the later of the notifications by each country of the completion of its legislative procedures, as provided by Article 30 of the Convention.

It will take effect in the United Kingdom as follows —

- (a) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the Convention enters into force; and
- (b) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the Convention enters into force.

It will take effect in the Kingdom of the Netherlands as follows—

- (a) in respect of taxes withheld at source, for amounts paid or credited on or after 1st January next following the date upon which the Convention enters into force; and
- (b) in respect of other taxes, for taxable years and periods beginning on or after 1st January next following the date upon which the Convention enters into force.

The date of entry into force will, in due course, be published in the *London, Edinburgh and Belfast Gazettes*.

A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.

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Draft Order laid before the House of Commons under section 788(10) of the Income and Corporation Taxes Act 1988 and section 173(7) of the Finance Act 2006, for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2008 No.

CAPITAL GAINS TAX

CORPORATION TAX

INCOME TAX

The Double Taxation Relief and International Tax Enforcement
(Taxes on Income and Capital) (Netherlands) Order 2008

£5.00