

No. 7047

**NETHERLANDS
and
ITALY**

**Agreement for the avoidance of double taxation with respect
to taxes on income and fortune (with exchange of notes).
Signed at The Hague, on 24 January 1957**

Official texts: Dutch and Italian.

Registered by the Netherlands on 9 January 1964.

**PAYS-BAS
et
ITALIE**

**Convention tendant à éviter la double imposition en matière
d'impôts sur le revenu et sur la fortune (avec échange
de notes). Signée à La Haye, le 24 janvier 1957**

Textes officiels néerlandais et italien.

Enregistrée par les Pays-Bas le 9 janvier 1964.

[TRANSLATION — TRADUCTION]

No. 7047. AGREEMENT¹ BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE ITALIAN REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND FORTUNE. SIGNED AT THE HAGUE, ON 24 JANUARY 1957

Her Majesty the Queen of the Netherlands and
The President of the Italian Republic,

Desiring to prevent double taxation with respect to taxes on income and fortune, have decided to conclude an Agreement and have appointed for that purpose as their plenipotentiaries :

Her Majesty the Queen of the Netherlands :

Mr. J. M. A. H. Luns, Minister of Foreign Affairs ;

The President of the Italian Republic :

Mr. Giorgio Benzoni, Ambassador of Italy ;

Who, having exchanged their full powers, found in good and due form, have agreed on the following provisions :

Article I

1. The provisions of this Agreement shall apply to the following taxes, surtaxes and supplementary taxes payable to the State, to provinces and communes and to other public institutions :

A. In the case of the Netherlands :

- (1) Real estate tax (on income from land and buildings) (*grondbelasting, van de opbrengst van gebouwde en ongebouwde eigendommen*) ;
- (2) The tax on wages and salaries (*loonbelasting*) ;
- (3) The tax on directors' emoluments (*commissarissenbelasting*) ;
- (4) The dividends tax (*dividendbelasting*) ;
- (5) The company tax (*vennootschapsbelasting*) ;
- (6) The personal income tax (*inkomstenbelasting van natuurlijke personen*) ;
- (7) The fortune tax (*vermogensbelasting*).

¹ Came into force on 18 November 1960, the date of the exchange of the instruments of ratification at Rome, in accordance with article XXV.

B. In the case of Italy :

- (1) The tax on income from land (*l'imposta sui redditi dei terreni*) ;
- (2) The tax on income from buildings (*l'imposta sui redditi dei fabbricati*) ;
- (3) The tax on movable capital (*l'imposta sulla ricchezza mobile*) :
 - (a) Category A : income from capital ;
 - (b) Category B : income from capital and work ;
 - (c) Category C/1 : income from self-employment ;
 - (d) Category C/2 : income from employment ;
 - (e) Agricultural income ;
- (4) The supplementary income tax (*l'imposta complementare progressiva sul reddito globale*).

2. The provisions of this Agreement shall also apply to all other ordinary or extraordinary taxes on income or fortune which are at present levied or may hereafter be introduced in either State.

3. If the tax legislation of either State is amended in any important respect, the competent authorities of the two States shall consult together.

Article II

1. For the purposes of this Agreement :

(a) The term "Netherlands" means only the Kingdom of the Netherlands in Europe ;

(b) The term "Italy" means only the territory of the Italian Republic in Europe ;

(c) The term "person" means :

1. Any individual ;
2. Any body corporate ;
3. Any unincorporated group of individuals.

(d) The terms "person having his fiscal domicile in the Netherlands" and "person having his fiscal domicile in Italy" mean : in the case of individuals, any individual domiciled in the Netherlands for the purposes of Netherlands taxation and any individual domiciled in Italy for the purposes of Italian taxation ; in the case of other persons, any body corporate or unincorporated group of individuals having its head office, that is, its centre of actual management, in the Netherlands or in Italy.

Where an individual may be deemed to have a fiscal domicile in both States, he shall be deemed for the purposes of this Agreement to have his fiscal domicile in the State with which he has the closer personal and economic ties. Where the fiscal domi-

cile of an individual cannot be determined under this rule, he shall be deemed to have his fiscal domicile in the State of which he is a citizen. If he is a citizen of both States or of neither, the competent authorities shall come to an agreement in each particular case.

(e) The term "permanent establishment" means a branch, workshop or other fixed installation in which an enterprise conducts all or part of its business. Where there is no fixed installation in one of the two States, works under execution in that State shall be regarded as a permanent establishment if the actual centre of management of the operations is in that State. In particular, an agency shall be regarded as a permanent establishment if the agent has a general authority to negotiate and conclude contracts on behalf of an enterprise, or has a stock of merchandise from which he regularly fills orders on its behalf, or represents one enterprise exclusively. A goods warehouse intended merely for facilitating deliveries and not for advertising purposes shall not be regarded as a permanent establishment. An enterprise of one of the two States shall not be deemed to have a permanent establishment in the other State merely because it carries on business dealings in that other State through a commission agent or broker acting in the ordinary course of his business as such. The fact that an enterprise of one of the two States maintains in the other State a fixed installation whose business is limited to the purchase of goods or merchandise intended for the supply of its own sales or processing establishments in the first-mentioned State shall not of itself constitute such fixed installation a permanent establishment of the enterprise. The fact that a company having its fiscal domicile in one of the two States maintains a subsidiary company which has its fiscal domicile in the other State or which, having no fiscal domicile in that other State, carries on any commercial, industrial or other similar activity therein, shall not of itself constitute that subsidiary company a permanent establishment of the parent company.

(f) The term "competent authority" means, in the case of the Netherlands, the Minister of Finance or the Director-General of the Department of Taxation duly authorized to act on his behalf, and in the case of Italy, the Ministry of Finance.

2. In the application of the provisions of this Agreement by either of the two States, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning attributed to it in the laws of the State concerned relating to the taxes which are the subject of this Agreement.

Article III

Income from immovable property shall be taxable in the State in which such property is situated. For the purposes of this article, income from immovable

property includes royalties paid in consideration of the right to exploit mines or quarries or to extract natural resources in any other form.

Article IV

1. Profits derived by a person having his fiscal domicile in one of the two States from the exercise of any industrial, agricultural, commercial or other like activity shall not be taxable in the other State unless the person concerned carries on his activity in such other State through a permanent establishment situated therein. In the latter case, the other State may impose tax only on the profits attributable to that permanent establishment.

2. The amount of the profits mentioned in paragraph 1 of this article shall be determined by reference to the amount of the profits which the permanent establishment might have earned if it had been an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

3. In determining the profits mentioned in paragraph 2 of this article, no profits shall be deemed to arise from the mere purchase of goods or merchandise within the State in which the permanent establishment is situated if such purchases are intended for supply of sales or processing establishments of the enterprise in the other State.

4. The competent authorities of the two States may lay down rules by agreement for the apportionment of the above-mentioned profits.

Article V

Where :

- (a) An enterprise of one of the two States participates directly or indirectly in the management, operation or capital of an enterprise in the other State, or
- (b) The same persons participate directly or indirectly in the management, operation or capital of an enterprise in one of the two States and an enterprise in the other State,

and where in either case the conditions made or imposed between the two enterprise in their commercial or financial relations are different from those which would exist between two independent enterprises, any profits which would have normally accrued to one of the enterprises but by reason of those conditions have not so accrued shall be regarded as income of that enterprise and taxed accordingly.

Article VI

Notwithstanding the provisions of article IV of this Agreement, income derived from the operation of ships or aircraft shall be taxable only in the State in which the effective headquarters of the sea or air navigation enterprise are situated, provided that such ships or aircraft fly the flag or have the nationality of that State.

Article VII

1. Dividends paid by a company having its fiscal domicile in one of the two States to a person having his fiscal domicile in the other State shall be taxable in the first State.

2. Inasmuch as dividends paid by a company having its fiscal domicile in Italy are not liable, on the date of signature of this Agreement, to any schedular tax distinct from the tax levied on the income of such company, dividends paid by a company having its fiscal domicile in the Netherlands to a person having his fiscal domicile in Italy shall be taxable in the Netherlands only if they represent for that person income from a permanent establishment of his enterprise in the Netherlands.

If Italy makes any changes in its fiscal legislation resulting in the imposition of a tax on dividends paid by a company having its fiscal domicile in Italy to a company having its fiscal domicile abroad, the Netherlands shall continue to extend the treatment provided for in the foregoing paragraph and Italy shall not tax dividends paid to a company having its fiscal domicile in the Netherlands if such company has the effective and direct ownership of at least 75 per cent of the paid-up capital of the company having its fiscal domicile in Italy, save in the case of dividends representing for the former company income from a permanent establishment in Italy of its enterprise.

3. For the purposes of this article the term "dividends" means dividends and other income from shares, *azioni di godimento*, *buoni di godimento*, profit-participating debentures and like participations in companies, and income from participations in private limited companies (*società a responsabilità limitata*).

Article VIII

1. Interests or other income from bonds or any other form of loan or from deposits, deposit accounts or other types of indebtedness shall be taxable in the State in which the debtor has his fiscal domicile.

2. If the debtor possesses permanent establishments, within the meaning of article IV of this Agreement, in both States and if one of those establishments, in the course of its own activity, contracts a debt or receives a deposit, the tax shall be levied by the State in whose territory that establishment is situated.

Article IX

1. Royalties and other proceeds received in one of the two States by a person having his fiscal domicile in the other State for copyrights or as consideration for the right to use patents, designs or models, secret processes and formulae, trade-marks and other similar rights (other than those specified in article III of this Agreement), or for the right to use industrial, commercial or scientific equipment or in respect of the rental of motion picture films shall be taxable in the State in which the debtor has his fiscal domicile only where such income represents for the beneficiary income derived from a permanent establishment of his enterprise in that State.

2. Where and to the extent that any royalties or other proceeds exceed the intrinsic and normal value of the rights in respect of which they are paid, the rule laid down in paragraph 1 of this article shall not apply.

3. The principles of paragraphs 1 and 2 of this article shall likewise apply to profits from the transfer of the said rights.

Article X

1. Profits derived by a person having his fiscal domicile in one of the two States from the exercise of a liberal profession shall not be taxable in the other State unless he exercises his profession in that State through a permanent establishment situated therein. In the latter case, the second State may levy tax only on the profits attributable to such permanent establishment.

2. The competent authorities of the two States may lay down rules by agreement for the apportionment of the above-mentioned profits.

Article XI

Remuneration for labour or for personal services performed otherwise than in the exercise of a liberal profession shall be taxable in the State in whose territory the activity is carried on, except as otherwise provided in articles XII to XVI, inclusive.

Article XII

Notwithstanding the provisions of article XI of this Agreement, remuneration for labour or for personal services performed otherwise than in the exercise of a liberal profession, executed or rendered in one of the two States by a person having his fiscal domicile in the other State, shall not be taxable in the first-mentioned State if :

(1) The person concerned is temporarily present in that State for a period or periods not exceeding a total of ninety days during the fiscal year ;

(2) The remuneration is received for labour performed or for personal services rendered as an employee of a person having his fiscal domicile in the other State, or under contract with such a person, and that person actually pays such remuneration ;

(3) The remuneration was not paid as such from the taxable income in the former State of a permanent establishment owned by his employer.

Article XIII

Remuneration for personal services rendered on board ships or aircraft shall be taxable in the State in which the effective headquarters of the sea or air navigation enterprise are situated.

Article XIV

1. Wages, salaries and similar remuneration and pensions and annuities paid by one of the two States or by a political subdivision or entity or public institution thereof to an individual who has his fiscal domicile in the other State and is not a citizen of that State shall not be taxable in the second State.

The provisions of this paragraph shall not apply to remuneration, pensions and annuities relating to services rendered in connexion with industrial or commercial transactions carried out by one of the two States in the other State.

2. Private pensions and annuities paid from sources in one of the two States and received by individuals having their fiscal domicile in the other State shall not be taxable in the former State.

3. In this article, the term "pensions" means periodic payments made in respect of services rendered or personal injuries received, or in respect of old age, infirmity or disability.

4. In this article, the term "annuities" means a fixed sum payable periodically at stated times during life, or during a fixed number of years, under an obligation to make payments in return for adequate and full consideration in money or money's worth.

Article XV

1. Remuneration paid to directors, members of the boards of directors or boards of auditors or other similar officers of companies having their fiscal domicile in one of the two States shall be taxable in that State.

2. For the purposes of paragraph 1 of this article, the term « remuneration » does not include remuneration paid to a director in connexion with a contract of service with the company.

Article XVI

1. A professor or teacher having his fiscal domicile in one of the two States who makes a temporary visit to the other State for the purpose of teaching there, for a period not exceeding two years, at a university, college or school or at any other educational institution situated therein shall be exempt in that other State from taxation on the remuneration received for his teaching work during the period in question from the first-mentioned State or from a person having his fiscal domicile therein.

Article XVII

1. A student or apprentice having his fiscal domicile in one of the two States who makes a temporary visit to the other State exclusively for the purpose of study or professional or technical training shall not be liable in that other State to any taxation on payments received by him from a foreign source for his maintenance or studies.

Article XVIII

As respects the fortune tax mentioned in article I, 1, A, (7), and any other similar tax to which this Agreement may become applicable pursuant to article I, 2 :

- (1) Immovable property of the kinds mentioned in article III shall be taxable only in the State in which the property is situated ;
- (2) Other property invested in a permanent establishment or in an enterprise of the kinds referred to in article VI shall be taxable only in the State in which the permanent establishment is situated or in the State in which the profits of the enterprise are taxable as the case may be ;
- (3) Movable property, which, by its nature, ordinarily produces no income, shall be taxable only in the State in which the owner or usufructuary has his fiscal domicile ; furniture, however, shall be taxable only in the State in which the house which it serves to furnish is situated ;
- (4) Shares, *azioni di godimento*, *buoni di godimento* and any other like participations in companies, and public or private bonds and all other forms of indebtedness shall be taxable in the State in which the owner or usufructuary has his fiscal domicile. However, indebtedness secured by immovable property even where such indebtedness is in the form of bonds, shall be taxable in the State in which the immovable property is situated ;

- (5) Any assets not specified in paragraphs (1) to (4) above shall be taxable only in the State in which the owner or usufructuary has his fiscal domicile.

Article XIX

1. Notwithstanding any other provision of this Agreement :

A. The Netherlands, in determining the income tax of persons having their fiscal domicile in the Netherlands, may include in the basis upon which such tax is imposed all categories of income taxable under the taxation laws of the Netherlands. However, the Netherlands shall deduct from the tax so calculated an amount corresponding to the ratio of the income derived from sources taxable in Italy, in conformity with articles III, IV, V, VII, 2, second paragraph, VIII, 2, IX, 1, X, XI, XIV, XV and XVI of this Agreement, to the aggregate income.

B. Italy, in determining the supplementary income tax on the aggregate income of individuals having their fiscal domicile in Italy may include in the basis upon which such tax is imposed all categories of income taxable under the taxation laws of Italy. However, Italy shall deduct from the tax so calculated an amount corresponding to the ratio of the income derived from sources taxable in the Netherlands, in conformity with articles III, IV, V, VII, 2, second paragraph, VIII, 2, IX, 1, X, XI, XIV, XV and XVI of this Agreement, to the aggregate income.

2. The provisions of paragraph 1 of this article shall apply *mutatis mutandis* to taxes on fortune, it being understood that the deductions mentioned therein shall be calculated on the basis of the ratio of the items of fortune taxable under article XVIII of this Agreement in the State other than that in which the owner or usufructuary has his fiscal domicile to the aggregate taxable fortune.

Article XX

1. Where a taxpayer shows proof that measures taken by the taxation authorities of the two States subject him to double taxation contrary to the provisions of the Agreement, he shall be entitled to lodge a claim with the State of which he is a citizen, or, if he is not a citizen of either State, with the State in which he has his fiscal domicile. If the claim is upheld, the competent authority of such State shall take steps to reach agreement with the competent authority of the other State with a view to the equitably avoidance of the double taxation.

Article XXI

As regards the taxes mentioned in article 1 of this Agreement and the conditions of their application, citizens of one of the two States shall not be subjected in the other State to any taxes or conditions which are higher or more burdensome than those

which are or may be imposed on citizens of that other State who are in the same circumstances. The same rule shall apply to enterprises so far as concerns such profits or property as are attributable to the permanent establishments which they possess in the other State.

In this article the term "citizen" means :

(a) In relation to the Netherlands :

- (1) All Netherlands nationals, regardless of their fiscal domicile ;
- (2) All Netherlands subjects having their fiscal domicile in the Netherlands ;
- (3) All persons within the meaning of article II, 1, (c), (2) and (3) constituted under Netherlands law.

(b) In relation to Italy :

All Italian citizens, regardless of their fiscal domicile, and all persons within the meaning of article II, 1, (c), (2) and (3) constituted under Italian law.

Article XXII

The provisions of this Agreement shall not be construed in such a way as to restrict in any manner any exemption, reduction, deduction or other relief accorded by the laws of either of the two States in the determination of the taxes levied by such State.

Article XXIII

The competent authority of each of the two States may make such regulations as are necessary to carry out the provisions of this Agreement.

Article XXIV

The competent authorities of the two States may consult together in order to eliminate any double taxation on income or fortune not covered by this Agreement, or in the event of any difficulty or doubt arising in the interpretation or application of this Agreement.

Article XXV

1. This Agreement shall be ratified and the instruments of ratification shall be exchanged at Rome as soon as possible.

2. The Agreement shall enter into force on the date of the exchange of instruments of ratification and shall apply :

(a) To taxes collected by deduction at source on income payable on or after 1 January 1954 ;

(b) To other taxes assessed for the year 1954.

Article XXVI

This Agreement shall continue in force indefinitely, but either of the High Contracting Parties may, before 30 June in any year not earlier than 1958, transmit written notice of termination to the other High Contracting Party through the diplomatic channel ; and in such event, this Agreement shall cease to have effect on 1 January of the year next following that in which notice is given, it being understood that its application shall be limited :

(a) To taxes collected by deduction at source on income payable on or after 1 January of the year following that in which notice is given ;

(b) To other taxes assessed for the year in which notice is given.

IN WITNESS WHEREOF the above-mentioned plenipotentiaries have signed the present Convention and have affixed thereto their seals.

DONE at The Hague in duplicate in the Dutch and Italian languages, both texts being equally authentic, on 24 January 1957.

For the Kingdom of the Netherlands :

(*Signed*) J. LUNS

For the Italian Republic :

(*Signed*) Giorgio BENZONI

EXCHANGE OF NOTES

I

The Hague, 24 January 1957

Your Excellency,

I have the honour to inform you, on the occasion of the signing of the Agreement concluded between the Kingdom of the Netherlands and the Italian Republic for the avoidance of double taxation with respect to taxes on income and fortune,¹ that the provisions of the Agreement may be extended, either in their entirety or subject to modifications, to any part of the Kingdom of the Netherlands situated outside Europe (Surinam, the Netherlands Antilles and Netherlands New Guinea) in which taxes substantially similar to those specified in article I of the Agreement are levied, provided that that part of the Kingdom of the Netherlands desires such an extension and that the Italian Republic consents thereto. The extension shall become effective from such date and subject to such modifications and conditions (including those relating to termination) as may be specified and agreed upon in the notes which shall be exchanged for that purpose.

¹ See p. 92 of this volume.

Unless expressly agreed otherwise, the termination of the Agreement in accordance with article XXVI shall put an end to the application thereof in every part of the Kingdom of the Netherlands to which it may have been extended pursuant to the foregoing paragraph.

If the Government of the Italian Republic approves the foregoing, I have the honour to propose that this letter and your affirmative reply shall constitute an agreement between our two Governments which shall enter into force on the date of entry into force of the Agreement signed this day.

I have the honour to be, etc.

(Signed) J. LUNS

His Excellency Mr. Giorgio Benzoni di Balsamo
Ambassador of Italy
The Hague

II

The Hague, 24 January 1957

Sir,

I beg to acknowledge receipt of your letter of today's date, in the following terms :

[See note I]

I have the honour to inform you of my agreement with the foregoing.

I have the honour to be, etc.

(Signed) Giorgio BENZONI

His Excellency Mr. J. M. A. H. Luns
Minister of Foreign Affairs
The Hague