

No. 8576

NETHERLANDS
and
FEDERAL REPUBLIC OF GERMANY

Agreement for the avoidance of double taxation with respect to taxes on income and fortune and various other taxes, and for the regulation of other questions relating to taxation (with Supplementary Protocol, Final Protocol and exchange of letters). Signed at The Hague, on 16 June 1959

Official texts: Dutch and German.

Registered by the Netherlands on 22 March 1967.

PAYS-BAS
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE

Convention tendant à éviter la double imposition en ce qui concerne les impôts sur le revenu, les impôts sur la fortune et divers autre impôts, et à réglementer d'autres questions d'ordre fiscal (avec Protocole additionnel, Protocole final et échange de lettres). Signée à La Haye, le 16 juin 1959

Textes officiels néerlandais et allemand.

Enregistrée par les Pays-Bas le 22 mars 1967.

[TRANSLATION — TRADUCTION]

No. 8576. AGREEMENT¹ BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE FEDERAL REPUBLIC OF GERMANY FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND FORTUNE AND VARIOUS OTHER TAXES, AND FOR THE REGULATION OF OTHER QUESTIONS RELATING TO TAXATION. SIGNED AT THE HAGUE, ON 16 JUNE 1959

The Kingdom of the Netherlands and the Federal Republic of Germany, desiring to avoid double taxation with respect to taxes on income and fortune and various other taxes, and to regulate other questions relating to taxation, have agreed to conclude the following Agreement. For that purpose they have appointed as their plenipotentiaries :

Her Majesty the Queen of the Netherlands :

Dr. J. M. A. H. Luns, Minister for Foreign Affairs,

The President of the Federal Republic of Germany :

Dr. J. Löns, Ambassador Extraordinary and Plenipotentiary at The Hague, who, having exchanged their full powers, found in good and due form, have agreed as follows :

Article 1

(1) This Agreement shall apply to taxes which, under the legislation of each of the Contracting States, are levied either directly on income or fortune or on various other tax bases on behalf of the States or of *Länder*, municipalities or associations of municipalities.

(2) The taxes which are the subject of this Agreement are :

1. In the Federal Republic of Germany :

(a) The income tax (*Einkommensteuer*) (including the wages tax (*Lohnsteuer*), the tax on income from capital (*Kapitalertragsteuer*) and the tax on directors' fees (*Aufsichtsratssteuer*)),

(b) The corporation tax (*Körperschaftsteuer*),

¹ Came into force on 18 September 1960, one month after the exchange of the instruments of ratification, which took place at Bonn on 18 August 1960, in accordance with article 29.

- (c) The Berlin emergency contribution (*Abgabe Notopfer Berlin*),
 - (d) The fortune tax (*Vermögensteuer*),
 - (e) The business tax (*Gewerbsteuer*),
 - (f) The land tax (*Grundsteuer*);
2. In the Kingdom of the Netherlands :
- (a) The income tax (*inkomstenbelasting*),
 - (b) The wages tax (*loonbelasting*),
 - (c) The corporation tax (*vennootschapsbelasting*),
 - (d) The dividends tax (*dividendbelasting*),
 - (e) The tax on directors' fees (*commissarissenbelasting*),
 - (f) The fortune tax (*vermogensbelasting*),
 - (g) The land tax (*grondbelasting*),
 - (h) The local profits tax (local taxes on the increase in value of certain plots of land) (*gemeentelijke baatbelastingen*),
 - (i) The local building plot tax (*gemeentelijke bouwterreinbelastingen*),
 - (j) The road, street and waterway tax (*wegen-, straat- en vaartbelastingen*),
 - (k) The mine tax (*het recht op de mijnen*).
- (3) This Agreement shall apply to any other tax of the same or substantially similar character which may be imposed by either Contracting State after the date of signature of this Agreement.
- (4) The chief financial authorities of the Contracting States shall inform each other of new taxes introduced, of any material changes made in existing taxes covered by this Agreement, or of the abolition of any such taxes.

Article 2

(1) In this Agreement, unless the context otherwise requires :

1. The term " person " means both individuals and bodies corporate, bodies corporate being deemed to include associations and assets liable as such to taxation as bodies corporate, as also the Netherlands *commanditaire vennootschappen op aandelen* (limited partnerships with share capital);

2. The term " permanent establishment " means a fixed place of business in which an enterprise carries on all or part of its activities.

(a) The following, in particular, shall be deemed to be permanent establishments :

(aa) A place of management,

- (bb) A branch,
 - (cc) A business office,
 - (dd) A factory,
 - (ee) A workshop,
 - (ff) A mine, a quarry or any other place where natural resources are worked,

 - (gg) A construction or assembly project, the duration of which exceeds twelve months.
- (b) The following shall not be deemed to constitute a permanent establishment :
- (aa) The use of facilities exclusively for the storage, display or delivery of goods or merchandise belonging to the enterprise;
 - (bb) The maintenance, exclusively for storage, display or delivery, of a stock of goods or merchandise belonging to the enterprise;
 - (cc) The maintenance, exclusively for manufacturing or processing by some other enterprise, of a stock of goods or merchandise belonging to the enterprise;
 - (dd) The maintenance of a fixed place of business exclusively for the purchase of goods and merchandise or for procuring information for the enterprise;
 - (ee) The maintenance of a fixed place of business exclusively for advertising purposes, for the supply of information, for scientific research or for similar activities which are in the nature of preparatory or subsidiary activities for the benefit of the enterprise.
- (c) A person acting in one of the Contracting States for an enterprise of the other Contracting State—other than an independent representative within the meaning of sub-paragraph (d)—shall be deemed to constitute a permanent establishment situated in the first-mentioned State if he has and habitually exercises in that State a general authority to negotiate and conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.
- (d) An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business dealings there through a broker, commission agent or other independent representative acting in the ordinary course of his business as such.
- (e) The fact that a company which is domiciled in one of the Contracting States controls, or is controlled by, a company which is domiciled in the other State or carries on business dealings there (either through a permanent establishment or otherwise) shall not of itself constitute one of the two companies a permanent establishment of the other.

3. The term “ chief financial authority ” means, in the case of the Federal Republic of Germany, the Federal Minister of Finance, and, in the case of the Kingdom of the Netherlands, the Minister of Finance or his authorized representative.

4. The term “ national ” means :

(a) In relation to the Federal Republic of Germany :

All German nationals within the meaning of article 116, paragraph 1, of the Basic Law for the Federal Republic of Germany;

(b) In relation to the Kingdom of the Netherlands :

All Netherlands nationals and, in addition, all Netherlands subjects living in the Netherlands.

A body corporate constituted under the laws in force in either Contracting State shall also be deemed to be a national of that State.

5. The term “ enterprise of one of the Contracting States ” or “ enterprise of the other State ” means, as the context requires, a business enterprise carried on by a person domiciled in the Netherlands or a business enterprise carried on by a person domiciled in the Federal Republic of Germany.

(2) In the application of this Agreement by either Contracting State, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that State relating to the taxes which are the subject of this Agreement.

Article 3

(1) An individual shall be deemed for the purposes of this Agreement to be domiciled in the Contracting State in which he has a dwelling under circumstances justifying the assumption that he will retain and use it.

(2) Where an individual does not possess a dwelling under the circumstances referred to in paragraph (1) in either Contracting State but regularly resides in one of the States, he shall be deemed for the purposes of this Agreement to be domiciled in the State in which he has his regular residence. A person has his regular residence in a State if he resides there under circumstances justifying the assumption that his stay in that State is not merely temporary.

(3) Where an individual may be deemed under the preceding paragraphs to be domiciled in both Contracting States, he shall be deemed for the purposes of articles 4-19 of this Agreement to be domiciled in the State with which he has the closer personal and economic ties (centre of vital interests). If the centre of

vital interests cannot be determined, the chief financial authorities of the Contracting States shall come to an agreement as provided in article 25.

(4) Where an individual has, on land, neither a dwelling under the circumstances referred to in paragraph (1) nor a regular residence within the meaning of paragraph (2), regularly resides on board a ship belonging to a shipping enterprise, he shall be deemed for the purposes of this Agreement to be domiciled in the Contracting State in which the place of management of the shipping enterprise is situated.

(5) A body corporate shall be deemed for the purposes of this Agreement to be domiciled in the Contracting State in which its place of management is situated. If its place of management is not situated in either Contracting State, it shall be deemed to be domiciled in the place where its registered office is situated.

(6) For the purpose of this Agreement, the place of management shall be the place where the centre of actual management of the enterprise is situated. Where the place of management of a shipping enterprise is situated on board a ship, the place of management for the purposes of this Agreement shall be deemed to be the place in which the home port of the ship is situated.

Article 4

(1) Where a person domiciled in one of the Contracting States derives income from immovable property (including accessories thereto) situated in the other State, such income shall be subject to taxation by the latter State.

(2) The provisions of paragraph (1) shall apply both to income derived from the direct administration and use of immovable property (including agricultural and forestry enterprises ancillary thereto) and to income derived from the lease or use in any other form of such property, in particular fixed or variable compensation for the use of natural resources; they shall also apply to income derived from the alienation of immovable property.

(3) Where a person domiciled in one of the Contracting States derives income from claims secured directly or indirectly by mortgages or other charges on immovable property situated in the other State, the said income shall be subject to taxation by the latter State. Such claims shall not be deemed to include bonds, even if the latter are secured by immovable property.

(4) The provisions of paragraphs 1-3 shall also apply to property referred to in those paragraphs which forms part of the assets of a business enterprise.

Article 5

(1) Where a person domiciled in one of the Contracting States derives income, as owner or co-owner, from a business enterprise whose activities extend to the territory of the other State, the said income shall be subject to taxation by the latter State only in so far as it is attributable to a permanent establishment of the enterprise which is situated in its territory.

(2) In this connexion, the income to be attributed to the permanent establishment shall be that which would have accrued to it if it were a separate enterprise engaged in the same or similar activities under the same or similar conditions and carrying on business as an independent enterprise.

(3) The provisions of paragraph (1) shall apply both to income derived from the direct administration and use of the business enterprise and to income derived from the lease or use in any other form thereof; they shall also apply to income derived from the alienation of a business as a whole, of a share in the enterprise, of a part of the business or of an object used in the business.

Article 6

(1) Where an enterprise of one of the Contracting States, by virtue of its participation in the management or financial structure of an enterprise of the other State, arranges with or imposes upon that enterprise economic or financial conditions differing from those which would be arranged with an independent enterprise, any income which would normally have accrued to one of the two enterprises but which by reason of those conditions has not so accrued may be included in the income of that enterprise and taxed accordingly.

(2) The provisions of paragraph (1) shall apply *mutatis mutandis* to the relationship between two enterprises in whose management or assets the same person participates directly or indirectly.

Article 7

(1) Where a person domiciled in one of the Contracting States derives income, as owner or co-owner, from a shipping, inland waterways transport or air transport enterprise having its place of management in one of the Contracting States, income directly connected with the shipping, inland waterways transport or air transport operations shall be subject to taxation only by the State in which the place of management is situated, even if the enterprise has a permanent establishment in the other State.

(2) So long as the Contracting State in which the place of management is situated fails to exercise its right to tax a person domiciled in the other State, the latter State shall be entitled to exercise that right.

Article 8

(1) Where a person domiciled in one of the Contracting States derives income from the disposal of an interest in a joint-stock company domiciled in the other State, the said income shall be subject to taxation by the former State.

(2) The provisions of paragraph (1) shall not apply where a person domiciled in one of the Contracting States has a permanent establishment in the other State and the income accrues to him through that establishment. In this case the income shall be subject to taxation by the latter State.

Article 9

(1) Where a person domiciled in one of the Contracting States derives income from present or past self-employment in the other State, the said income shall be subject to taxation by the latter State.

(2) A person shall not be deemed to be self-employed in the other State unless in the exercise of his occupation he makes use of permanent facilities regularly available to him there. This restriction shall not, however, apply to self-employment in the case of artistes, performers, athletes or entertainers.

(3) The provisions of article 5, paragraph (3), shall apply as appropriate.

(4) Where an individual domiciled in one of the Contracting States receives fees as a member of a board of directors or a non-managing member of a similar organ from a body corporate domiciled in the other State, the said fees shall be subject to taxation by the latter State.

Article 10

(1) Where an individual domiciled in one of the Contracting States derives income from employment in the other State, the said income shall be subject to taxation by the latter State.

(2) Notwithstanding paragraph (1), income derived from employment shall be taxable solely in the Contracting State in which the employed person is domiciled if:

1. He is present in the other State temporarily, for a total of not more than 183 days in one calendar year;
2. The remuneration for his work during that time is paid by an employer who is not domiciled in the other State; and

3. The remuneration for his work is not charged against a permanent establishment or fixed base which the employer has in the other State.

(3) Where an individual's services are performed exclusively or predominantly on board a ship or aircraft of a shipping or air transport enterprise, they shall be deemed to have been performed in the Contracting State in which the place of management of the enterprise is situated. So long as the latter State does not tax the income derived from such services, the State of domicile shall be entitled to do so.

Article 11

(1) Where an individual domiciled in one of the Contracting States derives income in the form of wages, salaries or similar remuneration paid by one of the two States or by *Länder*, provinces, municipalities or associations of municipalities or other public corporations of one of the two States, the said income shall be subject to taxation by the State from whose public funds it is paid. If, however, such individual is a national of the State of domicile without at the same time being a national of the State from whose public funds the income is paid, and his activity is exercised in the State of domicile, then the said income shall be subject to taxation by the State of domicile.

(2) Remuneration for services rendered in connexion with a business carried on for profit by either Contracting State or by another public corporation shall be subject to the provisions of article 10.

Article 12

(1) Where an individual domiciled in one of the Contracting States receives half pay, a retirement, widow's or orphan's pension, or other payments or benefits in money's worth in respect of past services, such income shall be subject to taxation by the State of domicile.

(2) Notwithstanding the provisions of paragraph (1), half pay, retirement, widows' or orphans' pensions or other payments or benefits in money's worth paid in respect of past services by one of the two States or by *Länder*, provinces, municipalities or associations of municipalities or other public corporations of one of the two States to employees or their survivors, either direct or through a public agency established for that purpose, shall be subject to taxation by that State.

(3) The provisions of paragraph (2) shall also apply in respect of :

1. Payments made under a statutory social insurance scheme;
2. Pensions, life annuities and other recurrent or non-recurrent payments made by one of the Contracting States or by a public or private corporation of such State as compensation for damage resulting from military action or political persecution.

Article 13

(1) Dividends received by a person domiciled in one of the Contracting States from the other State shall be subject to taxation by the State of domicile.

(2) To the extent that in the other Contracting State the tax on income from capital is collected by deduction (at the source), the right to make such tax deductions shall not be affected.

(3) Tax deducted as provided in paragraph (2) shall not exceed 15 per cent of the dividends.

(4) Tax deducted as provided in paragraph (2) shall not, however, exceed 10 per cent of the dividends if these are paid by a joint-stock company domiciled in one of the Contracting States to a joint-stock company domiciled in the other State and holding at least 25 per cent of the voting shares of the first-mentioned company.

(5) The provisions of paragraphs (1) to (4) shall not apply where a person domiciled in one of the Contracting States has a permanent establishment in the other State and realizes the income through that establishment. In this case the income shall be subject to taxation by the latter State.

Article 14

(1) Where a person domiciled in one of the Contracting States receives interest from the other State, such interest shall be subject to taxation by the State of domicile.

(2) The provisions of paragraph (1) shall not apply where a person domiciled in one of the Contracting States has a permanent establishment in the other State and realizes the income through that establishment. In this case the income shall be subject to taxation by the latter State.

(3) The term "income" as used in this article means income from loans, bonds, bills of exchange and debt-claims of any other kind, with the exception of income covered by article 4, paragraph (3). Income derived from convertible bonds and participating debentures shall be subject to the provisions of article 13, paragraphs (1), (2), (3) and (5).

Article 15

(1) Where a person domiciled in one of the Contracting States derives from the other State income from royalties or other remuneration paid as consideration

for the use of or for the right to use copyrights, patents, registered designs, manufacturing processes, trade marks, or similar rights (other than rights pertaining to the exploitation of natural resources), such income shall be subject to taxation by the State of domicile.

(2) The provisions of paragraph (1) shall also apply to income derived from the alienation of the rights referred to therein.

(3) Rentals and like payments for the hire of cinematograph films, for the use of industrial, commercial or scientific equipment or for industrial information shall be treated as royalties.

(4) The provisions of paragraphs (1) and (2) shall not apply where a person domiciled in one of the Contracting States has a permanent establishment in the other State and realizes the income through that establishment. In this case the income shall be subject to taxation by the latter State.

Article 16

Where a person domiciled in one of the Contracting States receives income in respect of which no provision is made in the preceding articles, such income shall be subject to taxation by the State of domicile.

Article 17

Professors or teachers domiciled in one of the Contracting States who receive remuneration, during a period of temporary residence not exceeding two years, for teaching at a university, college, school or other educational establishment in the other State shall be taxed in respect of such remuneration only by the State of domicile.

Article 18

A student, business or other apprentice or unsalaried trainee from one of the Contracting States who is present in the other State for the sole purpose of education or training shall not be taxed by the latter State in respect of payments which he receives for his maintenance, education or training, provided that such payments are made to him from sources outside that State.

Article 19

(1) Where the fortune of a person domiciled in one of the Contracting States consists of :

- (a) Immovable property (including accessories thereto),
 - (b) Claims secured by mortgages or other charges on immovable property,
 - (c) Property used by business enterprises, including shipping, inland waterways transport or air transport enterprises,
 - (d) Property used by a self-employed person in the exercise of his occupation,
- it shall be subject to taxation by the State which is entitled under this Agreement to tax the income derived therefrom.

(2) Other fortune owned by a person domiciled in one of the Contracting States shall be subject to taxation by that State.

Article 20

(1) Income or elements of fortune which under the preceding articles are subject to taxation by the State of domicile shall not be taxed by the other State. The foregoing shall be without prejudice to the provisions of article 13, paragraph (2), and article 14, paragraph (3), second sentence.

(2) If the Federal Republic of Germany is the State of domicile, it shall exclude from the tax base any income and fortune which under the preceding articles are subject to taxation by the Netherlands. Nevertheless, taxes on income or elements of fortune subject to taxation by the Federal Republic of Germany shall be levied at the rate applicable to the taxpayer's total income or total fortune. Notwithstanding the first sentence of this paragraph, dividends (other than those referred to in article 13, paragraph (4)) and interest on convertible bonds and participating debentures shall not be excluded from the tax base; Netherlands tax which is deducted from such income shall be credited against the taxes levied on this income by the Federal Republic of Germany, the latter taxes being computed on the basis of an average rate of tax.

(3) If the Netherlands is the State of domicile, it shall be entitled to include in the tax base income and elements of fortune which under the preceding articles are subject to taxation by the Federal Republic of Germany; however, the Netherlands, subject to its domestic regulations concerning the avoidance of double taxation with respect to the compensation of losses, shall deduct from the tax thus computed the portion thereof attributable to income and fortune which under articles 4, 5, 6, 7, 8, paragraph (2), 9, 10, paragraph (1), 11, 12, paragraphs (2) and (3), 13, paragraph (5), 14, paragraph (2), 15, paragraph (4), and 19, paragraph (1), are subject to taxation by the Federal Republic of Germany. The tax to be deducted shall be computed on the basis of the ratio of the income

or fortune subject to taxation by the Federal Republic of Germany, under the articles mentioned in the preceding sentence, to the total income or total fortune.

Article 21

This Agreement shall not affect claims to any additional exemptions to which diplomatic or consular officials may be entitled under the general rules of international law or by virtue of special agreements. Where, owing to such additional exemptions, income and fortune are not taxed in the receiving State, the right of taxation shall be reserved to the sending State.

Article 22

(1) When a person domiciled in one of the Contracting States shows proof that the action of the taxation authorities of the Contracting States has resulted in his case in double taxation contrary to the provisions of this Agreement, he may, without prejudice to such legal remedies as may be open to him under national law, apply to the chief financial authority of the Contracting State in which he is domiciled or of which he is a national.

(2) If the objection is considered to be justified, the chief financial authority competent under paragraph (1) shall endeavour to come to an agreement with the chief financial authority of the other State with a view to the avoidance of double taxation.

Article 23

(1) The chief financial authorities of the Contracting States shall exchange such information as is necessary for carrying out this Agreement and, in particular, for preventing tax evasion. The chief financial authorities may refuse information which cannot be given on the basis of data at the disposal of the financial authorities but would necessitate extensive inquiries.

(2) Information communicated to the chief financial authorities in accordance with this article shall be treated as secret but may be disclosed to persons who are statutorily concerned with the assessment or collection of the taxes which are subject to this Agreement. Such persons shall be under the same obligation as the chief financial authorities.

(3) In no case shall the provisions of paragraph (1) be so construed as to impose on either State the obligation :

(a) To carry out administrative measures at variance with the regulations or administrative practice of the two Contracting States;

- (b) To supply particulars which are not obtainable under the laws of the Contracting States.
- (4) No information may be given which would disclose a business or professional secret.
- (5) Information may be refused for reasons of public policy.

Article 24

(1) Nationals of one of the Contracting States shall not be subjected in the other State to any taxation other or higher than that to which the nationals of the latter State are subjected in similar circumstances. The same provision shall apply as regards the extent of any tax allowances, reliefs and reductions granted on the basis of marital status or family circumstances.

(2) Enterprises carried on by a person domiciled in one of the Contracting States shall not as a general rule be subjected, in respect of their permanent establishments in the other Contracting State to any tax mentioned in article 1 of this Agreement or to any requirement connected therewith which is other, higher or more burdensome than the taxes or connected requirements to which enterprises carried on by a person domiciled in the other Contracting State are subjected.

Article 25

(1) In dealing with matters arising out of this Agreement, the chief financial authorities of the Contracting States may enter into direct contact with each other.

(2) Where any difficulty or doubt arises in the interpretation or application of this Agreement, or where any hardship occurs through double taxation in cases for which the Agreement does not provide, the chief financial authorities shall settle the matter by arrangement between them. They shall consult each other before issuing any regulations for giving effect to this Agreement.

Article 26

(1) This Agreement shall also apply to *Land Berlin* unless the Government of the Federal Republic of Germany notifies the Government of the Kingdom of the Netherlands to the contrary within three months after its entry into force.

(2) In the application of this Agreement to *Land Berlin*, any reference to the Federal Republic of Germany shall be deemed also to be references to *Land Berlin*.

Article 27

(1) So far as the Kingdom of the Netherlands is concerned, this Agreement shall apply only to that part of the Kingdom which is situated in Europe.

(2) This Agreement may be extended, either in its entirety or with modifications, to any part of the Kingdom of the Netherlands outside Europe which imposes taxes which are substantially identical with or similar to those specified in article 1 of this Agreement, if such part of the Kingdom of the Netherlands so desires and the Federal Republic of Germany gives its consent. The Kingdom of the Netherlands and the Federal Republic of Germany shall exchange notes for that purpose. They shall specify in such notes the modifications and conditions (including conditions as to entry into force and termination) subject to which the Agreement shall apply.

Article 28

(1) This Agreement shall apply to taxes levied for periods subsequent to 31 December 1955.

(2) By way of exception to paragraph 1, the tax deduction maximum provided for in article 13, paragraph (3), shall apply to dividends paid after 31 December 1957.

Article 29

(1) This Agreement shall be ratified; the instruments of ratification shall be exchanged as soon as possible at Bonn.

(2) This Agreement shall enter into force one month after the exchange of the instruments of ratification and shall continue in force until notice of termination is given by one of the Contracting States. Where such notice is given not less than six months before the end of a calendar year, the Agreement shall cease to have effect on 1 January of the next following year; otherwise it shall cease to have effect on 1 January of the second year following the year of notice. Notice of termination may not be given to take effect earlier than 1 January 1962.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Agreement and have thereto affixed their seals.

DONE at The Hague on 16 June 1959 in duplicate in the Dutch and German languages, both texts being equally authentic.

For the Kingdom
of the Netherlands :

J. LUNS

For the Federal Republic
of Germany :

J. LÖNS

SUPPLEMENTARY PROTOCOL CONCERNING THE APPLICATION
TO NON-RECURRENT LEVIES ON FORTUNE OF THE AGREE-
MENT BETWEEN THE FEDERAL REPUBLIC OF GERMANY
AND THE KINGDOM OF THE NETHERLANDS FOR THE AVOID-
ANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON
INCOME AND FORTUNE AND VARIOUS OTHER TAXES, AND
FOR THE REGULATION OF OTHER QUESTIONS RELATING
TO TAXATION

With a view to the avoidance of double taxation in respect of non-recurrent levies on fortune (excluding inheritance tax) which have been introduced and have come into effect, or which may be introduced and come into effect, in one of the Contracting States during the period 1 January 1948 to 31 December 1959, the Federal Republic of Germany and the Kingdom of the Netherlands have come to the following arrangement, which constitutes a supplement to the Agreement between the Federal Republic of Germany and the Kingdom of the Netherlands for the avoidance of double taxation with respect to taxes on income and fortune and various other taxes, and for the regulation of other questions relating to taxation :

1. Subject to the provisions of paragraphs 2 and 3 hereunder, article 19 of the Agreement shall apply *mutatis mutandis* to non-recurrent levies on fortune.

2. The right of taxation of the Federal Republic of Germany shall remain unaffected in respect of property in the Kingdom of the Netherlands owned by a person who on the effective date of the levy did not or does not possess Netherlands nationality and was or is domiciled, within the meaning of the Agreement, in the Federal Republic of Germany; the right of taxation shall also remain unaffected in cases where an individual possessed or possesses Netherlands nationality in addition to German nationality.

3. The right of taxation of the Kingdom of the Netherlands shall remain unaffected in respect of property in the Federal Republic of Germany owned by a person who on the effective date of the levy did not or does not possess German nationality and was or is domiciled, within the meaning of the Agreement, in the Kingdom of the Netherlands; the right of taxation shall also remain unaf-

fects in cases where an individual possessed or possesses German nationality in addition to Netherlands nationality.

4. The provisions of the Supplementary Protocol shall not, except upon request, apply to levies already in effect on the date of entry into force of the said Protocol. A request for this purpose must be made within a period of three years after the date of such entry into force. This period may not be extended.

This Supplementary Protocol shall constitute an integral part of the Agreement.

DONE at The Hague on 16 June 1959 in duplicate in the Dutch and German languages, both texts being equally authentic.

For the Kingdom
of the Netherlands :

J. LUNS

For the Federal Republic
of Germany :

J. LÖNS

FINAL PROTOCOL

On signing the Agreement between the Federal Republic of Germany and the Kingdom of the Netherlands for the avoidance of double taxation with respect to taxes on income and fortune and various other taxes, and for the regulation of other questions relating to taxation, the undersigned plenipotentiaries have made an identical declaration in the following terms, such declaration constituting an integral part of the Agreement :

Ad Article 1

1. Except as otherwise provided in the Supplementary Protocol, the Agreement shall not apply to non-recurrent taxes on fortune or on capital gains.

2. If any doubts arise with respect to the future taxes to which the Agreement shall apply, the chief financial authorities of the Contracting States shall consult together with a view to interpreting or modifying the Agreement as may be considered necessary.

Ad Article 2

3. A joint railway station or interchange station established in one of the Contracting States by virtue of an agreement between the two Contracting States shall not be treated as a permanent establishment of a railway enterprise of the other Contracting State.

Ad Article 4

4. Article 4 shall also apply to rights which are governed by the provisions of the civil law of the Contracting States relating to immovable property.

5. Income derived from the alienation of immovable property shall be deemed to include income derived from the alienation of an agricultural or forestry enterprise and speculative profits accruing from the alienation of immovable property. Annuities paid as consideration for the alienation of immovable property may be taxed only in the Contracting State in which the annuitant is domiciled.

Ad Article 5

6. The income derived from the activities of a permanent establishment shall in principle be determined, for the purposes of article 5, paragraph (2), from the balance-sheet of the permanent establishment. In this connexion, account shall be taken of all expenditure which is attributable to the permanent establishment including a share in the executive and general administrative expenses of the enterprise but excluding artificial transfers of profits and, in particular, interest or royalties agreed upon between permanent establishments of the same enterprise.

7. In special cases, the determination of income for the purposes of article 5, paragraph (2), may be effected by dividing up the total profits of the enterprise. The financial authorities of the Contracting States shall reach agreement as soon as possible, where such agreement is necessary for the apportionment of income in any particular case.

8. Article 5, paragraph (1), shall apply *mutatis mutandis* to business tax which is levied on a tax base other than income.

Ad Articles 5, 7 and 13

9. A sleeping partner shall be treated as an owner if his participation carries with it a share in the property of the enterprise. Where this is not the case, income derived from participation as a sleeping partner shall be treated as dividends (article 13).

10. The possession of shares, mining shares (*Kuxe*), share certificates or similar securities, of shares in co-operative societies or private limited companies (*Gesellschaften mit beschränkter Haftung*), or of share certificates of an investment trust (*Kapitalanlagegesellschaft*), shall not constitute the possessor an owner or co-owner of the enterprise. Income derived from such securities and shares shall be treated as dividends (article 13).

Ad Article 7

11. Article 7 shall also apply where the enterprise operates with chartered vessels or aircraft. It shall likewise apply to agencies, in so far as the activities of the agency are directly connected with the operation of the enterprise or with its feeder services.

12. Article 7 shall also apply to participation of shipping, inland waterways transport or air transport enterprises in a pool or a joint operating organization.

13. Article 7, paragraph (1), shall apply *mutatis mutandis* to business tax which is levied on a tax base other than income.

Ad Article 10

14. The term "income from employment" means salaries, emoluments, wages, directors' fees, bonuses or other payments, benefits in money's worth and compensation paid to individuals in connexion with their employment.

15. Where the employer is a partnership, the domicile for the purposes of article 10, paragraph (2), sub-paragraph 2, shall be deemed to be the place of management.

16. Article 10, paragraph (1), shall not apply to students engaging in paid employment at an enterprise in the other State for not more than 183 days in one calendar year in order to receive necessary practical training.

Ad Article 11

17. Wages, salaries and similar remuneration paid by the Deutsche Bundespost (German Federal Post Office), the Deutsche Bundesbahn (German Federal Railways), the Deutsche Bundesbank (German Federal Bank), the Nederlandsche Spoorwegen (Netherlands Railways), the Staatsbedrijf der PTT (State Postal, Telegram and Telegraph Service) and the Nederlandsche Bank shall be governed by the provisions of article 11, paragraph (1), and not by the provisions of article 11, paragraph (2).

Ad Article 13

18. If in the Federal Republic of Germany the rate of corporation tax on distributed profits is less than the rate of tax on undistributed profits, the following arrangement shall apply for the purposes of article 13, paragraph (4) :

- (a) If the difference is 10 per cent or more, the tax deducted in the Federal Republic of Germany may not exceed 15 per cent of the dividends;
- (b) If the difference is 20 per cent or more, the tax deducted in the Federal Republic of Germany from dividends paid after 31 December 1958 may not exceed 25 per cent.

Ad Article 15

19. Where a contract provides for the payment of royalties or for other payments which are in fact concealed distributions of profits, the provisions of article 13 shall apply.

Ad Article 23

20. The obligation of the chief financial authorities to provide information shall not apply to information obtained by such authorities from banks or equivalent institutions.

DONE at The Hague on 16 June 1959 in duplicate in the Dutch and German languages, both texts being equally authentic.

For the Kingdom
of the Netherlands

J. LUNS

For the Federal Republic
of Germany :

J. LÖNS

EXCHANGE OF LETTERS

I

EMBASSY OF THE FEDERAL REPUBLIC OF GERMANY

THE HAGUE

The Hague, 16 June 1959

Sir,

On the occasion of the signing, under today's date, of the Agreement between the Federal Republic of Germany and the Kingdom of the Netherlands for the avoidance of double taxation with respect to taxes on income and fortune, as well as various other taxes, and for the regulation of other fiscal matters, I have the honour to inform you on behalf of the Government of the Federal Republic of Germany of its understanding that the Agreement signed today supersedes the Agreement signed on 18 August 1958.

I should be most grateful if you would confirm that your Government agrees with this understanding and that, in these circumstances, ratification of the Agreement signed on 18 August 1958 should not be proceeded with further.

Accept, Sir, etc.

J. LÖNS

His Excellency Dr. J. M. A. H. Luns
Minister for Foreign Affairs
The Hague

II

MINISTRY OF FOREIGN AFFAIRS

The Hague, 16 June 1959

Sir,

I have the honour to acknowledge receipt of your letter of today's date, reading as follows :

[See letter I]

I have the honour to inform you that the Netherlands Government agrees with the understanding of the Government of the Federal Republic of Germany.

Accept, Sir, etc.

J. LUNS

His Excellency Dr. J. Löns
Ambassador Extraordinary and Plenipotentiary
of the Federal Republic of Germany
The Hague
