

No. 10089

NETHERLANDS
and
LUXEMBOURG

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and fortune (with protocol). Signed at The Hague on 8 May 1968

Authentic texts: Dutch and French.

Registered by the Netherlands on 1 December 1969.

PAYS-BAS
et
LUXEMBOURG

Convention tendant à éviter les doubles impositions et à prévenir l'évasion fiscale en matière d'impôts sur le revenu et sur la fortune (avec protocole). Signé à La Haye le 8 mai 1968

Textes authentiques : néerlandais et français.

Enregistré par les Pays-Bas le 1^{er} décembre 1969.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE KINGDOM OF THE
NETHERLANDS AND THE GRAND DUCHY OF
LUXEMBOURG FOR THE AVOIDANCE OF DOUBLE
TAXATION AND THE PREVENTION OF FISCAL EVA-
SION WITH RESPECT TO TAXES ON INCOME AND
FORTUNE

Her Majesty the Queen of the Netherlands and

His Royal Highness the Grand Duke of Luxembourg,

Desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and fortune, have appointed as their Plenipotentiaries:

Her Majesty the Queen of the Netherlands:

His Excellency Mr. J. M. A. H. Luns, Minister for Foreign Affairs;

His Royal Highness the Grand Duke of Luxembourg:

His Excellency Mr. Paul Reuter, Ambassador Extraordinary and Plenipotentiary;

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

CHAPTER I

SCOPE OF THE CONVENTION

Article 1

PERSONAL SCOPE

This Convention shall apply to persons who are residents of one or both of the two States.

¹ Came into force on 20 October 1969 by the exchange of the instruments of ratification, which took place at Luxembourg, in accordance with article 31 (1).

Article 2

TAXES COVERED

1. This Convention shall apply to taxes on income and on fortune imposed on behalf of each State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on fortune all taxes imposed on total income, on total fortune, or on elements of income or of fortune, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are, in particular:

a. In the case of the Netherlands:

- The income tax (*inkomstenbelasting*);
- The wages tax (*loonbelasting*);
- The corporation tax (*vennootschapsbelasting*);
- The dividends tax (*dividendbelasting*);
- The tax on directors' fees (*commissarissenbelasting*);
- The fortune tax (*vermogensbelasting*);
- The land tax (*grondbelasting*);

b. In the case of Luxembourg:

- The income tax (*l'impôt sur le revenu des personnes physiques*);
- The corporation tax (*l'impôt sur le revenu des collectivités*);
- The special tax on directors' fees (*l'impôt spécial sur les tantièmes*);
- The fortune tax (*l'impôt sur la fortune*);
- The communal business tax (*l'impôt commercial communal*) [including the payroll tax (*l'impôt sur le total des salaires*)];
- The land tax (*l'impôt foncier*).

4. The Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes. The competent authorities of the States shall notify each other of any substantial changes in their respective taxation laws.

CHAPTER II

DEFINITIONS

Article 3

GENERAL DEFINITIONS

1. In this Convention, unless the context otherwise requires:

a. The term “State” means the Netherlands or Luxembourg as the context requires; the term “States” means the Netherlands and Luxembourg;

b. The term “The Netherlands” comprises the part of the Kingdom of the Netherlands that is situated in Europe and the part of the seabed and its subsoil under the North Sea over which the Kingdom of the Netherlands has sovereign rights; in accordance with the Convention on the Continental Shelf, concluded at Geneva on 29 April 1958 ¹;

c. The term “Luxembourg” means the Grand Duchy of Luxembourg;

d. The term “person” comprises an individual and a company;

e. The term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;

f. The terms “enterprise of one of the States” and “enterprise of the other State” mean respectively an enterprise carried on by a resident of one of the States and an enterprise carried on by a resident of the other State;

g. The term “competent authority” means:

1. In the Netherlands: the Minister of Finance or his duly authorized representative;
2. In Luxembourg: the Minister of the Treasury or his duly authorized representative.

2. As regards the application of the Convention by either of the States, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that State relating to the taxes which are the subject of the Convention.

¹ United Nations, *Treaty Series*, vol. 499, p. 311.

Article 4

FISCAL DOMICILE

1. For the purposes of this Convention, the term “resident of one of the States” means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

2. For the purposes of this Convention, an individual who is a member of a diplomatic or consular mission of one of the States in the other State or in a third State and who is a national of the sending State shall be deemed to be a resident of the sending State if he is subjected in that State to the same requirements with respect to taxes on income and fortune as residents of that State.

3. Where by reason of the provisions of paragraph 1 an individual is a resident of both States, then this case shall be determined in accordance with the following rules:

- a.* He shall be deemed to be a resident of the 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 of the State with which his personal and economic relations are closest (centre of vital interests);
- b.* If the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- c.* If he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- d.* If he is a national of both States or of neither of them, the competent authorities of the States shall settle the question by mutual agreement.

4. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term “permanent establishment” means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2. The term “permanent establishment” shall include especially:

- a.* A place of management;
- b.* A branch;
- c.* An office;
- d.* A factory;
- e.* A workshop;
- f.* A mine, quarry or other place of extraction of natural resources;
- g.* A building site or construction or assembly project which exists for more than six months.

3. The term “permanent establishment” shall not be deemed 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 for collecting information, for the enterprise;
- e.* The maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. A person acting in one of the States on behalf of an enterprise of the other State—other than an agent of an independent status to whom paragraph 5 applies—shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

5. An enterprise of one of the States shall not be deemed to have a permanent establishment in the other State merely because it carries on business in that other State through a broker, general commission agent or any other agent

of an independent status, where such persons are acting in the ordinary course of their business.

6. The fact that a company which is a resident of one of the States controls or is controlled by a company which is a resident of the other 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.

CHAPTER III

TAXATION OF INCOME

Article 6

INCOME FROM IMMOVABLE PROPERTY

1. Income from immovable property may be taxed in the State in which such property is situated.

2. The term “immovable property” shall be defined in accordance with the law of the 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, and debt-claims of every kind (other than bonds or debentures) secured by mortgage on immovable property; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 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 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

Article 7

BUSINESS PROFITS

1. The profits of an enterprise of one of the States shall be taxable only in that State unless the enterprise carries on business in the other 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. Where an enterprise of one of the States carries on business in the other State through a permanent establishment situated therein, there shall in each 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 the determination of 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 State in which the permanent establishment is situated or elsewhere.

4. In so far as it has been customary in one of the States to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles laid down in this article.

5. 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.

6. 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.

7. Where profits include items of income 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, INLAND WATERWAYS TRANSPORT AND AIR TRANSPORT

1. Profits from the operation of ships or aircraft in international traffic may be taxed in the State in which the place of effective management of the enterprise is situated.

2. Profits from the operation of boats engaged in inland waterways transport may be taxed in the State in which the place of effective management of the enterprise is situated.

3. If the place of effective management of a shipping enterprise or of an inland waterways transport enterprise is aboard a ship or boat, then it shall be deemed to be situated in the State in which the home harbour of the ship or boat is situated, or, if there is no such home harbour, in the State of which the operator of the ship or boat is a resident.

Article 9

ASSOCIATED ENTERPRISES

Where

- a.* An enterprise of one of the States participates directly or indirectly in the management, control or capital of an enterprise of the other State, or
- b.* The same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the States and an enterprise of the other 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.

Article 10

DIVIDENDS

1. Dividends paid by a company which is a resident of one of the States to a resident of the other State shall be taxable only in that other State.

2. The provisions of paragraph 1 shall not affect the right of either of the States to impose a tax on dividends paid by a company which is a resident of that State to a resident of the other State.

However, the rate of the tax shall not exceed:

- a.* 2½ per cent of the gross amount of the dividends if the recipient is a company the capital of which is wholly or partly divided into shares or corporate rights assimilated to shares by the taxation law of that other

- State and which holds directly at least 25 per cent of the capital of the company paying the dividends;
- b. In all other cases, 15 per cent of the gross amount of the dividends.
3. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraph 2.
4. The provisions of paragraphs 1 and 2 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
5. The term "dividends" as used in this article means income from shares, *iouissance* shares or *jouissance* rights, mining shares, founders' shares or other rights participating in profits, as well as income from debt-claims carrying a right to participate in profits and income from other corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident.
6. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of one of the States, has in the other State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of article 7 shall apply.
7. Where a company which is a resident of one of the States derives profits or income from the other State, that other State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.
8. Not later than five years after the date of the entry into force of this Convention, the competent authorities of the States shall consult together to study the desirability of a change in the rate referred to in paragraph 2 (a) of this article.

Article 11

INTEREST

1. Interest arising in one of the States and paid to a resident of the other State shall be taxable only in that other State.
2. The competent authorities of the States shall by mutual agreement settle the manner in which the State wherein the interest arises shall forgo its taxation.

3. The term “interest” as used in this article means income from government securities, bonds or debentures and debt-claims of every kind, as well as all other income assimilated to income from money lent by the taxational law of the State in which the income arises. However, the term does not, include income from the debt-claims referred to in article 6, paragraph 2, or income from the debt-claims carrying a right to participate in profits referred to in article 10, paragraph 5.

4. The provisions of paragraph 1 shall not apply if the recipient of the interest, being a resident of one of the States, has in the other State in which the interest arises a permanent establishment with which the debt-claim from which the interest arises is effectively connected. In such a case, the provisions of article 7 shall apply.

5. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each State, due regard being had to the other provisions of this Convention.

Article 12

ROYALTIES

1. Royalties arising in one of the States and paid to a resident of the other State shall be taxable only in that other State.

2. The competent authorities of the States shall by mutual agreement settle the manner in which the State wherein the royalties arise shall forgo its taxation.

3. 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 the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraph 1 shall not apply if the recipient of the royalties, being a resident of one of the States, has in the other State in which the royalties arise a permanent establishment with which the right or property

giving rise to the royalties is effectively connected. In such a case, the provisions of article 7 shall apply.

5. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each State, due regard being had to the other provisions of this Convention.

Article 13

LIMITATION OF ARTICLES 10, 11 AND 12

International organizations, their organs and officials and members of diplomatic or consular missions of third States who are in the territory of one of the States shall not be entitled in the other State to the tax reductions or exemptions provided for in articles 10, 11 and 12 in respect of dividends, interest and royalties arising in that other State if such income is not subjected to income tax in the first-mentioned State.

Article 14

CAPITAL GAINS

1. Gains from the alienation of immovable property, as defined in article 6, paragraph 2, may be taxed in the State in which such property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of one of the States has in the other State or of movable property pertaining to a fixed base available to a resident of one of the States in the other State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State.

3. Notwithstanding the provisions of paragraph 2, gains from the alienation of ships and aircraft operated in international traffic and boats engaged in inland waterways transport, and of movable property pertaining to the operation of such ships, aircraft and boats, may be taxed in the State in which the place of effective management of the enterprise is situated, due regard being had to the provisions of article 8, paragraph 3.

4. Gains from the alienation of any property other than those mentioned in the preceding paragraphs shall be taxable only in the State of which the alienator is a resident.

5. The provisions of paragraph 4 shall not affect the right of either of the States to levy, according to its own law, a tax on gains from the alienation of shares, *jouissance* shares or *jouissance* or other rights in a company which is a resident of that State and the capital of which is wholly or partly divided into shares or corporate rights assimilated to shares by the taxation law of that State, where such gains are realized by an individual who is a resident of the other State, who is a national of the first-mentioned State but not a national of the other State, and who has been a resident of the first-mentioned State during the five years immediately preceding the alienation. However, the rate of the tax shall not exceed 20 per cent.

Article 15

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of one of the State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

2. The term "professional services" includes, especially, independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 16

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of articles 17, 19 and 20, salaries, wages and other similar remuneration derived by a resident of one of the States in respect of an employment shall be taxable only in that State unless the employment is exercised in the other 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, remuneration derived by a resident of one of the States in respect of an employment exercised in the other 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 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 or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this article, remuneration derived by a resident of one of the States in respect of an employment exercised aboard a ship or aircraft in international traffic, or aboard a boat engaged in inland waterways transport, shall be taxable only in that State.

Article 17

DIRECTORS' FEES

1. Directors' fees and similar payments derived by a resident of the Netherlands in his capacity as a member of the board of directors of a company which is a resident of Luxembourg may be taxed in Luxembourg.

2. Directors' fees and similar payments derived by a resident of Luxembourg in his capacity as a *bestuurder* or *commissaris* of a company which is a resident of the Netherlands may be taxed in the Netherlands.

Article 18

ARTISTS AND ATHLETES

Notwithstanding the provisions of articles 15 and 16, income derived by public entertainers, such as theatre, motion picture, radio or television artists, and musicians, and by athletes, from their personal activities as such may be taxed in the State in which these activities are exercised.

Article 19

PENSIONS

Subject to the provisions of article 20, paragraph 1, pensions and other similar remuneration paid to a resident of one of the States in consideration of past employment shall be taxable only in that State.

Article 20

GOVERNMENTAL FUNCTIONS

1. Remuneration, including pensions, paid by, or out of funds created by, one of the States or a political subdivision, local authority or other public corporation thereof to any individual in respect of services rendered to that State or subdivision, local authority or other public corporation thereof in the discharge of functions of a governmental nature may be taxed in that State.

2. However, the provisions of articles 16, 17 and 19 shall apply to remuneration or pensions in respect of services rendered in connexion with any trade or business carried on by one of the States or a political subdivision, local authority or other public corporation thereof.

Article 21

OTHER ITEMS OF INCOME

Items of income of a resident of one of the States other than those to which the provisions of the preceding articles of this Convention apply shall be taxable only in that State.

CHAPTER IV

TAXATION OF FORTUNE

Article 22

1. Fortune represented by immovable property, as defined in article 6, paragraph 2, may be taxed in the State in which such property is situated.

2. Fortune represented by movable property forming part of the business property of a permanent establishment of an enterprise, or by movable property pertaining to a fixed base used for the performance of professional services, may be taxed in the State in which the permanent establishment or fixed base is situated.

3. Ships and aircraft operated in international traffic and boats engaged in inland waterways transport, and movable property pertaining to the operation of such ships, aircraft and boats, may be taxed in the State in which the place of effective management of the enterprise is situated, due regard being had to the provisions of article 8, paragraph 3.

4. All other elements of fortune of a resident of one of the States shall be taxable only in that State.

CHAPTER V

METHODS FOR ELIMINATION OF DOUBLE TAXATION

Article 23

1. The Netherlands, when imposing tax on its residents, may include in the basis upon which such tax is imposed the items of income or fortune which according to the provisions of this Convention may be taxed in Luxembourg.

2. Without prejudice to the application of the provisions concerning the compensation of losses in the unilateral regulations for the avoidance of double taxation, the Netherlands shall allow a deduction from the amount of tax computed in conformity with paragraph 1 of this article equal to the part of that tax which bears the same proportion to the aforesaid tax as the total income or fortune which may be taxed in Luxembourg according to articles 6, 7, 8, 9, 10 (paragraph 6), 11 (paragraph 4), 12 (paragraph 4), 14 (paragraphs 1, 2 and 3), 15, 16 (paragraph 1), 17 (paragraph 1), 18, 20 and 22 (paragraphs 1, 2 and 3) of this Convention bears to the total income or fortune which forms the basis referred to in paragraph 1 of this article.

The Netherlands shall allow a deduction from the tax so computed for such items of income as may be taxed in Luxembourg under article 10, paragraph 2, and are included in the basis referred to in paragraph 1 of this article; the amount of this deduction shall be the lesser of the following amounts:

- a. An amount equal to the Luxembourg tax;
- b. An amount equal to the part of the Netherlands tax which bears the same proportion to the amount of tax computed in conformity with paragraph 1 of this article as the amount of the said items of income bears to the amount of income which forms the basis referred to in paragraph 1 of this article.

3. Where a resident of Luxembourg derives income or owns fortune which, in accordance with the provisions of this Convention, may be taxed in the Netherlands, Luxembourg shall, subject to the provisions of paragraph 4, exempt such income or fortune from tax but may, in calculating tax on the remaining income or fortune of that person, apply the rate of tax which would have been applicable if the exempted income or fortune had not been so exempted. This exemption shall not, however, apply to the capital gains referred to in article 14, paragraph 5.

4. Where a resident of Luxembourg derives income which, in accordance with the provisions of article 10, paragraph 2, may be taxed in the Netherlands,

Luxembourg shall allow as a deduction from the tax on the income of that person an amount equal to the tax paid in the Netherlands. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is appropriate to the income derived from the Netherlands.

5. Dividends paid by a company which is a resident of the Netherlands to a company which is a resident of Luxembourg shall be exempt from tax in Luxembourg only in so far as they would be so exempt under Luxembourg law if both companies were residents of Luxembourg. In such a case, the provisions of the preceding paragraph shall not apply.

6. Where a resident of one of the States derives gains which, in accordance with the provisions of article 14, paragraph 5, may be taxed in the other State, that other State shall allow as a deduction from its tax on such gains an amount equal to the tax of the first-mentioned State in respect of such gains.

CHAPTER VI

SPECIAL PROVISIONS

Article 24

NON-DISCRIMINATION

1. The nationals of one of the States, whether or not they are residents of that State, shall not be subjected in the other State to any taxation or any requirements 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 are or may be subjected.

2. The term "nationals" means:

- a. All individuals possessing the nationality of one of the two States;
- b. All legal persons, partnerships and associations deriving their status as such from the law in force in one of the two States.

3. The taxation on a permanent establishment which an enterprise of one of the States has in the other 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.

This provision shall not be construed as obliging one of the States to grant to residents of the other State any personal allowances, reliefs and reductions

for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Enterprises of one of the States, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other 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 that first-mentioned State are or may be subjected.

Article 25

MUTUAL AGREEMENT PROCEDURE

1. Where a resident of one of the States considers that the actions of one or both of the States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the State of which he is a resident.

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 an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other State, with a view to the avoidance of taxation not in accordance with the Convention.

3. The competent authorities of the 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.

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

Article 26

EXCHANGE OF INFORMATION

1. The competent authorities of the two States shall exchange such information as is necessary for the carrying out of this Convention, and in particular for the prevention of tax fraud and fiscal evasion. The competent authorities shall not be obliged to supply information which is not obtainable from the documents and papers available to the competent authorities but which would

require extensive search. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of the Convention.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the States the obligation:

- a. To carry out administrative measures at variance with the laws or the administrative practice of that or of the other State;
- b. To supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other 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 (*ordre public*).

Article 27

STUDENTS

Payments which a student or business apprentice who is or was formerly a resident of one of the States and who is present in the other 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 other State, provided that such payments are made to him from sources outside that other State.

Article 28

DIPLOMATIC AND CONSULAR OFFICIALS

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

Article 29

EXCLUSION OF CERTAIN COMPANIES

This Convention shall not apply to holding companies within the meaning of the special Luxembourg legislation (currently the Act of 31 July 1929 and the Legislative Decree of 27 December 1937). Neither shall it apply to income derived from such companies by a resident of the Netherlands or to shares or other corporate rights in such companies belonging to such a person.

Article 30

TERRITORIAL EXTENSION

1. This Convention may be extended, either in its entirety or with any necessary modifications, to either or both of the countries of Surinam and the Netherlands Antilles, if the country 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 the diplomatic channel.

2. Unless otherwise agreed, the termination of the Convention under article 32 shall not terminate the application of the Convention to the country to which it has been extended under this article.

CHAPTER VII

FINAL PROVISIONS

Article 31

ENTRY INTO FORCE

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

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect for taxable years and periods beginning on or after 1 January 1967.

Article 32

TERMINATION

This Convention shall remain in force until denounced by one of the High Contracting Parties. Either Party may denounce the Convention, through the diplomatic channel, by giving notice of termination at least six months before the end of any calendar year after the year 1972.

In such event, the Convention shall cease to have effect for any taxable year or period beginning after the end of the calendar year in which the notice is given.

IN WITNESS WHEREOF the aforementioned Plenipotentiaries have signed this Convention and have thereto affixed their seals.

DONE in duplicate, on 8 May 1968 at The Hague in the Dutch and French languages, both texts being equally authentic.

For the Kingdom of the Netherlands:

J. LUNS

For the Grand Duchy of Luxembourg:

Paul REUTER

PROTOCOL

On signing the Convention between the Kingdom of the Netherlands and the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Fortune, the undersigned Plenipotentiaries have agreed on the following provisions, which shall form an integral part of the Convention:

I

Ad article 4

An individual living aboard a ship or boat and having no genuine domicile in either of the States shall be deemed to be a resident of the State in which the home harbour of the ship or boat is situated.

II

Ad article 4

The provisions of article 4, paragraph 2, shall not apply to honorary consuls.

III

Ad articles 10, 11 and 12

Applications for refund of tax collected in contravention of the provisions of articles 10, 11 and 12 must be made to the competent authority of the State which collected the tax within a period of three years after the end of the calendar year in which the tax was collected.

IV

Ad article 16

As regards the application of article 16, paragraph 1, members of the board of directors of a company which is a resident of Luxembourg and *bestuurders* and *commissarissen* of a company which is a resident of the Netherlands shall be deemed to exercise their functions in Luxembourg and in the Netherlands respectively.

The provisions of article 16, paragraph 2, shall not apply.

V

Ad article 23

It is understood that, as concerns the Netherlands income tax and the Netherlands corporation tax, the basis referred to in article 23, paragraph 1, shall be the *onzuivere inkomen* (total net income) or *winst* (profit) within the meaning of the Netherlands laws relating to the income tax or the corporation tax, as the case may be.

VI

Ad article 26

The obligation to exchange information shall not apply to information obtained from banks or equivalent institutions. The term "equivalent institutions" shall include insurance companies.

DONE in duplicate, on 8 May 1968 at The Hague in the Dutch and French languages, both texts being equally authentic.

For the Kingdom of the Netherlands:

J. LUNS

For the Grand Duchy of Luxembourg:

Paul REUTER