

No. 11098

**NETHERLANDS
and
AUSTRIA**

**Convention for the avoidance of double taxation with respect
to taxes on income and fortune (with final protocol).
Signed at Vienna on 1 September 1970**

Authentic texts: Dutch and German.

Registered by the Netherlands on 28 May 1971.

**PAYS-BAS
et
AUTRICHE**

**Convention tendant à éviter la double imposition en matière
d'impôts sur le revenu et d'impôts sur la fortune (avec
protocole final). Signée à Vienne le 1^{er} septembre 1970**

Textes authentiques : néerlandais et allemand.

Enregistrée par les Pays-Bas le 28 mai 1971.

[TRANSLATION — TRADUCTION]

CONVENTION ¹ BETWEEN THE KINGDOM OF THE
NETHERLANDS AND THE REPUBLIC OF AUSTRIA FOR
THE AVOIDANCE OF DOUBLE TAXATION WITH RES-
PECT TO TAXES ON INCOME AND FORTUNE

Her Majesty the Queen of the Netherlands and
The Federal President of the Republic of Austria,

Desiring to conclude a Convention for the avoidance of double taxation
with respect to taxes on income and fortune, have for that purpose
appointed as their plenipotentiaries:

Her Majesty the Queen of the Netherlands:

Constant Wilhelm Baron van Boetzelaer van Asperen, Ambassador
Extraordinary and Plenipotentiary at Vienna;

The Federal President of the Republic of Austria:

Dr. Joseph Hammerschmidt, *Sektionschef*, Federal Ministry of
Finance;

who, having exchanged their full powers, found in good and due form,
have agreed as follows:

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 States.

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.

¹ Came into force on 21 April 1971 by the exchange of the instruments of ratification, which
took place at the Hague, in accordance with article 30 (1) and (2).

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, 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:

- (i) The income tax (*inkomstenbelasting*);
- (ii) The tax on wages and salaries (*loonbelasting*);
- (iii) The corporation tax (*vennootschapsbelasting*);
- (iv) The dividends tax (*dividendbelasting*);
- (v) The tax on directors' fees (*commissarissenbelasting*);
- (vi) The tax on fortune (*vermogensbelasting*);
- (vii) The land tax (*grondbelasting*);
- (viii) Local taxes on the increase in value of certain plots of land (*gemeentelijke baatbelastingen*);
- (ix) Local taxes on building sites (*gemeentelijke bouwterreinbelastingen*);
- (x) Road, street and waterway taxes (*wegen-, straat- en vaartbelastingen*);
- (xi) The tax on mines (*recht op de mijnen*);

(b) In the case of Austria:

- (i) The income tax (*Einkommensteuer*) (including the tax on wages and salaries (*Lohnsteuer*) and the capital gains tax (*Kapitalertragsteuer*));
- (ii) The corporation tax (*Körperschaftsteuer*) (including the capital gains tax);
- (iii) The tax on fortune (*Vermögensteuer*);
- (iv) The contribution from income for the promotion of residential building and for the equalization of family burdens (*Beitrag vom Einkommen zur Förderung des Wohnbaues und für Zwecke des Familienlastenausgleiches*);
- (v) The contribution from income to the Disaster Fund (*Katastrophenfondsbeitrag vom Einkommen*);
- (vi) The special tax on income (*Sonderabgabe vom Einkommen*);

- (vii) The tax on directors' fees (*Aufsichtsratsabgabe*);
- (viii) The business tax (*Gewerbesteuer*) (including the pay-roll tax (*Lohnsummensteuer*));
- (ix) The land tax (*Grundsteuer*);
- (x) The tax on agricultural and forestry enterprises (*Abgabe von land- und forstwirtschaftlichen Betrieben*);
- (xi) The tax on the land value of undeveloped real estate (*Abgabe vom Bodenwert bei unbebauten Grundstücken*);
- (xii) The contribution from fortune to the Disaster Fund (*Katastrophenfondsbeitrag vom Vermögen*);
- (xiii) The special tax on fortune (*Sonderabgabe vom Vermögen*);
- (xiv) The tax on property exempt from the inheritance tax (*Abgabe von Vermögen, die der Erbschaftssteuer entzogen sind*);
- (xv) The contribution from agricultural and forestry enterprises to the equalization fund for family subsidies (*Beiträge von land- und forstwirtschaftlichen Betrieben zum Ausgleichsfonds für Familienbeihilfen*).

4. This 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 two States shall notify each other of any material changes which are made in their taxation laws.

CHAPTER II

DEFINITIONS

Article 3

GENERAL DEFINITIONS

1. In this Convention, unless the context otherwise requires:
 - (a) The terms "one of the States" and "the other State" mean the Netherlands or Austria, as the context requires;
 - (b) The term "the Netherlands" covers that part of the Kingdom of the Netherlands which is situated in Europe and that part of the sea-bed and subsoil in the North Sea which is subject to the sovereignty of the Kingdom of the Netherlands in accordance with international law;

- (c) The term "Austria" means the territory of the Republic of Austria;
 - (d) The term "person" comprises an individual, a company and any other body of persons;
 - (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 Austria: the Federal Minister of Finance.
2. As regards the application of the Conventions by one 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.

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.

3. Where by reason of the provisions of paragraph 1 an individual is a resident of both States, the following rules shall apply:

(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 a habitual abode;

(c) If he has a 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.

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 12 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 or finishing 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 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, as well as debt-claims of every kind—other than bonds or debentures—which are 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 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 shall be taxable only 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 shall be taxable only 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 may be taxed in that other State.

2. However, such dividends may be taxed in the State of which the company paying the dividends is a resident, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

3. Notwithstanding the provisions of paragraph 2, the State of which the company paying the dividends is a resident may not levy any tax on dividends paid by the said company to a company whose capital is wholly or partly divided into shares and which is a resident of the other State and holds directly or indirectly at least 25 per cent of the capital of the company paying the dividends.

4. The competent authorities of the two States shall by mutual agreement settle the mode of application of paragraphs 2 and 3.

5. The provisions of paragraphs 2 and 3 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

6. The term "dividends" as used in this article means income from shares, *jouissance* shares or *jouissance* rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as 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.

7. The provisions of paragraphs 1, 2 and 3 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.

8. 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.

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 term "interest" as used in this article means income from government securities, bonds or debentures, whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises. However, the term shall not include income from the debt-claims referred to in article 6, paragraph 2, or the profits referred to in article 12, paragraph 1.

3. 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-claims from which the interest arises is effectively connected. In such a case, the provisions of article 7 shall apply.

4. 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

SLEEPING PARTNERSHIPS

1. Where a resident of one of the States derives profits from participation as a sleeping partner in an enterprise whose place of management is situated in the other State, such profits may be taxed in that other State unless the participation carries with it a share in the property of the enterprise.

2. In the case of profits derived from participation as a sleeping partner carrying with it a share in the property of the enterprise, the provisions of article 7 shall apply.

Article 13

ROYALTIES

1. Subject to the provisions of paragraph 2, 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. Royalties paid by a company which is a resident of one of the States to a resident of the other State who holds indirectly or directly more than 50 per cent of the capital of the company making the payment may also be taxed in the first-mentioned State, but the tax shall not exceed one half of the statutory rate of assessment and shall in no case exceed 10 per cent of the gross amount of the royalties in question.

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 paragraphs 1 and 2 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 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, shall be taxable only in the State in which the place of effective management of the enterprise is situated. The provisions of article 8, paragraph 3, shall apply *mutatis mutandis*.

4. Gains from the alienation of any property other than that specified 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 each State to levy taxes, according to its own law, on gains from the alienation of shares or *jouissance* rights in a company whose capital is wholly or partly divided into shares and which is a resident of that State, where the gains are derived by an individual who is a resident of the other State and who has been during the last five years preceding the alienation of the shares or *jouissance* rights a resident of the first-mentioned State.

Article 15

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of one of the States 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 and accountants.

Article 16

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of articles 17, 19, 20 and 21, paragraph 2, 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 calendar 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 Austria may be taxed in Austria.

2. Remuneration and other payments derived by a resident of Austria 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 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

PAYMENTS OUT OF PUBLIC FUNDS

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

2. Pensions paid to a resident of one of the States under the statutory social security scheme of the other State may be taxed in that other State.

3. 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 or a local authority thereof.

Article 21

STUDENTS

1. 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.

2. Remuneration received by a student or business apprentice who is or was formerly a resident of one of the States in respect of any activity which he carries on in the other State for a period not exceeding in the aggregate 183 days in the calendar year concerned for the purpose of acquiring practical experience shall not be taxed in that other State.

Article 22

INCOME NOT EXPRESSLY MENTIONED

Items of income of a resident of one of the States which are not expressly mentioned in the foregoing articles of this Convention shall be taxable only in that State.

CHAPTER IV

TAXATION OF FORTUNE

Article 23

FORTUNE

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, shall be taxable only in the State in which the place of effective management of the enterprise is situated. The provisions of article 8, paragraph 3, shall apply *mutatis mutandis*.

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 24

1. The Netherlands may, in levying taxes on its residents, include in the basis upon which the tax is computed all items of income and fortune which, in accordance with the provisions of this Convention, may be taxed in Austria.

2. Subject to the application of those provisions of its domestic regulations for the avoidance of double taxation which concern the setting-off of losses, the Netherlands shall allow a deduction from the tax computed in accordance with paragraph 1 of this article. The deduction shall bear the same ratio to the amount of that tax as those items of income and fortune included in the basis referred to in paragraph 1 of this article which under articles 6, 7, 10, paragraph 7, 11, paragraph 3, 13, paragraph 4, 14, paragraphs 1 and 2, 15, 16, paragraph 1, 17, paragraph 1, 18, 20 and 23, paragraphs 1 and 2, of this Convention may be taxed in Austria bears to the amount of the income and fortune constituting the basis referred to in paragraph 1 of this article.

In addition, a deduction from the tax computed in accordance with paragraph 1 shall be allowed by the Netherlands in respect of those items of income which under articles 10, paragraph 2, 12, paragraph 1, 13, paragraph 2, and 14, paragraph 5, may be taxed in Austria and which are included in the basis referred to in paragraph 1 of this article. The amount of the said education shall be the smaller of the following amounts:

- (a) The amount corresponding to the Austrian tax;
- (b) The amount of the Netherlands tax which bears the same ratio to the amount of the tax computed in accordance with paragraph 1 of this article as the amount of the items of income in question bears to the amount of the income constituting the basis referred to in paragraph 1 of this article.

3. Where a resident of Austria derives income or owns fortune which, in accordance with the provisions of this Convention, may be taxed in the Netherlands, Austria shall, subject to the provisions of paragraph 4, exempt such income or fortune from tax; however, Austria 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.

4. Where a resident of Austria derives income which, in accordance with the provisions of articles 10, paragraph 2, 12, paragraph 1, 13, paragraph 2, and 14, paragraph 5, may be taxed in the Netherlands, Austria 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.

CHAPTER VI

SPECIAL PROVISIONS

Article 25

NON-DISCRIMINATION

1. 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 requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The term "nationals" means:

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

5. In this article, the term "taxation" means taxes of every kind and description.

Article 26

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 two 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 two States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 27

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 preventing fraud and giving effect to statutory provisions against legal avoidance in relation to the taxes which are the subject of this Convention. The competent authorities of the two States may refuse information which cannot be given on the basis of data at the disposal of the financial authorities but would necessitate extensive inquiries. 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.

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

TERRITORIAL EXTENSION

1. This Convention may be extended, either in its entirety or with any necessary modifications, to Surinam or the Netherlands Antilles, or to both of those countries, 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 denunciation of the Convention under article 31 shall not terminate the application thereof to any country to which it has been extended under this article.

CHAPTER VII

FINAL PROVISIONS

Article 30

ENTRY INTO FORCE

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

2. The Convention shall enter into force upon the exchange of instruments of ratification, and its provisions shall have effect in respect of fiscal years and fiscal periods beginning on or after 1 January 1969.

Article 31

TERMINATION

This Convention shall remain in force until denounced by one of the Contracting Parties. Either Contracting 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. In such event, the Convention shall cease to have effect in respect of fiscal years and fiscal periods beginning after the end of the calendar year at the end of which the Convention is terminated.

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

DONE at Vienna, on 1 September 1970, in duplicate in the Dutch and German languages, both texts being equally authentic.

For the Kingdom of the Netherlands:

C. W. VAN BOETZELAER

For the Republic of Austria:

HAMMERSCHMIDT

FINAL PROTOCOL

On signing the Convention for the Avoidance of Double Taxation with respect to Taxes on Income and Fortune, concluded this day between the Kingdom of the Netherlands and the Republic of Austria, the undersigned plenipotentiaries have agreed on the following provisions, which shall form an integral part of the Convention:

I. *Ad* article 1:

The Convention shall not apply to international organizations, to organs or officials thereof and to persons who are members of a diplomatic or consular mission of a third State, being present in or having their headquarters in one of the States and not being liable to taxation therein in respect of their total income and total fortune.

II. *Ad* article 10:

If in Austria the rate of corporation tax, including surtax, on distributed profits is less than the rate of tax on undistributed profits, the following arrangement shall apply with respect to holdings of the kind referred to in article 10, paragraph 3:

- (a) If the difference in the highest income category is 10 per cent or more, the dividends may be taxed in Austria, but the tax shall not exceed 5 per cent of the gross amount of the dividends;
- (b) If the difference in the highest income category is 20 per cent or more, the dividends may be taxed in Austria, but the tax shall not exceed 10 per cent of the gross amount of the dividends.

III. *Ad* articles 10, 11 and 13:

Applications for the refund of tax collected contrary to the provisions of articles 10, 11 and 13 must be submitted within a period of three years following the end of the calendar year in which the tax was collected.

IV. *Ad* article 24:

It is understood that, as concerns the Netherlands income tax or corporation tax, the basis referred to in article 24, paragraph 1, shall be the *onzuivere inkomen* or the *winst* within the meaning of the Netherlands

laws relating to the income tax or the corporation tax, as the case may be.

V. *Ad* article 24:

The amount of the Austrian tax referred to in article 24, paragraph 2 (*a*), shall, with respect to the gains specified in article 14, paragraph 5, be computed on the basis of the average rate of tax.

VI. *Ad* article 27:

The obligation to exchange information shall not apply to information obtained from banks or equivalent institutions. The term “equivalent institutions” shall include, *inter alia*, insurance companies.

DONE at Vienna, on 1 September 1970, in duplicate in the Dutch and German languages, both texts being equally authentic.

For the Kingdom of the Netherlands:

C. W. VAN BOETZELAER

For the Republic of Austria:

HAMMERSCHMIDT