No. 11542

NETHERLANDS
and
BELGIUM

Convention for the avoidance of double taxation with respect to taxes on income and fortune and the regulation of certain other fiscal matters (with protocol). Signed at Brussels on 19 October 1970

Authentic texts: Dutch and French.

Registered by the Netherlands on 1 February 1972.

PAYS-BAS
et
BELGIQUE

Convention tendant à éviter les doubles impositions en matière d'impôts sur le revenu et sur la fortune et à régler certaines autres questions en matière fiscale (avec protocole). Signée à Bruxelles le 19 octobre 1970

Textes authentiques: néerlandais et français.

Enregistrée par les Pays-Bas le 1er février 1972.

[TRANSLATION — TRADUCTION]

CONVENTION [1] BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE KINGDOM OF BELGIUM FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND FORTUNE AND THE REGULATION OF CERTAIN OTHER FISCAL MATTERS

The Government of the Kingdom of the Netherlands and

The Governement of the Kingdom of Belgium,

Desiring to replace the Convention for the Avoidance of Double Taxation and the Settlement of Certain Other Questions concerning Fiscal Matters signed at Geneva on 20 February 1933 [2] by a new convention,

Have agreed as follows:

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.

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, 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.

[1] Came into force on 1 October 1971, the fifteenth day following the date of the exchange of the instruments of ratification, which took place at The Hague on 16 September 1971, in accordance with article 31.

[2] League of Nations, *Treaty Series*, vol. CLXIV, p. 223.

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

(1) In the case of the Netherlands:
- (*a*) The income tax (*inkomstenbelasting*);
- (*b*) The wages tax (*loonbelasting*);
- (*c*) The company tax (*vennootschapsbelasting*);
- (*d*) The dividends tax (*dividendbelasting*);
- (*e*) The fortune tax (*vermogensbelasting*);
- (*f*) The land tax (*grondbelasting*),

(hereinafter referred to as " Netherlands tax ");

(2) In the case of Belgium:
- (*a*) The tax on individuals (*l'impôt des personnes physiques*);
- (*b*) The company tax (*l'impôt des sociétés*);
- (*c*) The tax on legal persons (*l'impôt des personnes morales*);
- (*d*) The non-residents' tax (*l'impôt des non-résidents*), including taxes collected in advance (*précomptes*) and supplements to taxes collected in advance (*compléments de précomptes*), surcharges (*décimes et centimes additionnels*) on the aforementioned taxes and advance collections, and the additional communal tax (*taxe communale additionnelle*) to the tax on individuals,

(hereinafter referred to as " Belgian tax ").

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.

II. DEFINITIONS

Article 3

GENERAL DEFINITIONS

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

(1) (*a*) The term " State " means the Netherlands or Belgium, as the context requires; the term " States " means the Netherlands and Belgium;

(*b*) The term " the Netherlands " means the part of the Kingdom of the Netherlands that is situated in Europe and the part of the sea-bed and its subsoil under the North Sea over which the Kingdom of the Netherlands has sovereign rights in accordance with international law;

(*c*) The term " Belgium " means the territory of the Kingdom of Belgium; it includes any territory outside Belgian national sovereignty which by Belgian legislation concerning the continental shelf and in accordance with international law has been or may hereafter be designated as territory over which the rights of Belgium with respect to the sea-bed and subsoil and their natural resources may be exercised;

(2) The term " person " comprises an individual and a company;

(3) The term " company " means any body corporate or any entity which is treated as a body corporate for tax purposes in the State of which it is a resident, as well as a general partnership or limited partnership under Netherlands law;

(4) 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;

(5) The term " competent authority " means:

(*a*) In the case of the Netherlands, the Minister of Finance or his duly authorized representative;

(*b*) In the case of Belgium, the authority which is competent under its national laws.

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.

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; it also means any general partnership or limited partnership under Netherlands law whose place of management is situated in the Netherlands, as well as any company or partnership under Belgian law — other than a company or partnership limited by shares (*société par actions*) — which has elected to have its profits subjected to the tax on individuals.

2. For the purposes of the Convention, a person 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 therein to the same obligations in respect of taxes on income and fortune as are 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:

(1) 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);

(2) 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;

(3) 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) 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 company 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:

(1) A place of management;

(2) A branch;

(3) An office;

(4) A factory;

(5) A workshop;

(6) A mine, quarry or other place of extraction of natural resources;

(7) A building site or construction or assembly project which exists for more than nine months.

3. The term " permanent establishment " shall not be deemed to include:

(1) The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(2) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(3) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(4) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

(5) The maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for other similar activities which have a preparatory or auxiliary character, for the enterprise.

4. A person — other than an agent of an independent status to whom paragraph 5 applies — acting in one of the States on behalf of an enterprise of the other State 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, commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business. This provision shall not apply to an agent acting solely on behalf of one or at most two insurance enterprises who has and habitually exercises an authority to conclude contracts in the name of the said enterprise or enterprises.

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.

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; 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 acting wholly independently.

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. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

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

6. Where profits include items of income which are dealt with separately in other articles of this Convention, then the provisions of this article shall not affect the provisions of those articles as concerns the taxation of such items of income.

Article 8

SHIPPING, INLAND WATERWAYS TRANSPORT AND AIR TRANSPORT

1. Notwithstanding the provisions of article 7:

(1) Profits derived by a resident of one of the States from the operation of ships or aircraft in international traffic shall be taxable only in that State;

(2) Profits derived by a resident of one of the States from the operation of boats engaged in inland waterways transport shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, the aforementioned profits may also be taxed in the other State if the place of effective management of the enterprise is situated in that other State.

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

INTERDEPENDENT ENTERPRISES

Where:

(*a*) An enterprise of one of the States participates directly or indirectly in the management, control or financing of an enterprise of the other State, or

(*b*) The same persons participate directly or indirectly in the management, control or financing 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 agreed upon 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 also 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:

(1) 5 per cent of the gross amount of the dividends if the recipient is a company limited by shares which holds directly at least 25 per cent of the capital of the company paying the dividends;

(2) In other cases, 15 per cent of the gross amount of the dividends.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term " dividends " as used in this article means income from shares, *jouissance* shares or *jouissance* rights, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which for tax purposes is treated in the same way as income from shares in the State of which the company making the distribution is a resident.

4. 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; they shall not preclude the imposition of taxes payable by deduction at the source on such dividends in the other State.

5. 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 a resident of the first-mentioned 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; this provision shall not prevent such other State from taxing dividends pertaining to a holding which is effectively connected with a permanent establishment maintained in the other State by a resident of the first-mentioned State.

Article 11

INTEREST

1. Interest arising in one of the States and paid to a resident of the other State may be taxed in that other State.

2. However, such interest may also be taxed in the State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest shall not be taxed in the State in which it arises if it is paid to an enterprise of the other State.

4. The provisions of paragraph 3 shall not apply to:

(1) Interest on bonds and debentures and other loan securities, with the exception of trade bills representing commercial debt-claims;

(2) Interest paid by a company limited by shares or a limited-liability partnership which is a resident of one of the States to a similar company or partnership which is a resident of the other State, where one of the two companies or partnerships holds directly at least 25 per cent of the capital of the other company or partnership.

5. The term " interest " as used in this article means income from government securities, bonds or debentures, deposits and debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in profits, premiums on bonds, as well as all other income which for tax purposes is treated in the same way, in the State in which it arises, as income from money lent.

6. The provisions of paragraphs 1 to 4 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; they shall not preclude the imposition of taxes payable by deduction at the source on such interest in the other State.

7. Interest shall be deemed to arise in one of the States when the payer is that State itself, a political subdivision or a resident of that State. Where, however, the person paying the interest, whether he is a resident of one of the States or not, has in one of the States a permanent establishment in connexion with which the indebtedness on which the interest is paid was incurred, and the interest is borne as such by the permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

8. 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, 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 paragraphs 2 and 3 shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall be taxable according to the law of each State, but the tax so levied on the said excess part shall not exceed that which would be applicable in the case of dividends.

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 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 and films or tapes for radio or television broadcasting — 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, not being immovable property within the meaning of article 6, or for information concerning industrial, commercial or scientific experience.

3. 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.

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 royalties, 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 paragraph 1 shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall be taxable according to the law of each State, but the tax so levied on the said excess part shall not exceed that which would be applicable in the case of dividends.

Article 13

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:

(1) Gains derived by a resident of one of the States from the alienation of ships or 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 that State;

(2) Notwithstanding the provisions of subparagraph (1), the aforementioned gains may also be taxed in the other State if the place of effective management of the enterprise is situated in that other State.

4. Gains from the alienation of any property other than those referred to in paragraphs 1, 2 and 3 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 the Netherlands to levy, according to its own law, a tax on gains from the alienation of shares or *jouissance* rights — not forming part of the business property of an enterprise — in a company limited by shares which is a resident of the Netherlands, where such gains are derived by an individual who is a resident of Belgium, possesses Netherlands nationality and has been a resident of the Netherlands during the five years immediately preceding the alienation of the shares or *jouissance* rights and where the said shares or *jouissance* rights have, during that period, formed part of a substantial holding within the meaning of Netherlands taxation law. However, the rate of the tax shall not exceed 20 per cent.

Article 14

INDEPENDENT PERSONAL SERVICES

1. Profits or 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 profits or income may be taxed in the other State but only so much of them as is attributable to the activities performed through 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 15

DEPENDENT PERSONAL SERVICES

1. 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:

(1) The employment is exercised in the other State for a period or periods not exceeding in the aggregate 183 days — including normal interruptions of work — in the calendar year, and

(2) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

(3) The remuneration is not borne as such by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the provisions of paragraphs 1 and 2:

(1) Salaries, wages and other similar remuneration derived by a person employed as a frontier worker in the frontier zone of one of the States and having his permanent home in the frontier zone of the other State, to which he normally returns each day or at least once a week, shall be taxable only in that other State;

(2) 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.

4. The provisions of this article shall not apply to income of the kinds referred to in articles 16, 18, 19 and 20.

Article 16

COMPANY DIRECTORS

1. Directors' fees and other remuneration derived by a resident of Belgium who is a director (*commissaris* or *bestuurder*) of a limited-liability company which is a resident of the Netherlands may be taxed in the Netherlands.

2. Directors' fees and other remuneration derived by a resident of the Netherlands who is a member of the board of directors of a company limited by shares which is a resident of Belgium may be taxed in Belgium.

This provision shall also apply to remuneration derived by a general partner (*associé commandité*) in a partnership limited by shares (*société en commandite par actions*) which is a resident of Belgium.

3. Notwithstanding the provisions of paragraphs 1 and 2, where the aforementioned remuneration is derived by persons performing genuine and

permanent functions in a permanent establishment situated in the State other than that of which the company or partnership is a resident, and the remuneration is borne as such by the said permanent establishment, then such remuneration may be taxed in that other State.

Article 17

ARTISTS AND ATHLETES

Notwithstanding the provisions of articles 14 and 15, 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 18

PENSIONS

Subject to the provisions of article 19, 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 19

GOVERNMENTAL FUNCTIONS

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

This provision shall not apply if the recipient of the income is a national of the other State but is not at the same time a national of the first-mentioned State.

2. The provisions of paragraph 1 shall not 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 thereof.

Article 20

PROFESSORS AND TEACHERS

Remuneration which a professor or teacher who is a resident of one of the States and who is present in the other State for the purpose of teaching at a university, college or other educational establishment in that State for a period not exceeding two years derives in respect of such teaching shall be taxable only in the first-mentioned State.

Article 21

STUDENTS

Payments which a student, apprentice or business trainee 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 not made to him from sources within that other State.

Article 22

OTHER INCOME

Items of income of a resident of one of the States to which the foregoing articles of this Convention do not apply shall be taxable only in that State.

IV. TAXATION OF FORTUNE

Article 23

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 which an enterprise of one of the States has in the other State, or by 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, may be taxed in that other State.

3. Notwithstanding the provisions of paragraph 2:

(1) 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 of which the operator is a resident;

(2) Notwithstanding the provisions of subparagraph (1), the aforementioned ships, aircraft, boats and movable property may also be taxed in the other State if the place of effective management of the enterprise is situated in that other State.

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

V. METHODS FOR AVOIDANCE OF DOUBLE TAXATION

Article 24

1. In the case of residents of the Netherlands, double taxation shall be avoided as follows:

(1) When taxing its residents, the Netherlands may include in the tax base items of income or elements of fortune which, in accordance with the provisions of this Convention, may be taxed in Belgium.

(2) Subject 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 the provisions of subparagraph (1). Such deduction shall be equal to the part of the tax which bears the same proportion to the aforesaid tax as the total income or fortune included in the tax base referred to in subparagraph (1) which may be taxed in Belgium under articles 6, 7, 8 (paragraph 2), 10 (paragraph 4), 11 (paragraph 6), 12 (paragraph 3), 13 (paragraphs 1, 2 and 3), 14, 15 (paragraph 1), 16 (paragraphs 2 and 3), 17, 19 and 23 (paragraphs 1, 2 and 3) of the Convention bears to the total income or fortune which forms the tax base referred to in subparagraph (1).

(3) The Netherlands shall also allow a deduction from the tax so computed for such items of income as may be taxed in Belgium under articles 10 (paragraph 2), 11 (paragraphs 2 and 8) and 12 (paragraph 4) and are included in the tax base referred to in subparagraph (1). The amount of this deduction shall be the lesser of the following amounts:

(*a*) An amount equal to the Belgian 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 the provisions of subparagraph (1) as the amount of the said items of income bears to the amount of income which forms the tax base referred to in paragraph 1 of this article.

2. In the case of residents of Belgium, double taxation shall be avoided as follows:

(1) Income — with the exception of income of the kinds referred to in subparagraphs (2) and (3) — and elements of fortune which, in accordance with the foregoing articles, may be taxed in the Netherlands shall be exempt from tax in Belgium. This exemption shall not limit the right of Belgium to take into account the income and elements of fortune so exempted in determining the rate of its taxes.

(2) In the case of dividends, interest and royalties to which articles 10 (paragraph 2), 11 (paragraphs 2 and 8) and 12 (paragraph 4) respectively apply, the fixed quota of foreign tax provided for under Belgian law shall be allowed as a deduction, under the conditions and at the rate laid down by the said law, from the tax on individuals in respect of dividends or from the tax on individuals or the company tax in respect of interest and royalties.

(3) Where a company which is a resident of Belgium owns shares in a company limited by shares which is a resident of the Netherlands,

dividends paid by the last-mentioned company to the first-mentioned company to which article 10, paragraph 2, applies shall be exempt from the company tax in Belgium, to the extent that exemption would be granted if both companies were residents of Belgium. This provision shall not preclude the levying, in respect of such dividends, of the movable property tax collected in advance (*précompte mobilier*) payable under Belgian law.

(4) Where shares in a company limited by shares which is a resident of the Netherlands and which is liable to the company tax in that State have been held throughout the said company's financial year by a company which is a resident of Belgium as sole owner, the last-mentioned company may also be exempted from the movable property tax collected in advance payable under Belgian law in respect of dividends on the said shares, provided that it makes written application for such exemption within the prescribed time for the submission of its annual tax return; the dividends so exempted may not, when they are redistributed, be deducted from the total amount of the distributed dividends which are subject to the movable property tax collected in advance. This provision shall not apply if the Belgian company has elected to have its profits subjected to the tax on individuals.

If the provisions of Belgian law exempting from the company tax the net amount of dividends which a company being a resident of Belgium receives from another company being a resident of Belgium are amended in such a way as to limit the exemption to dividends pertaining to holdings of a certain size in the capital of the last-mentioned company, then the provisions of the preceding subparagraph shall apply only to dividends paid by companies being residents of the Netherlands which pertain to holdings of the same size in the capital of the said companies.

(5) Where, under Belgian law, losses sustained by an enterprise of Belgium in a permanent establishment situated in the Netherlands have been effectively deducted from the profits of such enterprise for the purpose of its taxation in Belgium, the exemption provided for in subparagraph (1) shall not apply to the profits for other taxable periods which are attributable to such establishment, to the extent that such profits have not been taxed in the Netherlands by reason of their being offset by the said losses.

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:

(1) All individuals possessing the nationality of one of the States;

(2) All companies, partnerships and associations deriving their status as such from the law in force in one of the States.

3. Individuals who are residents of one of the States shall be entitled in the other State to any personal allowances, reliefs and reductions which are granted by that other State to its own residents by reason of their civil status or family responsibilities.

4. 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.

5. 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.

6. 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, without prejudice to the remedies provided by the national laws of those States, present his case in the form of an application, indicating his reasons, to the competent authority of the State of which he is a resident. In order to be admissible, such application must be submitted within two years from the time when it was possible for him to have knowledge of the taxation which he considers not in accordance with the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a 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 application of the Convention.

4. The competent authorities of the States may communicate with each other directly for the purposes of the application of the Convention.

Article 27

EXCHANGE OF INFORMATION

1. The competent authorities of the States shall exchange such information (being information normally available to them) as is necessary for the carrying out of this Convention and of the domestic laws of the States concerning taxes covered by this Convention, in so far as the levying of such taxes is in accordance with this Convention. Any information so obtained shall be treated as secret; it shall be disclosed — other than to the taxpayer — only to persons or authorities, including judicial authorities, concerned with the assessment or collection of the taxes.

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

(1) To carry out measures at variance with the laws or the administrative practice of that or of the other State;

(2) 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;

(3) To supply information which would disclose any trade, business, industrial, commercial or professional secret or industrial or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).

Article 28

DIPLOMATIC AND CONSULAR OFFICIALS

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

Article 29

MISCELLANEOUS PROVISIONS

1. Nothing in this Convention shall limit the right of Belgium to tax a company which is a resident of Belgium in the event of redemption of its own stock or shares or division of its assets. As regards the tax levied in Belgium in such cases, the Netherlands shall not allow the deduction provided for in article 24, paragraph 1.

2. The Convention shall not apply to international organizations, to organs and officials thereof and to persons who are members of a diplomatic or consular mission of a third State, being present in one of the States and not treated in either State as residents in respect of taxes on income and fortune.

3. The competent authorities of the States shall by mutual agreement settle the mode of application of articles 10, 11 and 12.

4. The competent authorities of each State may determine, in accordance with the practice of that State, the administrative measures necessary for the carrying out of the other provisions of the Convention.

Article 30

TERRITORIAL EXTENSION

1. This Convention may be extended, either in its entirety or with any necessary modifications, to Surinam and/or 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 or in any other manner in accordance with the constitutional procedures of the States.

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

VII. FINAL PROVISIONS

Article 31

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 on the fifteenth day following the date of the exchange of instruments of ratification and its provisions shall have effect:

(1) In the Netherlands:

For taxable years and periods beginning on or after the first day of January of the year in which the instruments of ratification are exchanged;

(2) In Belgium:

(*a*) As regards taxes payable by deduction at the source in respect of income normally accruing or paid on or after the first day of January of the year in which the instruments of ratification are exchanged;

(*b*) As regards other taxes levied on income for taxable periods ending on or after the thirty-first day of December of the year in which the instruments of ratification are exchanged.

3. The provisions of the Convention for the Avoidance of Double Taxation and the Settlement of Certain Other Questions concerning Fiscal Matters between the Netherlands and Belgium signed at Geneva on 20 February 1933 shall cease to have effect:

(1) In the Netherlands, for taxable years and periods to which the provisions of the present Convention apply;

(2) In Belgium, as regards taxes to which the provisions of the present Convention apply.

Article 32

TERMINATION

This Convention shall continue in effect indefinitely. However, either State 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 fifth year following the year in which the instruments of ratification are exchanged. In such event, the provisions of the Convention shall cease to have effect:

(1) In the Netherlands:

For taxable years and periods beginning on or after the first day of January of the year following the year in which notice of termination is given;

(2) In Belgium:

(*a*) As regards taxes payable by deduction at the source in respect of income normally accruing or paid on or after the first day of January of the year following the year in which notice of termination is given;

(*b*) As regards other taxes levied on income for taxable periods normally ending on or after the thirty-first day of December of the year following the year in which notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE at Brussels, on 19 October 1970, in duplicate in the Dutch and French languages, both texts being equally authentic.

For the Government of the Kingdom of the Netherlands:

J. LUNS

For the Government of the Kingdom of Belgium:

P. HARMEL

PROTOCOL

On signing the Convention for the avoidance of double taxation with respect to taxes on income and fortune and the regulation of certain other fiscal matters, concluded this day between the Government of the Kingdom of the Netherlands and the Government of the Kingdom of Belgium, the undersigned plenipotentiaires have agreed upon the following provisions, which form an integral part of the Convention.

I

The term " property " as used in the provisions of the Convention also includes rights.

II

Ad article 4

The term " under the law of that State " as used in article 4, paragraph 1, means the law of the State in question as amended or supplemented pursuant to international agreements.

III

Ad article 6

During such time as the supplement to the immovable property tax collected in advance (*complément de précompte immobilier*) payable in Belgium on the cadastral income from immovable property the income from which is taxable in Belgium in accordance with article 6 is levied at a fixed rate exceeding 10 per cent:

(*a*) The said supplement to the immovable property tax collected in advance payable by residents of the Netherlands who are subject to the non-residents' tax in accordance with articles 148 and 149 of the Income Tax Code shall be refunded to the extent that it exceeds the non-residents' tax payable by the persons concerned;

(*b*) The said supplement to the immovable property tax collected in advance payable by other residents of the Netherlands shall, if necessary, be limited in such a way that the total charge constituted by the said supplement and by that part of the immovable property tax collected in advance which is allowed as a deduction from the tax on individuals does not exceed the quota of the non-residents' tax, calculated nationally on the total income arising or received in Belgium, which would be proportionate to the said cadastral income.

IV

Ad article 10

The provisions of article 10, paragraph 2 (1), shall not apply if the company receiving the dividends is liable, in the State of which it is a resident, to the company tax in respect of the dividends or of that part of the dividends which cannot be deemed to constitute deductible expenses connected with the holding; in such a case, the provisions of article 10, paragraph 2 (2), shall apply.

V

Ad article 10

The term « dividends " as used in article 10 also means income, even if paid in the form of interest, which is taxable as income from capital invested by partners in partnerships — other than partnerships limited by shares — which are residents of Belgium.

VI

Ad articles 10, 11 and 12

The term " paid " as used in articles 10, 11 and 12 shall be construed as meaning performance of the obligation to place funds at the disposal of the recipient in the manner specified in the contract or in accordance with usage; it accordingly covers all forms of settlement, whether by payment in cash, by transfer to an account or by any other means.

VII

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 two years after the end of the calendar year in which the tax was collected.

VIII

Ad article 13

The provisions of article 13, paragraph 4, shall be construed as applying also to gains from the alienation of shares or *jouissance* rights, unless such shares or rights form part of the business property of a permanent establishment or pertain to a fixed base as referred to in paragraph 2.

IX

Ad article 15

The frontier zones referred to in article 15, paragraph 3 (1), shall be delimitated as follows:

(*a*) The frontier zone of the Netherlands shall be the territory bounded to the south by the Netherlands-Belgian frontier and to the north by Grevelingen, Krammer, Volkerak, Hollandsch Diep, Dordtsche Kil, Merwede, the River Maas as far as Gennep, the railway line running eastwards from Gennep to the German frontier.

(*b*) The frontier zone of Belgium shall be the territory bounded to the north by the Belgian-Netherlands frontier and to the south by the shortest imaginary line linking the following municipalities: Ostend, Brugge (Bruges), Tielt, Oudenaarde, Aalst (Alost), Mechelen (Malines), Leuven (Louvain), Tienen (Tirlemont), Landen, Waremme, Liège, Verviers, Eupen, Raeren.

Municipalities intersected by the imaginary line referred to in sub-paragraph (*b*) shall be deemed to lie entirely within the frontier zone.

X

Ad article 15

The competent authorities of the States shall by mutual agreement establish rules relating to the documents to be produced by the persons concerned for the purposes of the application of the provisions of article 15, paragraph 3 (1).

XI

Ad article 15

The provisions of article 15, paragraph 3 (1), shall not apply to persons possessing Netherlands nationality who transferred their domicile from the Netherlands to Belgium after 1 January 1970.

XII

Ad article 23

The provisions of article 23, paragraph 4, shall be construed as applying also to shares and *jouissance* rights, unless such shares or rights form part of the business property of a permanent establishment or pertain to a fixed base as referred to in paragraph 2.

XIII

Ad article 24

It is understood that the tax base referred to in article 24, paragraph 1, shall be the total semi-net income (*onzuiver inkomen*) or profit (*winst*) within the meaning of the Netherlands laws relating to the income tax or the company tax, as the case may be.

XIV

Ad article 25

Companies being residents of the Netherlands and bodies of persons having their place of effective management in the Netherlands which maintain a permanent establishment in Belgium shall be subject in the latter State, as concerns profits realized in that State, to the regime applicable to similar foreign companies and bodies of persons.

However, the tax which may be levied on such profits under Belgian law shall not exceed the aggregate of the various taxes, as computed at the standard rate, which would be payable by a company or partnership being a resident of Belgium in respect of its profits and of income distributed to its shareholders or partners if the said profits were disposed of in the same manner as those of the company which is a resident of the Netherlands or of the body of persons which has its place of effective management in the Netherlands.

For the purposes of the application of this provision, the tax which would be imposed on distributed profits of a company or partnership being a resident of Belgium shall be computed at the rate of 10 per cent on one half of the difference between the profit of the permanent establishment, on the one hand, and the amount arrived at by applying to that profit the standard basic rate of the company tax on distributed profits of companies being residents of Belgium, on the other hand.

XV

Ad article 25

The provisions of article 25, paragraph 4, shall entail the following:

(1) Where an enterprise of one of the States has a permanent establishment in the other State, the provisions in force in that other State concerning the carrying over of losses shall be applicable in the last-mentioned State for the purposes of the taxation on that permanent establishment under the same conditions as apply to enterprises of that other State;

(2) Where a company being a resident of one of the States has in the other State a permanent establishment with which a holding in the capital of a company being a resident of the other State is effectively connected, dividends pertaining to that holding shall be exempt in that other State from the taxes specified in article 2, to the extent that they would be exempt under the laws of that other State if the holding were owned by a similar company being a resident of the last-mentioned State.

DONE at Brussels, on 19 October 1970, in duplicate in the Dutch and French languages, both texts being equally authentic.

For the Government
of the Kingdom of the Netherlands:

J. LUNS

For the Government
of the Kingdom of Belgium:

P. HARMEL