No. 13395

FRANCE
and
NETHERLANDS

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and fortune (with protocol). Signed at Paris on 16 March 1973

Authentic texts: French and Dutch.

Registered by France on 18 June 1974.

FRANCE
et
PAYS-BAS

Convention tendant à éviter les doubles impositions et à prévenir l'évasion fiscale en matière d'impôts sur le revenu et sur la fortune (avec protocole). Signée à Paris le 16 mars 1973

Textes authentiques : français et néerlandais.

Enregistrée par la France le 18 juin 1974.

[TRANSLATION — TRADUCTION]

CONVENTION[1] BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND FORTUNE

The Government of the French Republic and the Government of the Kingdom of the Netherlands,

Desiring to replace by a new convention the Agreement signed at Paris on 30 December 1949[2] for the avoidance of double taxation with respect to taxes on income and for the settlement of certain other fiscal questions,

Have agreed on the following provisions:

CHAPTER I. SCOPE OF THE CONVENTION

Article 1. PERSONAL SCOPE

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

Article 2. TAXES COVERED

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

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

3. The taxes to which the Convention shall apply are:

(*a*) In the case of the Netherlands:

— The income tax (*inkomstenbelasting*);
— The wages tax (*loonbelasting*);
— The corporation tax (*vennootschapsbelasting*);
— The dividends tax (*dividendbelasting*);
— The fortune tax (*vermogensbelasting*);

(hereinafter referred to as "Netherlands tax");

(*b*) In the case of France:

— The income tax (*l'impôt sur le revenu*);

[1] Came into force on 29 March 1974, i.e., the thirtieth day after the date of the exchange of notifications confirming that it had been approved in conformity with the constitutional provisions in force in each of the States, in accordance with article 31 (1).

[2] United Nations, *Treaty Series*, vol. 203, p. 85.

— The company tax (*l'impôt sur les sociétés*);

— Licence fees with respect to article 8, including any withholding tax, prelevy (*précompte*) or advance payment with respect to the aforesaid taxes;

(hereinafter referred to as "French 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.

CHAPTER II. DEFINITIONS

Article 3. GENERAL DEFINITIONS

1. In this Convention:

(*a*) The term "State" means the Netherlands or France, as the context requires;

(*b*) The term "the Netherlands" means that part of the Kingdom of the Netherlands which is situated in Europe and those areas outside the territorial sea of the Kingdom of the Netherlands over which the latter may, in accordance with international law and its domestic law, exercise rights in respect of the sea-bed and subsoil and the natural resources thereof;

(*c*) The term "France" means the European *départements* and overseas *départements* (Guadeloupe, Guiana, Martinique and Réunion) of the French Republic and those areas outside the territorial sea of France over which the latter may, in accordance with international law and its domestic law, exercise rights in respect of the sea-bed and subsoil and the natural resources thereof;

(*d*) The term "person" comprises individuals and companies;

(*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 France: the Minister of Economic Affairs and Finance or his duly authorized representative.

2. As regards the application of the Convention by a State, 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 a State" 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 accrediting or sending State shall be deemed to be a resident of the latter State if he is submitted therein to the same obligations in respect of taxes on income and on 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:

(*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 does not have 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;
(*d*) If he is a national of both States or of neither of them, the competent authorities of the States shall settle the question by mutual agreement.

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

Article 5. PERMANENT ESTABLISHMENT

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

2. The term "permanent establishment" shall include especially:

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

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

(*a*) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
(*b*) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
(*c*) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
(*d*) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
(*e*) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. A person acting in one of the States on behalf of an enterprise of the other State—other than an agent of an independent status to whom paragraph 6 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 insurance enterprise of one of the States shall be deemed to have a permanent establishment in the other State if, through a representative not falling within the category of persons referred to in paragraph 6 below, it collects premiums in the territory of the last-mentioned State or insures risks situated therein.

6. An enterprise of one of the States shall not be deemed to have a permanent establishment in the other State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

7. 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, including income from farming and forestry activities, 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 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. 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 those articles shall not be affected by the provisions of this article.

Article 8. SHIPPING, INLAND WATERWAYS TRANSPORT AND AIR TRANSPORT

1. Notwithstanding the provisions of article 7:

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

(*b*) Profits which a resident of one of the States derives 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.

4. Paragraphs 1 and 2 shall similarly apply to the payment of licence fees which are levied on a basis other than business profits.

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:

(*a*) 5 per cent of the gross amount of the dividends if the recipient is a joint-stock or limited company which holds directly at least 25 per cent of the capital of the company paying the dividends;

(*b*) in all other cases, 15 per cent of the gross amount of the dividends.

3. (*a*) Dividends paid by a company being a resident of France which would entitle the recipient to a tax credit (*avoir fiscal*) if he were a resident of France shall, when paid to residents of the Netherlands entitle the recipient to a gross payment from the French Treasury in an amount equal to such tax credit, subject to deduction of the tax referred to in paragraph 2 (*b*) above.

(b) The provisions of subparagraph (*a*) shall apply to the following recipients who are residents of the Netherlands:

(i) Individuals who are subject to Netherlands tax in respect of the aggregate of the dividends distributed by the company being a resident of France and the gross amount of the payment referred to in subparagraph (*a*) in connexion with such dividends;

(ii) Companies which are subject to Netherlands tax in respect of the aggregate of the dividends distributed by the company being a resident of France and the gross amount of the payment referred to in subparagraph (*a*) in connexion with such dividends;

(iii) Investment companies or investment funds which are not covered by the provisions of (ii) above and which meet the conditions determined by the competent authorities by mutual agreement.

4. An individual being a resident of the Netherlands who receives dividends distributed by a company being a resident of France may, unless he is eligible for the payment referred to in paragraph 3, apply for a refund of any prelevy (*précompte*) paid in respect of such dividends by the company making the distribution, subject to deduction of the tax referred to in paragraph 2 above.

5. (*a*) 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.

(*b*) Dividends paid by a company being a resident of France shall also be deemed to include the gross payment representing the tax credit referred to in

paragraph 3 and the gross reimbursements in respect of the prelevy which are referred to in paragraph 4 and which are made in connexion with dividends paid by such company.

6. The provisions of paragraphs 1 to 4 shall not apply if the recipient of the dividends, being a resident of one of the States, has in the other State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of article 7 shall apply.

7. Where a company which is a resident of one of the States derives profits or income from the other State, that other State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

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 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.

Notwithstanding the provisions of the preceding sentence, interest on bonds or debentures issued in France before 1 January 1965 may be subjected in that State to a tax of 12 per cent.

3. Notwithstanding the provisions of paragraph 2, interest as referred to in paragraph 1 shall not be taxed in the State in which it arises if it is paid:

(*a*) Under finance agreements or deferred payment contracts relating to sales of industrial, commercial or scientific equipment or to the construction of industrial, commercial or scientific installations or public works;

(*b*) On a loan of any kind granted by a banking establishment;

(*c*) As a penalty for arrears, following a summons or court proceedings, on a debt-claim for which no interest had been stipulated.

4. The term "interest" as used in this article means income from government securities, bonds or debentures, whether or not secured by mortgage and 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.

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

6. Interest shall be deemed to arise in one of the States when the payer is that State itself or a local authority or 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 such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

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

Article 12. ROYALTIES

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

2. The 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, videotapes and television or radio sound recordings, 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.

3. The provisions of paragraph 1 shall not apply if the recipient of the royalties, being a resident of one of the States, either carries out in the other State in which the royalties arise any commercial activity through a permanent establishment or performs any professional services from a fixed base therein, and if the right or property giving rise to the royalties is effectively connected with such permanent establishment of fixed base. In such a case, the provisions of article 7 or article 14, as appropriate, 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 paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each State, due regard being had to the other provisions of this Convention.

Article 13. CAPITAL GAINS

1. Gains from the alienation of immovable property as defined in article 6, paragraph 2, or from the alienation of shares or comparable interests in a company of which the assets consist principally of such property shall be taxable 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, shall be taxable in the other State.

3. Notwithstanding the provisions of paragraph 2:

(*a*) Gains which a resident of one of the States realizes from the alienation of ships or aircraft operated in international traffic, or of boats used in inland waterways transport or of movable property pertaining to the operation of such ships, aircraft and boats shall be taxable only in that State;

(*b*) Notwithstanding the provisions of subparagraph (*a*), 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 that mentioned in the preceding paragraphs shall be taxable only in the State of which the alienator is a resident.

5. Notwithstanding the provisions of paragraph 4, each State shall retain the right to levy, according to its own law, a tax on gains from the alienation of shares, *jouissance* shares or *jouissance* rights constituting all or part of a substantial interest in a joint-stock or limited company which is a resident of that State if such gains are realized by an individual who is a resident of the other State, provided, however, that the individual in question:

— is a national of the first-mentioned State but not of the other State; and
— has been a resident of the first-mentioned State during any part of the five years preceding the alienation.

Article 14. 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, dentists and accountants.

Article 15. DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of articles 16, 19 and 20, salaries, wages and other similar remuneration derived by a resident of one of the States in respect of an employment shall be taxable only in that State unless the employment is exercised in the other State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of one of the States in respect of an employment exercised in the other State shall be taxable only in the first-mentioned State if:

(*a*) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and

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

(*c*) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

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

Article 16. DIRECTORS OF COMPANIES

1. Directors' fees and other payments derived by a resident of the Netherlands who is a member of the board of directors of a joint-stock or limited company which is a resident of France shall be taxable in France.

2. Directors' fees and other payments derived by a resident of France who is a member of the board of directors of a joint-stock or limited company which is a resident of the Netherlands shall be taxable in the Netherlands.

3. Notwithstanding the provisions of paragraphs 1 and 2, payments as referred to above which are derived by persons performing actual functions on a permanent basis at a permanent establishment situated in the State other than that of which the company is a resident and which are borne as such by the permanent establishment shall be taxable in that other State.

Article 17. ARTISTES AND ATHLETES

1. Notwithstanding the provisions of articles 14 and 15, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the State in which these activities are exercised.

2. Notwithstanding any other provision of this Convention, a company of one of the States which supplies in the other State the services of a person covered by paragraph 1 shall be taxable in that other State in respect of the profits which it derives from the supply of such services, unless such company shows that it is not controlled directly or indirectly by the person in question.

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, local authority or public establishment thereof to any individual in respect of services rendered to that State, subdivision, authority or public establishment in the discharge of functions of a governmental nature shall be taxable in that State.

2. The provisions of articles 15, 16 and 18 shall apply to remuneration or pensions in respect of services rendered in connexion with any trade or business carried on by one of the States or a political subdivision, local authority or public establishment thereof.

Article 20. TEACHERS

1. The remuneration which teaching staff, being residents of one of the States and teaching in a university or other educational institution of the other State, derive from their services shall be taxable only in the first-mentioned State for a period not exceeding two years as from the commencement of their teaching activities.

2. This provision shall also apply to remuneration which an individual who is a resident of one of the States derives from research work performed in the other State, where such work is not undertaken primarily for the purpose of securing a particular benefit for an enterprise or person but rather is undertaken in the public interest.

Article 21. STUDENTS AND BUSINESS APPRENTICES

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 taxable in that other State, provided that such payments are made to him from sources outside that other State.

2. The same shall apply to any remuneration derived by such a student or business apprentice from an employment exercised in the State in which he is receiving his education or training, provided that the employment in question is directly connected with his education or training and that its duration does not exceed 183 days in any assessment year.

Article 22. OTHER INCOME

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

CHAPTER IV

Article 23. TAXATION OF FORTUNE

1. Fortune represented by immovable property, as defined in article 6, paragraph 2, shall be taxable 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, shall be taxable in the State in which the permanent establishment or fixed base is situated.

3. Notwithstanding the provisions of paragraph 2:

(*a*) 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;

(*b*) Notwithstanding the provisions of subparagraph (*a*), 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 therein.

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

CHAPTER V

Article 24. METHODS FOR THE ELIMINATION OF DOUBLE TAXATION

Double taxation shall be avoided in the following manner:

A. In the case of the Netherlands:

1. In calculating the taxes for which its residents are liable, the Netherlands may include in the basis upon which the said taxes are levied items of income or fortune which, in accordance with the provisions of this Convention, are taxable in France.

2. However, subject to the provisions of Netherlands domestic law concerning the compensation of losses, the Netherlands shall allow a deduction from the amount of tax computed in conformity with paragraph 1 equal to the part of that tax which bears the same proportion to the aforesaid tax as the total income or fortune included in the taxable basis referred to in paragraph 1 which may be taxed in France under articles 6, 7, 8 (paragraph 2), 10 (paragraph 6), 11 (paragraph 5), 12 (paragraph 3), 13 (paragraphs 1, 2 and 3 (*b*)), 14, 15 (paragraph 1), 19 and 23 (paragraphs 1, 2 and 3 (*b*)) of this Convention bears to the total income or fortune taken as the taxable basis in applying paragraph 1 above.

3. In respect of those items of income included in the taxable basis referred to in paragraph 1 which may be taxed in France under articles 10 (paragraph 2), 11 (paragraph 2), 16 and 17, the Netherlands shall allow a deduction from the Netherlands tax so computed which shall be the lesser of the following amounts:

(*a*) an amount equal to the French tax levied either under articles 16 and 17 of within the limits set out in articles 10 (paragraph 2) and 11 (paragraph 2);

(*b*) an amount equal to the part of Netherlands tax computed in conformity with paragraph 1 of this article which bears the same proportion to that tax as the amount of the said items of income bears to the total income which forms the taxable basis referred to in paragraph 1 above.

B. In the case of France:

(*a*) Income other than that referred to in subparagraph (*b*) below shall be exempt from the French taxes referred to in article 2, paragraph 3 (*b*), while the income is, under this Convention, taxable in Netherlands.

(*b*) As regards income referred to in articles 8, 10, 11, 16 and 17 which has borne Netherlands tax in accordance with the provisions of those articles, France shall allow to persons who are residents of France receiving such income a tax credit (*crédit d'impôt*) corresponding to the amount of Netherlands tax.

Such tax credit, not exceeding the amount of tax levied in France on such income, shall be allowed against taxes referred to in article 2, paragraph 3 (*b*), in the bases of which such income in included.

(*c*) Notwithstanding the provisions of subparagraphs (*a*) and (*b*), French tax may be computed on income chargeable in France by virtue of this Convention at the rate appropriate to the total of the income chargeable in accordance with French law.

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 two States;

(*b*) All bodies corporate, partnerships and associations deriving their status as such from the law in force in one of the two States.

3. Stateless persons who are residents of one of the States shall not be subjected in either 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 the State in question in the same circumstances are or may be subjected.

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. 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.

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. APPLICATION OF THE CONVENTION

The competent authorities of the two States shall determine the mode of application of this Convention.

Article 27. 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. The case must be presented within three years of the first notice of the action which results in taxation not in accordance with this 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 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. The agreement shall be applied irrespective of the time-limits established by the domestic law of the two States.

3. The competent authorities of the States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to be application of the Convention. They may, in particular, consult together with a view to reaching agreement:

(*a*) to the effect that profits accruing to an enterprise of one of the States and to its permanent establishment in the other State shall be attributed in the same manner;

(*b*) to the effect that income accruing to an enterprise of one of the States and to any associated person as referred to in article 9 shall be attributed in the same manner.

The said authorities may also consult together with a view to the avoidance 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 as provided in the preceding paragraphs.

Article 28. EXCHANGE OF INFORMATION

1. The competent authorities of the two States shall exchange such information relating to taxation as is normally available to them and is necessary for the carrying out of this Convention and of the domestic laws of the two States concerning taxes covered by this Convention and concerning the elimination of tax evasion. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of the Convention.

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

(*a*) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other State;

(*b*) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other State;

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

Article 29. DIPLOMATIC AND CONSULAR OFFICIALS

1. 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.

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

Article 30. TERRITORIAL EXTENSION

1. This Convention may be extended, either in its entirety or with any necessary modifications,

(*a*) to Surinam and the Netherlands Antilles or to either of those countries singly;
(*b*) to overseas territories of the French Republic when such countries and territories impose taxes 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 between the States in notes to be exchanged through the diplomatic channels.

2. Unless otherwise agreed by both States, the denunciation of the Convention by one of them under article 32 shall terminate, in the manner provided for in that article, the application of the Convention to any country or territory to which it has been extended under this article.

CHAPTER VII. FINAL PROVISIONS

Article 31. ENTRY INTO FORCE

1. This Convention shall be approved in conformity with the constitutional provisions in force in each of the States. It shall enter into force on the thirtieth day after the date of the exchange of notifications confirming that the respective provisions have been complied with.

2. This Convention shall apply:

(*a*) In the Netherlands:
  (i) As regards the dividends tax, to the dividends referred to in article 10 which are paid as from the date of entry into force;
  (ii) As regards other taxes, to income and fortune assignable to fiscal years and periods commencing on or after 1 January of the year in which the exchange of notification takes place;

(*b*) In France:
  (i) As regards, firstly, taxes deducted at the source on dividends and interest and, secondly, the payments provided for in article 10, paragraphs 3 and 4, to payments made as from the date of entry into force;
  (ii) As regards other taxes, to income assignable to the calendar year in which the exchange of notification takes place or to fiscal years ending in that year, and to income assignable to subsequent years.

3. The entry into force of this Convention shall terminate the agreement between France and the Netherlands for the avoidance of double taxation with respect to taxes on income and for the settlement of certain other fiscal questions signed at Paris on 30 December 1949, as amended by the Additional Agreement to that Convention signed at Paris on 24 July 1952.[1] The provisions of the Convention shall cease to apply as from the date on which the corresponding provisions of this Convention apply for the first time in accordance with paragraph 2 above.

Article 32. TERMINATION

This Convention shall remain in force until such time as it is denounced by one of the States. As from 1976, either State may denounce the Convention through the diplomatic channel by giving notice to that effect at least six months before the end of the current calendar year.

In that event, the Convention shall cease to apply:

(*a*) In the Netherlands:
— to income and fortune assignable to fiscal years and periods commencing after the end of the calendar year in which notice of termination is given;

(*b*) In France:
— to income assignable to any assessment year subsequent to the year in which notice of termination is given.

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

DONE at Paris on 16 March 1973, in duplicate in the French and Dutch languages, both texts being equally authentic.

For the Government of the French Republic:
[*Signed*]
GILBERT DE CHAMBRUN

For the Government of the Kingdom of the Netherlands:
[*Signed*]
J.-A. DE RANITZ

PROTOCOL

On signing the Convention between the Government of the French Republic and the Government of the Kingdom of the Netherlands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and fortune, concluded this day, the undersigned have agreed on the following provisions, which shall form an integral part of the Convention.

[1] United Nations, *Treaty Series*, vol. 203, p. 85.

I. *Ad* article 4

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

II. *Ad* article 6

In accordance with the provisions of its domestic law, France reserves the right to regard as immovable property, for the purposes of articles 6 and 13 of the Convention, interests owned by partners of shareholders of companies which have as their sole objective either the construction or acquisition of buildings or groups of buildings for the purpose of dividing them into parts to be owned or used by the members of such companies, or the management of such buildings or groups of buildings thus divided.

III. *Ad* article 10

It is understood that, for the purposes of paragraph 7, companies being residents of the Netherlands which have a permanent establishment in France shall not be subjected to the distribution tax referred to in article 115 *quinquies* of the General Code of Taxation.

IV. *Ad* articles 10, 11 and 12

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

V. *Ad* article 24

It is understood that, as regards the Netherlands income tax and the Netherlands corporation tax, the basis referred to in article 24, paragraph 1, shall be the total net income (*onzuivere inkomen*) or profit (*winst*) within the meaning of the Netherlands laws relating to the income tax or the corporation tax, as the case may be.

DONE at Paris on 16 March 1973, in duplicate in the French and Dutch languages, both texts being equally authentic.

For the Government of the French Republic:
[*Signed*]
GILBERT DE CHAMBRUN

For the Government of the Kingdom of the Netherlands:
[*Signed*]
J.-A. DE RANITZ