No. 14040

NETHERLANDS
and
INDONESIA

Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital (with protocol). Signed at Jakarta on 5 March 1973

Authentic texts: Dutch, Indonesian and English.

Registered by the Netherlands on 20 May 1975.

PAYS-BAS
et
INDONÉSIE

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu et sur la fortune (avec protocole). Signée à Jakarta le 5 mars 1973

Textes authentiques : néerlandais, indonésien et anglais.

Enregistrée par les Pays-Bas le 20 mai 1975.

AGREEMENT[1] BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE REPUBLIC OF INDONESIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

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

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,

Have agreed as follows:

CHAPTER I. SCOPE OF THE AGREEMENT

Article 1. PERSONAL SCOPE

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

Article 2. TAXES COVERED

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of each of the two States 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 capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

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

a) in the case of the Netherlands:
- *de inkomstenbelasting* (income tax),
- *de loonbelasting* (wages tax),
- *de vennootschapsbelasting* (company tax),
- *de dividendbelasting* (dividend tax),
- *de vermogensbelasting* (capital tax),

(hereinafter referred to as "Netherlands tax");

b) in the case of Indonesia:
- *pajak pendapatan* (income tax),
- *pajak perseroan* (company tax),
- *pajak kekayaan* (capital tax),
- *pajak atas bunga, dividen dan royalty* (tax on interest, dividend and royalty),

(hereinafter referred to as "Indonesian tax").

[1] Came into force on 2 December 1974, the date on which the Contracting Parties notified each other of the completion of the required constitutional formalities, in accordance with article 29.

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

CHAPTER II. DEFINITIONS

Article 3. GENERAL DEFINITIONS

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

a) The terms "one of the two States" and "the other State" mean the Netherlands or Indonesia, as the context requires; the term "the two States" means the Netherlands and Indonesia;

b) The term "the Netherlands" comprises the part of the Kingdom of the Netherlands that is situated in Europe and the part of the seabed and its sub-soil under the North Sea, over which the Kingdom of the Netherlands has sovereign rights in accordance with international law;

c) The term "Indonesia" comprises the territory of the Republic of Indonesia and the parts of the seabed and sub-soil under the adjacent seas, over which the Republic of Indonesia has sovereign rights in accordance with international law;

d) The term "person" comprises an individual, a company and any other body of persons;

e) The term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

f) The terms "enterprise of one of the two States" and "enterprise of the other State" mean respectively an enterprise carried on by a resident of one of the two 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 Indonesia, the Minister of Finance or his duly authorized representative.

2. As regards the application of the Agreement by either of the two 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 this Agreement.

Article 4. FISCAL DOMICILE

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

2. For the purposes of this Agreement an individual, who is a member of a diplomatic or consular mission of one of the two 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 submitted therein to the same obligations in respect of taxes on income and capital 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 has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

c) if he has an habitual abode in both States or in neither of them, the competent authorities of the two 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. If the competent authorities of the two States consider that a place of effective management is present in both States, they shall settle the question by mutual agreement.

Article 5. PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, 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 farm or plantation;

g) a mine, an oil-well, quarry or other place of extraction of natural resources;

h) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activity continues for a period of more than three months, it being understood that in the case of a construction, installation or assembly project with respect to machinery or industrial equipment a permanent establishment shall not be deemed to exist if such project continues for a period of not more than 183 days;

i) the furnishing of services including consultancy services by an enterprise through an employee or other personnel where activities of that nature continue within one of the two States for a period or periods exceeding in the aggregate 183 days within any twelve-month period.

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

a) the use of facilities solely for the purpose of storage or display 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 or display;

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 two 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 —

a) he has, and habitually exercises in the first-mentioned 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; or

b) he maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise.

5. An insurance enterprise of one of the two States shall, except with regard to reinsurance, be deemed to have a permanent establishment in the other State if it collects premiums in the territory of that other State or insures risks situated therein through an employee or through a representative who is not an agent of an independent status within the meaning of paragraph 6.

6. An enterprise of one of the two 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. However, when such a broker or agent carries on activities wholly or almost wholly for that enterprise itself or for that enterprise and other enterprises which are controlled by or have a controlling interest in it, he shall not be considered an agent of an independent status within the meaning of this paragraph.

7. The fact that a company which is a resident of one of the two States controls or is controlled by a company which is a resident of the other State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

CHAPTER III. TAXATION OF INCOME

Article 6. INCOME FROM IMMOVABLE PROPERTY

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

2. The term "immovable property" shall be defined in accordance with the law of the State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources and debt-claims of every kind (excluding bonds) secured by mortgage; 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 two 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 or are derived within such other State from sales of goods or merchandise of the same kind as those sold, or from other business transactions of the same kind as those effected, through the permanent establishment.

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

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

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

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8. ASSOCIATED ENTERPRISES

Where

a) an enterprise of one of the two 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 two 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 9. DIVIDENDS

1. Dividends paid by a company which is a resident of one of the two 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 in the aggregate 20 per cent of the gross amount of the dividends.

3. Notwithstanding the provisions of paragraph 2 the Netherlands shall not levy a tax on dividends paid by a company which is a resident of that State to a company the capital of which is wholly or partly divided into shares and which is a resident of Indonesia and holds directly at least 25 per cent of the capital of the company paying the dividends, unless the relationship of the two companies has been arranged or is maintained primarily with the intention of securing this exemption.

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

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

6. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, founders' shares or other rights participating in profits, as well as income from debt-claims participating in profits and income from other corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident.

7. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient of the dividends, being a resident of one of the two States, has in the other State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of Article 7 shall apply.

8. Where a company which is a resident of one of the two 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 10. INTEREST

1. Interest arising in one of the two 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 in the aggregate 20 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 the tax levied by the State in which the interest arises shall not exceed in the aggregate 10 per cent of the gross amount of the interest, if

a) the interest is owned by a bank or a financial institution or by an enterprise mainly engaged in activities in the fields of agriculture, plantation, forestry, fishery, dairy-farming, mining, manufacturing industries, transportation, people's housing projects, tourism, infra-structure or any other field of production, and

b) the interest is derived by a bank or a financial institution or by another enterprise.

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

5. The term "interest" as used in this Article means income from Government securities, bonds, whether or not secured by mortage but not carrying a right to participate in profits, and debt-claims of every kind not secured by mortgage as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

6. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient of the interest, being a resident of one of the two 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.

7. Interest shall be deemed to arise in one of the two States when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of one of the two States or not, has in one of the two States a permanent establishment in connection 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.

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 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 Agreement.

Article 11. ROYALTIES

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

2. However, such royalties may be taxed in the State in which they arise, and according to the law of that State, but the tax so charged shall not exceed in the aggregate 20 per cent of the gross amount of the royalties.

3. Notwithstanding the provisions of paragraph 2 the tax levied by the State in which the royalties arise shall not exceed in the aggregate:

a) 10 per cent of the gross amount of the royalties, if the royalties consist of payments of any kind received as a consideration for the use of, or the right to use, any copyright of scientific work, or industrial, commercial or scientific equipment, or for information concerning scientific experience;

b) 5 per cent of the gross amount of the royalties, if the royalties consist of payments of any kind received as a consideration for the use of, or the right to use, inventions or discoveries in the field of technology and industry, such as a patent, trade mark, design or model, plan, secret formula or process, or for information concerning experience with respect to production and sale ("know-how").

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

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient of the royalties, being a resident of one of the two 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.

6. Royalties shall be deemed to arise in one of the two States when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of one of the two States or not, has in one of the two States a permanent establishment in connection with which the contract under which the royalties are paid was concluded, and such royalties are borne by such permanent establishment, then such royalties 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 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 Agreement.

Article 12. LIMITATION OF ARTICLES 9, 10 AND 11

International organisations, organs and officials thereof and members of a diplomatic or consular mission of a third State, being present in one of the two States, shall not be entitled, in the other State, to the reductions from tax provided for in Articles 9, 10 and 11 in respect of the items of income dealt with in these Articles and arising in that other State, if such items of income are not subject to a tax on income in the first-mentioned State.

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 two States has in the other State or of movable property pertaining to a fixed base available to a resident of one of the two 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. Gains from the alienation of any property other than those mentioned in paragraphs 1 and 2, shall be taxable only in the State of which the alienator is a resident.

4. The provisions of paragraph 3 shall not affect the right of each of the two States to levy according to its own law a tax on gains from the alienation of shares or "jouissance" rights in a company, the capital of which is wholly or partly divided into shares and which is a resident of that State, derived by an individual who is a resident of the other State and has been a resident of the first-mentioned State in the course of the last five years preceding the alienation of the shares of "jouissance" rights.

Article 14. INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of one of the two 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 that 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, dentists and accountants.

Article 15. DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21 salaries, wages and other similar remuneration derived by a resident of one of the two 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 two 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 within a period of twelve months, and

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

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

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

Article 16. DIRECTORS' FEES

1. Remuneration and other payments derived by a resident of Indonesia in his capacity as a *bestuurder* or a *commissaris* of a company which is a resident of the Netherlands may be taxed in the Netherlands.

2. Remuneration and other payments derived by a resident of the Netherlands in his capacity as a *pengurus* or a *komisaris* of a company which is a resident of Indonesia may be taxed in Indonesia.

Article 17. ARTISTS AND ATHLETES

Notwithstanding the provisions of Articles 5, 7, 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, or income derived from the furnishing by an enterprise of the services of such public entertainers or athletes, may be taxed in the State in which these activities or services are exercised.

Article 18. PENSIONS

Subject to the provisions of Article 19, paragraph 1:

a) pensions and other similar remuneration, which are paid by an enterprise of one of the two States to a resident of the other State in consideration of an employment formerly exercised in the service of that enterprise, and which are chargeable as such against the profits arising in the first-mentioned State, may be taxed in the first-mentioned State;

b) all other pensions and other similar remuneration paid to a resident of one of the two 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 two States or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof in the discharge of functions of a governmental nature may be taxed in that State.

2. Notwithstanding paragraph 1, the provisions of Articles 15, 16 or 18 shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by one of the two States or a political subdivision or a local authority thereof.

3. Paragraph 1 shall not apply in so far as services are rendered to a State in the other State by an individual who is a resident and a national of that other State.

Article 20. PROFESSORS AND TEACHERS

An individual who sojourns in one of the two States for a period not exceeding two years, for the purpose of teaching at a university, college, school or other educational institution or at a non-commercial and non-industrial research institute in that State and who immediately prior to such sojourn is a resident of the other State, shall not be taxed in the first-mentioned State in respect of any payments which he receives for such activity.

Article 21. STUDENTS

1. An individual who immediately before visiting one of the two States is a resident of the other State and is temporarily present in the first-mentioned State for the primary purpose of:

a) studying at a recognised university, college or school in that first-mentioned State; or

b) securing training as a business apprentice,

shall be exempt from tax in the first-mentioned State in respect of:

(i) all remittances from abroad for the purpose of his maintenance, education or training, and

(ii) any remuneration for personal services performed in the first-mentioned State in an amount that, as far as the Netherlands is concerned, does not exceed 3,600 guilders, and, as far as Indonesia is concerned, does not exceed an amount to be determined by the competent authorities by mutual agreement, for any taxable year.

The benefits under this paragraph shall only extend for such period of time as may be reasonable or customarily required to effectuate the purpose of the visit.

2. An individual who immediately before visiting one of the two States is a resident of the other State and is temporarily present in the first-mentioned State for a period not exceeding three years for the purpose of study, research or training solely as a recipient of a grant, allowance or award from a scientific, educational, religious or charitable organization or under a technical assistance programme entered into by one of the two States, a political subdivision or a local authority thereof shall be exempted from tax in the first-mentioned State on:

a) the amount of such grant, allowance or award; and

b) any remuneration for personal services performed in the first-mentioned State provided such services are in connection with his study, research or training or are incidental thereto, in an amount that, as far as the Netherlands is concerned, does not exceed 3,600 guilders, and, as far as Indonesia is concerned, does not exceed an amount to be determined by the competent authorities by mutual agreement, for any taxable year.

3. An individual who immediately before visiting one of the two States is a resident of the other State and is temporarily present in the first-mentioned State for a period not exceeding twelve months as an employee of, or under contract with the last-mentioned State, a political subdivision or a local authority thereof, or an enterprise of the last-mentioned State, for the purpose of acquiring technical, professional or business experience, shall be exempted from tax in the first-mentioned State on:

a) all remittances from the last-mentioned State for the purpose of his maintenance, education or training, and

b) any remuneration for personal services performed in the first-mentioned State, provided such services are in connection with his study or training or are incidental thereto, in an amount that, as far as the Netherlands is concerned, does not exceed 15,000 guilders, and, as far as Indonesia is concerned, does not exceed an amount to be determined by the competent authorities by mutual agreement.

However, the benefits under this paragraph shall not be granted if the technical, professional or business experience is acquired from a company 50 per cent or more of the voting stock of which is owned by the State, the political subdivision or the local authority thereof or the enterprise, having sent the employee or the person working under contract.

Article 22. INCOME NOT EXPRESSLY MENTIONED

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

CHAPTER IV. TAXATION OF CAPITAL

Article 23. CAPITAL

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

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

3. All other elements of capital of a resident of one of the two States shall be taxable only in that State.

CHAPTER V

Article 24. ELIMINATION OF DOUBLE TAXATION

1. Each of the two States, when imposing tax on its residents, may include in the basis upon which such taxes are imposed, the items of income or capital, which according to the provisions of this Agreement may be taxed in the other State.

2. Without prejudice to the application of the provisions concerning the compensation of losses in the unilateral regulations for the avoidance of double taxation, the Netherlands shall allow a deduction from the amount of tax computed in conformity with the first paragraph of this Article equal to such part of that tax which bears the same proportion to the aforesaid tax, as the part of the income or capital which is included in the basis mentioned in the first paragraph of this Article and may be taxed in Indonesia according to Articles 6, 7, 9 paragraph 7, 10, paragraph 6, 11, paragraph 5, 13, paragraphs 1 and 2, 14, 15, paragraph 1, 16, paragraph 1, 17, 19, paragraph 1, and 23, paragraphs 1, and 2, of this Agreement bears to the total income or capital which forms the basis mentioned in the first paragraph of this Article.

3. Further the Netherlands shall allow a deduction from the Netherlands tax computed in accordance with the preceding paragraphs of this Article with respect to the items of income which may be taxed in Indonesia according to Articles 9, paragraph 2, 10, paragraphs 2 and 3, 11, paragraphs 2 and 3, and 18, subparagraph *a*), and are included in the basis mentioned in paragraph 1 of this Article. The amount of this deduction shall be the lesser of the following amounts:

a) the amount equal to the Indonesian tax;

b) the amount of the Netherlands tax which bears the same proportion to the amount of tax computed in conformity with paragraph 1 of this Article, as the amount of the said items of income bears to the amount of income which forms the basis mentioned in paragraph 1 of this Article.

4. Where, by reason of the relief given under the provisions of Indonesian laws for the purpose of encouraging foreign investments in Indonesia, the Indonesian tax actually levied on dividends which may be taxed in Indonesia according to Article 9, paragraph 2, or interest as mentioned in Article 10, paragraph 3, or royalties as mentioned in Article 11, paragraph 3, subparagraph *a*), arising in Indonesia is lower than the tax Indonesia may levy according to those provisions, then the amount equal to Indonesian tax as mentioned in subparagraph *a*) of paragraph 3 of this Article on those items of income shall be deemed to be:

a) with respect to dividends which may be taxed in Indonesia according to Article 9, paragraph 2: 20 per cent of the gross amount of the dividends;

b) with respect to interest as mentioned in Article 10, paragraph 3, arising in Indonesia: an amount equal to the amount of tax which Indonesia actually has levied thereon increased by twice the difference between this amount and 10 per cent of the gross amount of such interest;

c) with respect to royalties as mentioned in Article 11, paragraph 3, subparagraph *a*), arising in Indonesia: 10 per cent of the gross amount of such royalties.

5. With respect to royalties as mentioned in Article 11, paragraph 3, subparagraph *b*), arising in Indonesia, the amount equal to Indonesian tax as mentioned in subparagraph *a*) of paragraph 3 of this Article levied on such royalties shall be deemed to be 15 per cent of the gross amount of such royalties. Where, however, by reason of the relief given under the provisions of Indonesian laws for the purpose of encouraging foreign investments in Indonesia, the Indonesian tax actually levied on such royalties is lower than 5 per cent of the gross amount thereof, then the percentage of 15 shall be increased by one per cent for each per cent that Indonesia has levied less than 5 per cent.

6. Subject to the provisions of paragraph 7 of this Article Indonesia shall allow a deduction from the tax computed in conformity with the first paragraph of this Article equal to such part of that tax which bears the same proportion to the

aforesaid tax as the part of the income or capital which is included in the basis of that tax and may be taxed in the Netherlands according to the provisions of this Agreement bears to the total income or capital which forms the basis for Indonesian tax.

7. Where a resident of Indonesia derives income which, in accordance with the provisions of Article 9, paragraph 2, 10, paragraphs 2 and 3, 11, paragraphs 2 and 3, and 18, subparagraph *a*), may be taxed in the Netherlands, Indonesia shall allow as a deduction from the Indonesian tax on the income of that person an amount equal to the tax paid in the Netherlands on that income. Such deduction shall not, however, exceed that part of the Indonesian tax computed in conformity with the first paragraph of this Article, which is appropriate to the income derived from the Netherlands.

8. Where a resident of one of the two States derives gains which may be taxed in the other State according to Article 13, paragraph 4, that other State shall allow a deduction from its tax on such gains to an amount equal to the tax levied in the first-mentioned State on the said gains.

CHAPTER VI. SPECIAL PROVISIONS

Article 25. MUTUAL AGREEMENT PROCEDURE

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

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other State, with a view to the avoidance of taxation not in accordance with this Agreement.

3. The competent authorities of the two States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

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

Article 26. EXCHANGE OF INFORMATION

1. The competent authorities of the two States shall exchange such information (being information which such authorities have in proper order at their disposal) as is necessary for the carrying out of this Agreement, in particular for the prevention of fraud, and for the administration of statutory provisions against legal avoidance concerning taxes covered by this Agreement. 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 this Agreement.

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

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

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

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

Article 27. DIPLOMATIC AND CONSULAR OFFICIALS

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

Article 28. TERRITORIAL EXTENSION

1. This Agreement may be extended, either in its entirety or with any necessary modifications, to either or both of the countries of Surinam or the Netherlands Antilles, if the country concerned imposes taxes substantially similar in character to those to which this Agreement 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 diplomatic channels.

2. Unless otherwise agreed the terminations of the Agreement shall not also terminate the application of the Agreement to any country to which it has been extended under this Article.

CHAPTER VII. FINAL PROVISIONS

Article 29. ENTRY INTO FORCE

This Agreement shall enter into force on the date on which the Contracting Governments have notified each other in writing that the formalities constitutionally required in their respective countries have been complied with, and its provisions shall have effect for taxable years and periods beginning on or after the first day of January 1971.

Article 30. TERMINATION

This Agreement shall remain in force until denounced by one of the two Contracting Parties. Either Party may denounce the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year 1976. In such event the Agreement shall cease to have effect for taxable years and periods beginning after the end of the calendar year in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Agreement.

DONE at Jakarta, on March 5, 1973, in two originals, each in the Netherlands, Indonesian and English languages, the three texts being equally authentic. In case

there is any divergence of interpretation between the Netherlands and Indonesian texts, the English text shall prevail.

For the Government of the Kingdom of the Netherlands:

[Signed]
HUGO SCHELTEMA
Ambassador Extraordinary and Plenipotentiary

For the Government of the Republic of Indonesia:

[Signed]
ALI WARDHANA
Minister of Finance

PROTOCOL

At the moment of signing the Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, this day concluded between the Kingdom of the Netherlands and the Republic of Indonesia,[1] the undersigned have agreed that the following provisions shall form an integral part of the Agreement.

I. *Ad* Article 2, paragraph 3, subparagraph *b*

It is understood that the Indonesian *"menghitung pajak orang"* is included in the *"pajak pendapatan"* and the *"pajak perseroan"* (the income tax and the company tax). As for the province of West Irian the Agreement shall also apply to the taxes on income and on capital which are in force there, including the tax on interest, dividend and royalty.

II. *Ad* Article 5

The competent authorities of the two States may agree that in spite of criteria by reason of which a permanent establishment within the meaning of Article 5 can be assumed to exist, nevertheless a permanent establishment shall not be deemed to exist.

III. *Ad* Article 5

Notwithstanding Article 5, paragraph 2, subparagraph *i*), a permanent establishment shall be deemed to exist, if a resident of one of the two States carries on, as a subcontractor under instructions from an enterprise of the other State, prospecting operations for mineral resources in that other State, provided such prospecting operations continue for a period or periods exceeding in the aggregate 91 days within any twelve-month period.

IV. *Ad* Article 7

Where a company which is a resident of the Netherlands wholly or partly carries on business in Indonesia through a permanent establishment situated therein, the tax Indonesia may levy according to Article 7, paragraph 1, shall include the tax which is due in Indonesia on transferred profits under the modifications effected by the law of August 7, 1970, No. 10 (*Bulletin of Acts*, Orders and Decrees 1970, No. 45). The latter tax shall not exceed, however, 10 per cent of the amount transferred.

[1] See p. 375 of this volume.

V. *Ad* Article 7

In the application of Article 7, paragraph 3, no deduction shall be allowed in respect of amounts charged—otherwise than with respect to expenses actually incurred — by the head office of the enterprise or any of its other offices to the permanent establishment, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys made available to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for such amounts charged — otherwise than with respect to expenses actually incurred — by the permanent establishment to the head office of the enterprise or any of its other offices.

VI. *Ad* Article 9

Notwithstanding the provisions of Article 9, paragraph 2, Indonesian tax on dividends paid by a company which is a resident of Indonesia to a company the capital of which is wholly or partly divided into shares and which is a resident of the Netherlands and holds directly at least 25 per cent of the capital of the company paying the dividends, shall not exceed in the aggregate 10 per cent of the gross amount of the dividends, provided that the receiving company does not suffer tax thereon in the Netherlands.

VII. *Ad* Article 11

The term "royalties" as used in Article 11 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 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, or for information concerning industrial, commercial or scientific experience.

VIII. *Ad* Articles 9, 10 and 11

Applications for the restitution of tax levied contrary to the provisions of Articles 9, 10 and 11 have to be lodged with the competent authority of the State having levied the tax within a period of five years after the expiration of the calendar year in which the tax was levied.

IX. *Ad* Article 24

After a period of 10 years following the entry into force of the Agreement the competent authorities shall consult each other in order to determine whether it is opportune to amend the provisions of Article 24, paragraphs 4 and 5, of the Agreement.

X. *Ad* Article 24

It is understood that, in so far as the Netherlands income tax or company tax is concerned, the basis mentioned in Article 24, paragraph 1, is the *onzuivere inkomen* or *winst*, in terms of the Netherlands income tax law or company tax law, respectively.

XI. *Ad* Article 26

The obligation to exchange information does not include information obtained from banks or from institutions assimilated therewith. The term "institutions assimilated therewith" means inter alia insurance companies.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Protocol.

DONE at Jakarta, on March 5, 1973, in two originals, each in the Netherlands, Indonesian and English languages, the three texts being equally authentic. In case there is any divergence of interpretation between the Netherlands and Indonesian texts, the English text shall prevail.

For the Government of the Kingdom of the Netherlands:

[Signed]
HUGO SCHELTEMA
Ambassador Extraordinary and Plenipotentiary

For the Government of the Republic of Indonesia:

[Signed]
ALI WARDHANA
Minister of Finance