No. 16531

NETHERLANDS
and
MALTA

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 The Hague on 18 May 1977

Authentic texts: Dutch and English.
Registered by the Netherlands on 12 April 1978.

PAYS-BAS
et
MALTE

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 La Haye le 18 mai 1977

Textes authentiques : néerlandais et anglais.
Enregistrée par les Pays-Bas le 12 avril 1978.

AGREEMENT[1] BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE REPUBLIC OF MALTA 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 Malta,

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 States.

Article 2. TAXES COVERED

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of each of the 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 this 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 Malta:

- the income tax and surtax, including prepayments of tax whether made by deduction at source or otherwise;

(hereinafter referred to as "Malta tax").

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

[1] Came into force on 9 November 1977, i.e., 30 days after the date of the last of the notifications by which the Parties informed each other of the completion of their constitutional requirements, in accordance with article 32 (2).

5. Where, under any provision of this Agreement, income is relieved from tax in one of the States, either in full or in part, and, under the law in force in the other State, a person, in respect of the said income, is subject to tax by reference to the amount thereof which is remitted to or received in that other State and not by reference to the full amount thereof, then the relief to be allowed under this Agreement in the first-mentioned State shall apply to so much of the income as is remitted to or received in the other State.

CHAPTER II. DEFINITIONS

Article 3. GENERAL DEFINITIONS

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

a. The term "State" means the Netherlands or Malta, as the context requires; the term "States" means the Netherlands and Malta;

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

c. The term "Malta" means the Republic of Malta, and, when used in a geographical sense, means the Island of Malta, the Island of Gozo and the other islands of the Maltese archipelago, including the territorial waters thereof, and any area outside the territorial sea of Malta which, in accordance with international law, has been or may hereafter be designated, under the laws of Malta concerning the Continental Shelf, as an area within which the rights of Malta with respect to the sea-bed and subsoil and their natural resources may be exercised;

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

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

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

g. The term "national" means:

(i) in respect of the Netherlands, any individual possessing the nationality of the Netherlands and any legal person, partnership or association deriving its status as such from the law in force in the Netherlands;

(ii) in respect of Malta, any citizen of Malta as provided for in Chapter III of the Constitution of Malta and in the Maltese Citizenship Act, 1965, and any legal person, partnership or association deriving its status as such from the law in force in Malta;

h. The term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in one of the States, except when the ship or aircraft is operated solely between places in the other State;

i. The term "competent authority" means:

(i) in the case of the Netherlands, the Minister of Finance or his authorized representative;

(ii) in the case of Malta, the Minister responsible for finance or his authorized representative.

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

Article 4. FISCAL DOMICILE

1. For the purposes of this Agreement, the term "resident of one of the States" means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. The term does not include any person who is liable to tax in that State in respect only of income from sources therein or capital situated in that State.

2. For the purposes of this Agreement an individual, who is a member of a diplomatic or consular mission of one of the States in the other State or in a third State and who is a national of the sending State, shall be deemed to be a resident of the sending State if he is 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 his status shall be determined as follows:

a. He shall be deemed to be a resident of the State in which he has a permanent home available to him. If he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closest (centre of vital interests).

b. If the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode.

c. If he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national.

d. If he is a national of both States or of neither of them, the competent authorities of the States shall settle the question by mutual agreement.

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

Article 5. PERMANENT ESTABLISHMENT

1. For the purposes of this 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 mine, quarry or other place of extraction of natural resources;
g. a building site or construction or assembly project or supervisory activities in connection therewith, where such site, project or activity continues 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 5 applies — shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

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

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

CHAPTER III. TAXATION OF INCOME

Article 6. INCOME FROM IMMOVABLE PROPERTY

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

2. The term "immovable property" shall be defined in accordance with the law of the State in which the property in question is situated. The term shall in any case include property accessory to immovable property, 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 secured by mortgage on immovable property, excluding bonds or debentures; ships 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. Subject to the provisions of paragraph 3, 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. Insofar as it has been customary in one of the States to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles embodied 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. SHIPPING AND AIR TRANSPORT

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

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

3. The provisions of paragraph 1 shall also apply to profits derived from the participation in a pool, a joint business or in an international operating agency.

Article 9. ASSOCIATED ENTERPRISES

1. 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.

2. Where profits on which an enterprise of one of the States has been charged to tax in that State are also included in the profits of an enterprise of the other State and taxed accordingly and the profits so included are profits which would have accrued to that enterprise of the other State if the conditions made between the enterprises had been those which would have been made between independent enterprises, then the first-mentioned State shall make an appropriate adjustment to the amount of tax charged on those profits in the first-mentioned State. In determining such an adjustment due regard shall be had to the other provisions of this Agreement in relation to the nature of the income, and for this purpose the competent authorities of the States shall if necessary consult each other.

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. Dividends paid by a company which is a resident of the Netherlands to a resident of Malta may also be taxed in the Netherlands, and according to Netherlands law, but, if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed:

a. 5 per cent of the gross amount of the dividends if the recipient is a company which holds directly at least 25 per cent of the capital of the company paying the dividends;

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

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

3. Dividends paid by a company which is a resident of Malta to a resident of the Netherlands who is the beneficial owner thereof shall be exempt from any tax in Malta which is chargeable on dividends in addition to the tax chargeable in respect of the profits of the company. Furthermore, Malta tax chargeable with respect to distributed profits of the company shall not exceed 15 per cent of the gross amount thereof, if the distributed profits consist of gains or profits earned in any year in respect of which that company is in receipt of any benefit under the provisions regulating aids to industries in Malta, and the profits are distributed to a company which is a resident of the Netherlands and which is not charged to Netherlands company tax with respect to such profits: provided that the receiving company submits returns and accounts to the taxation authorities of Malta in respect of its income liable to Malta tax for the relative year of assessment.

This paragraph shall not affect the taxation of the company in respect of the profits out of which distributions are made, but the recipient of any distributed profits shall be entitled to any refund which may be available under the law of Malta on account of the tax paid by the company, if the tax so paid is in excess of that chargeable on the distributed profits in accordance with the provisions of this paragraph or of the law of Malta.

4. The term "dividends" as used in this article means income from shares, "*jouissance*" shares or "*jouissance*" rights, mining shares, founders' shares or other

rights participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the taxation law of the State of which the company making the distribution is a resident.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient of the dividends, being a resident of one of the States, carries on business in the other State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of article 7 or article 15, as the case may be, shall apply.

6. 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, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor 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 if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2:

a. Interest arising in Malta and paid to the Netherlands Government, the Central Bank of the Netherlands, the Nederlandse Financieringsmaatschappij voor Ontwikkelingslanden N.V. (Netherlands finance company for developing countries), and the Nederlandse Investeringsbank voor Ontwikkelingslanden N.V. (Netherlands investment bank for developing countries) shall be exempt from Malta tax.

b. Interest arising in the Netherlands and paid to the Malta Government, the Central Bank of Malta or the Malta Development Corporation shall be exempt from Netherlands tax.

c. The exemptions granted by this paragraph shall also apply to any other statutory body of one of the States if such body possesses a distinct legal personality.

4. The term "interest" as used in this article means income from Government securities, income from bonds or debentures, whether or not secured by mortgage but not carrying a right to participate in profits, and income from 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 States in which the income arises.

5. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the interest, being a resident of one of the States, carries on business in the other State in which the interest arises, through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of article 7 or article 15, as the case may be, shall apply.

6. Interest shall be deemed to arise in one of the 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 States or not, has in one of the 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.

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 Agreement.

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 if such resident is the beneficial owner of the royalties and the royalties consist of payments of any kind received as consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work.

2. Royalties arising in one of the States and paid to a resident of the other State may be taxed in that other State if the royalties consist of payments of any kind received as a consideration for the use of, or the right to use, cinematographic films or tapes for television or broadcasting, any patent, trade mark, design, model, plan, secret formula or process, industrial, commercial or scientific equipment, or information concerning industrial, commercial or scientific experience. However, such royalties may also be taxed in the State in which they arise, and according to the law of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10 per cent of the gross amount of such royalties.

3. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of one of the States, carries on business in the other State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of article 7 or article 15, as the case may be, shall apply.

4. Royalties shall be deemed to arise in one of the 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 States or not, has in one of the States a permanent establishment in connection with which the liability to pay the royalties was incurred, 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.

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

Article 13. LIMITATION OF ARTICLES 10, 11 AND 12

International organizations, organs and officials thereof and members of a diplomatic or consular mission of a third State, being present in one of the States, are not entitled, in the other State, to the reductions or exemptions from tax provided for in articles 10, 11 and 12 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 14. CAPITAL GAINS

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

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

3. Notwithstanding the provisions of paragraph 2, gains from the alienation of ships and aircraft operated in international traffic or of movable property, pertaining to the operation of such ships and aircraft, shall be taxable only in the State in which the place of effective management of the enterprise is situated. For the purposes of this paragraph the provisions of paragraph 2 of article 8 shall apply.

4. Gains from the alienation of any property other than those mentioned in paragraphs 1, 2 and 3, shall be taxable only in the State of which the alienator is a resident.

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

Article 15. INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of one of the States in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base. A resident of one of the States performing such professional services or other independent activities in the other State shall be deemed to have such a fixed base available to him in that other State if he is present in that other State for a period or periods exceeding in the aggregate 183 days in the calendar year concerned.

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

Article 16. DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of articles 17, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of one of the States in respect of an

employment shall be taxable only in that State unless the employment is exercised in the other State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

a. the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned; and

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

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

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

Article 17. DIRECTORS' FEES

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

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

Article 18. ARTISTES AND ATHLETES

1. Notwithstanding the provisions of articles 15 and 16, income derived by 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. Where income in respect of personal activities as such of an entertainer or athlete accrues not to that entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of articles 7, 15 and 16, be taxed in the State in which the activities of the entertainer or athlete are exercised.

Article 19. PENSIONS

Subject to the provisions of paragraph 2 of article 20, pensions and other similar remuneration paid to a resident of one of the States in consideration of past employment shall be taxable only in that State.

Article 20. GOVERNMENT SERVICE

1. *a*. Remuneration, other than a pension, paid by one of the States or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof may be taxed in that State.

b. However, such remuneration shall be taxable only in the other State if the services are rendered in that State and the recipient is a resident of that other State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of performing the services.

2. *a*. Any pension paid by, or out of funds created by, one of the States or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof may be taxed in that State.

b. However, such pension shall be taxable only in the other State if the recipient is a national of and a resident of that State.

3. The provisions of articles 16, 17 and 19 shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by one of the States or a political subdivision or a local authority thereof.

Article 21. PROFESSORS AND TEACHERS

1. Payments which a professor or teacher who is a resident of one of the States and who is present in the other State for the purpose of teaching or scientific research for a maximum period of two years in a university, college or other establishment for teaching or scientific research in that other State, receives for such teaching or research, shall be taxable only in the first-mentioned State.

2. This article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

Article 22. STUDENTS AND TRAINEES

1. An individual who was a resident of one of the States immediately before visiting the other State and is temporarily present in that other State solely as a student at a university, college, school or other similar educational institution in that other State or as a business apprentice shall, from the date of his first arrival in that other State in connection with that visit, be exempt from tax in that other State:

a. on all remittances from abroad for purposes of his maintenance, education or training; and

b. for a period not exceeding in the aggregate five years, on any remuneration not exceeding 5000 guilders, or the equivalent in Malta currency, for each calendar year for personal services rendered in that other State with a view to supplementing the resources available to him for such purposes.

2. An individual who was a resident of one of the States immediately before visiting the other State and is temporarily present in that other State solely for the purpose of study, research or training as a recipient of a grant, allowance or award from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the Government of one of the States shall, from the date of his first arrival in that other State in connection with that visit, be exempt from tax in that other State:

a. on the amount of such grant, allowance or award, and

b. on all remittances from abroad for the purposes of his maintenance, education or training.

Article 23. OTHER INCOME

1. Items of income of a resident of one of the States, wherever arising, not dealt with in the foregoing articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply if the recipient of the income, being a resident of one of the States, carries on business in the other State through a permanent establishment situated therein, or performs in that other State profes-

sional services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of article 7 or article 15, as the case may be, shall apply.

CHAPTER IV. TAXATION OF CAPITAL

Article 24. CAPITAL

1. Capital represented by immovable property, as defined in paragraph 2 of article 6, 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. Notwithstanding the provisions of paragraph 2, ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in the State in which the place of effective management of the enterprise is situated. For the purposes of this paragraph the provisions of paragraph 2 of article 8 shall apply.

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

CHAPTER V. ELIMINATION OF DOUBLE TAXATION

Article 25. ELIMINATION OF DOUBLE TAXATION

1. The Netherlands, 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 Malta.

2. Without prejudice to the application of the provisions concerning the compensation of losses in the unilateral regulations for the avoidance of double taxation, the Netherlands shall allow a deduction from the amount of tax computed in conformity with paragraph 1 of this article equal to 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 referred to in paragraph 1 of this article and may be taxed in Malta according to articles 6 and 7, paragraph 5 of article 10, paragraph 5 of article 11, paragraph 3 of article 12, paragraphs 1 and 2 of article 14, article 15, paragraph 1 of article 16, paragraph 1 of article 17, article 20, paragraph 2 of article 23, and paragraphs 1 and 2 of article 24 of this Agreement, bears to the total income or capital which forms the basis referred to in paragraph 1 of this article.

3. Further, the Netherlands shall allow a deduction from the tax computed in accordance with the preceding paragraphs of this article with respect to the items of income which may be taxed in Malta according to paragraph 2 of article 11, paragraph 2 of article 12, and article 18 and are included in the basis referred to in paragraph 1 of this article.

The amount of this deduction shall be the lesser of the following amounts:

(i) the amount equal to the Malta tax;

(ii) 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 referred to in paragraph 1 of this article.

4. Where, by reason of special incentive measures designed to promote economic development in Malta, the Malta tax actually levied on interest and royalties (other than royalties in respect of cinematographic films or tapes for television and broadcasting) arising in Malta is lower than the tax Malta may levy according to paragraph 2 of article 11 and paragraph 2 of article 12, respectively, then the amount equal to the Malta tax referred to in subparagraph (i) of paragraph 3 on such interest and royalties shall be deemed to be 10 per cent of the gross amount thereof.

5. Subject to the provisions of the law of Malta regarding the allowance of a credit against Malta tax in respect of foreign tax (which shall not affect the general principle hereof) and saving the provisions of paragraph 6, where there is included in a Malta assessment income or capital which, in accordance with the provisions of this Agreement, may be taxed in the Netherlands, the Netherlands tax on such income or capital, as the case may be, shall be allowed as a credit against the relative Malta tax payable thereon.

6. Where a resident of one of the States derives gains which may be taxed in the other State in accordance with paragraph 5 of article 14, 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 26. NON-DISCRIMINATION

1. The nationals of one of the States, whether they are residents of that State or not, 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 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.

3. Except where the provisions of paragraph 1 of article 9, paragraph 7 of article 11, or paragraph 5 of article 12, apply, interest, royalties and other disbursements paid by an enterprise of one of the States to a resident of the other State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same condition as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of one of the States to a resident of the other State shall, for the purpose of determining the taxable capital of such enterprise, be deductible as if they had been contracted to a resident of the first-mentioned State.

4. Enterprises of one of the States, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

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

Article 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 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, or, in any case referred to in paragraph 1 of article 26, to that of the State of which he is a national. This case must be presented within three years from the first notification of the action giving rise to taxation not in accordance with the Agreement.

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 Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the national laws of the States.

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

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

Article 28. EXCHANGE OF INFORMATION

1. The competent authorities of the States shall exchange such information as is necessary for the carrying out of this Agreement or of the domestic laws of the States concerning taxes covered by this Agreement insofar as the taxation thereunder is not contrary to this Agreement. The exchange of information is not restricted by article 1. Any information received by one of the States shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Agreement. Such persons or authorities shall use the information only for such purposes. These persons or authorities may disclose the information in public court proceedings or in judicial decisions.

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

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

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

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

Article 29. DIPLOMATIC AND CONSULAR OFFICIALS

Nothing in this 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 30. REGULATIONS

1. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraphs 2 and 3 of article 10, of paragraphs 2 and 3 of article 11, and of paragraphs 1 and 2 of article 12.

2. The competent authorities of each of the States, in accordance with the practices of that State, may prescribe regulations necessary to carry out the other provisions of this Agreement.

Article 31. TERRITORIAL EXTENSION

1. This Agreement may be extended, either in its entirety or with any necessary modifications, to the Netherlands Antilles, if that country 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 termination of the Agreement shall not of itself also terminate any extension of the Agreement to the Netherlands Antilles.

CHAPTER VII. FINAL PROVISIONS

Article 32. ENTRY INTO FORCE

1. The Governments of the States shall notify to each other that the constitutional requirements for the entry into force of this Agreement have been complied with.

2. The Agreement shall enter into force thirty days after the date of the later of the notifications referred to in paragraph 1 and its provisions shall have effect:

a. in respect of taxes on income derived on or after the first day of January, 1976;

b. in respect of taxes on capital levied as from the first day of January, 1976.

Article 33. TERMINATION

This Agreement shall remain in force until terminated by the Government of one of the States. Either State may terminate the Agreement through diplomatic channels by giving notice of termination at least six months before the end of any calendar year after the year 1981. In such event the Agreement shall cease to have effect:

a. in respect of taxes on income derived on or after the first day of January next following the year during which notice of termination has been given;

b. in respect of taxes on capital levied as from the first day of January next following the year during which notice of termination has been given.

IN WITNESS WHEROF the undersigned, duly authorized thereto, have signed this Agreement.

DONE at The Hague this 18th day of May 1977, in duplicate, in the Netherlands and English languages, both texts being equally authentic.

For the Government of the Kingdom of the Netherlands:

M. VAN DER STOEL

For the Government of the Republic of Malta:

G. AGIUS

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 Malta, the undersigned have agreed that the following provisions shall form an integral part of the Agreement.

I. Ad *article 4*

An individual living aboard a ship without having a permanent home in either of the States shall be deemed to be a resident of the State in which the ship has its home harbour.

II. Ad *articles 5 and 7*

Except with regard to re-insurance, the provisions of articles 5 and 7 of the Agreement shall not affect the provisions of the law of either State regarding the taxation of profits from the business of insurance.

III. Ad *articles 8, 14 and 24*

1. Notwithstanding the provisions of article 8, profits from the operation of ships in international traffic derived by a company which is a resident of Malta may be taxed in the Netherlands, unless the company proves that such profits are not relieved from Malta tax under the provisions of the Merchant Shipping Act, 1973, or under any identical or similar provision. The foregoing sentence, however, shall not apply if the company proves that not more than 25 per cent of its capital is owned, directly or indirectly, by persons who are not residents of Malta.

2. The provisions of paragraph 1 shall apply accordingly to capital gains referred to in paragraph 3 of article 14 and to capital referred to in paragraph 3 of article 24.

IV. Ad *article 10*

It is understood that the reference in the second sentence of paragraph 3 of article 10 to the provisions of the Netherlands law to the effect that the receiving company is not charged to Netherlands company tax in respect of the profits distributed by a Malta company is to the application of the so-called "holding privilege" in the Netherlands Company Tax Act. Subject to the provisions of the said Act and to future amendments thereto, this "holding privilege" leads to the result that a company which is a resident of the Netherlands can leave out of account, in the computation of its taxable profits, dividends it receives from a company which is a resident of Malta, if it owns at least 5 per cent of the paid-up capital of the latter company.

V. Ad *articles 10, 11 and 12*

Applications for the repayment of tax levied contrary to the provisions of articles 10, 11 and 12 have to be lodged with the competent authority of the State, which has levied the tax, within a period of three years after the expiration of the calendar year in which the tax has been levied.

VI. Ad *article 25*

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 paragraph 4 of article 25 of the Agreement.

VII. Ad *article 25*

It is understood that, insofar as the Netherlands income tax or company tax is concerned, the basis referred to in paragraph 1 of article 25 is the "*onzuivere inkomen*" or "*winst*" in terms of the Netherlands Income Tax Law or Company Tax Law, respectively.

VIII. Ad *article 28*

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 authorized thereto, have signed this Protocol.

DONE at The Hague this 18th day of May 1977, in duplicate, in the Netherlands and English languages, both texts being equally authentic.

For the Government of the Kingdom of the Netherlands:

M. VAN DER STOEL

For the Government of the Republic of Malta:

G. AGIUS