No. 20952

NETHERLANDS
and
ROMANIA

Convention 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 Bucharest on 27 March 1979

Authentic texts: Dutch, French and Romanian.
Registered by the Netherlands on 13 March 1982.

PAYS-BAS
et
ROUMANIE

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). Signé à Bucarest le 27 mars 1979

Textes authentiques : néerlandais, français et roumain.
Enregistré par les Pays-Bas le 13 mars 1982.

[TRANSLATION — TRADUCTION]

CONVENTION[1] BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE SOCIALIST REPUBLIC OF ROMANIA 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 Socialist Republic of Romania,

Desiring to conclude a Convention 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 CONVENTION

Article 1. PERSONAL SCOPE

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

Article 2. TAXES COVERED

1. This Convention shall apply to taxes on the income and on capital imposed on behalf of each State or of its territorial-administrative or 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 Convention shall apply are:

(*a*) In the case of Romania:

- The tax on wages or salaries and income from literary, artistic or scientific works, from collaboration in publications or performances, from expert services and from other similar sources;
- The tax on income accruing to non-resident individuals or bodies corporate;
- The tax on the income of mixed companies constituted with the participation of Romanian economic organizations and foreign partners;
- The tax on income from gainful activities such as trades and professional services and from enterprises other than State enterprises;
- The tax on income from the letting of buildings and land;
- The tax on income from agriculture;

(hereinafter referred to as "Romanian tax");

[1] Came into force on 5 December 1980, i.e., the thirtieth day following the exchange of the notifications (effected on 30 July and 5 November 1980) by which the Parties informed each other of the completion of the constitutional procedures, in accordance with article 32.

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

— The income tax;

— The tax on salaries, wages and pensions;

— The company tax;

— The dividend tax;

— The capital tax;

(hereinafter referred to as "Netherlands tax").

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

CHAPTER II. DEFINITIONS

Article 3. GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:

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

(*b*) The term "Romania" means the Socialist Republic of Romania and any areas situated outside the territorial waters of the Socialist Republic of Romania over which, in accordance with international law and its own laws, the Socialist Republic of Romania may exercise rights with regard to the sea-bed, the subsoil and their natural resources;

(*c*) The term "Netherlands" means the part of the Kingdom of the Netherlands that is situated in Europe and the areas situated outside the territorial waters of the Kingdom of the Netherlands over which, in accordance with international law and its own laws, the Kingdom of the Netherlands may exercise rights with regard to the sea-bed, the subsoil and their natural resources;

(*d*) The term "person" includes an individual and a company;

(*e*) The term "company" means any body corporate, including a mixed company within the meaning of Romanian law, or any entity which is treated as a body corporate for tax purposes;

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

(*g*) The term "competent authority" means:

(i) In Romania: the Minister of Finance or his duly authorized representative,

(ii) In the Netherlands: the Minister of Finance or his duly authorized representative.

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

3. For the purposes of this Convention, the term "territorial-administrative subdivision" applies to Romania, and the term "political subdivision" applies to the Netherlands.

Article 4. FISCAL DOMICILE

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

2. For the purposes of this Convention, a member of a diplomatic or consular mission of one of the States in the other State or in a third State who is a national of the accrediting or sending State shall be deemed to be a resident of the accrediting or sending State if he is subjected therein to the same obligations in respect of taxes on income and on 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, 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 closer (centre of vital interests);

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

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

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

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

Article 5. PERMANENT ESTABLISHMENT

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

2. The term "permanent establishment" includes especially:

(*a*) A place of management;

(*b*) A branch;

(*c*) An office;

(*d*) A factory;

(*e*) A workshop;

(*f*) A mine, a quarry or any other place of extraction of natural resources;

(*g*) A building site or a construction, assembly or installation project which exists for more than 12 months.

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

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

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

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

(*d*) The sale by the enterprise of goods or merchandise belonging to the enterprise which have been displayed at a trade fair or an exhibition, after the closing of that fair or exhibition;

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

(*f*) 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 — other than an agent of an independent status to whom paragraph 5 applies — acting in one of the States on behalf of an enterprise of the other State shall be deemed to be a permanent establishment in the first-mentioned State if:

(*a*) 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; or

(*b*) He has in that State a stock of goods or merchandise belonging to the enterprise with which he regularly fills orders that he has received on behalf of 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, provided that such persons are acting in the ordinary course of their business.

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

CHAPTER III. TAXATION OF INCOME

Article 6. INCOME FROM IMMOVABLE PROPERTY

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

2. The term "immovable property" shall be defined in accordance with the law of the State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property, 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 — except bonds or debentures — which are secured by a mortgage on immovable goods; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

Article 7. BUSINESS PROFITS

1. The profits of an enterprise of one of the States shall be taxable only in that State unless the enterprise carries on business in the other State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Where an enterprise of one of the States carries on business in the other State through a permanent establishment situated therein, there shall in each State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently of 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 business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the pemanent establishment is situated or elsewhere.

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

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

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

7. Where profits include items of income which are dealt with separately in other articles of this Convention, the provisions of those articles shall not be affected by the provisions of this article.

Article 8. TRANSPORT ENTERPRISES

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, 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. Profits from the operation of rail or road vehicles in international traffic shall be taxable only in the State in which the place of effective management of the enterprise is situated.

4. The provisions of paragraphs 1 and 3 shall also apply where a transport enterprise participates in a pool, a joint business or another international operating agency.

Article 9. ASSOCIATED ENTERPRISES

1. Where conditions are agreed to or imposed between two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, all profits which, solely by reason of those conditions, have not accrued to one of the enterprises may be included in the profits of that enterprise and taxed accordingly.

2. For the purposes of paragraph 1, enterprises shall be deemed to be related 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.

Article 10. DIVIDENDS

1. Dividends paid by a company which is a resident of one of the States to a resident of the other State may be taxed in that other State.

2. However, such dividends may also be taxed in the State of which the company paying the dividends is a resident and according to the laws of that State, but the tax so charged shall not exceed:

(*a*) 10 per cent of the gross amount of the dividends, if the recipient is a company the capital of which is wholly or partly divided into shares and 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.

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

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 (not being debt-claims) participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation laws of the State of which the company making the distribution is a resident.

5. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of one of the States, has in the other State, of which the company paying the dividends is a resident, a permanent establishment with which the holding in respect of which the dividends are paid is effectively connected. In such case the provisions of article 7 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 to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on the company's 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 also be taxed in the State in which it arises and according to the laws of that State, but the tax so charged shall not exceed 10 per cent of the amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in one of the States shall not be taxed in that State if it is paid to a bank or other financial institution or if it is paid on loans of any kind granted, guaranteed, insured or financed directly or indirectly by the other State or a public agency thereof.

4. The term "interest" as used in this article means income from government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind not secured by mortgage as well as all other income assimilated to income from moneys lent by the taxation laws of the State in which the income arises.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient of the interest, being a resident of one of the States, has in the other State in which the interest arises a permanent establishment with which the debt-claim in respect of which the interest is paid is effectively connected. In such case, the provisions of article 7 shall apply.

6. Interest shall be deemed to arise in one of the States when the payer is that State itself, or a territorial-administrative or 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 as such by the 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 such case, the excess part of the payments shall remain taxable according to the laws of each State, due regard being had to the other provisions of this Convention.

Article 12. ROYALTIES

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

2. However, such royalties may also be taxed in the State in which they arise and according to the laws of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for televi-

sion or radio, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of one of the States, has in the other State in which the royalties arise a permanent establishment with which the right or property in respect of which the royalties are paid is effectively connected. In such case, the provisions of article 7 shall apply.

5. Royalties shall be deemed to arise in one of the States when the payer is that State itself, or a territorial-administrative or 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 contract on the basis of which the royalties are paid was concluded, and such royalties are borne as such by the permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

6. 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 usual 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 such case, the excess part of the payments shall remain taxable according to the laws of each State, due regard being had to the other provisions of this Convention.

Article 13. COMMISSION

1. Commission 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 commission may also be taxed in the State in which it arises and according to the laws of that State, but the tax so charged shall not exceed 5 per cent of the gross amount of the commission.

3. The term "commission" as used in this article means payment received by any person for services rendered as a middleman; this term does not include payment received as income from independent activities within the meaning of article 15 or income from dependent personal services within the meaning of article 16.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the commission, being a resident of one of the States, has in the other State in which the commission arises a permanent establishment with which the commission is effectively connected. In such case, the provisions of article 7 shall apply.

5. Commission shall be deemed to arise in one of the States when the payer is that State itself, or a territorial-administrative or political subdivision, a local authority or a resident of that State. Where, however, the person paying the commission, 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 obligation to pay the commission was incurred, and such commission is borne as such by the permanent establishment, then such commission shall be deemed to arise in the State in which the permanent establishment is situated.

6. 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 commission, hav-

ing regard to the services 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 such case, the excess part of the commission shall remain taxable according to the laws of each State, due regard being had to the other provisions of this Convention.

7. Where a resident of one of the States who is the recipient of commission arising in the other State claims commission for a given taxation year or financial year, the tax which may be charged on such commission in the State in which it arises shall be determined as if the said resident had a permanent establishment in the State and as if the commission was taxable in accordance with article 7 in respect of profits attributable to such permanent establishment.

Article 14. CAPITAL GAINS

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

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

3. Notwithstanding the provisions of paragraph 2, gains from the alienation of means of transport operated in international traffic and of movable property pertaining to the operation of such means of transport shall be taxable only in the State in which the place of effective management of the enterprise is situated, due regard being had to the provisions of article 8, paragraph 2.

4. Gains from the alienation of any property other than that mentioned in the preceding paragraphs shall be taxable only in the State of which the alienator is a resident.

5. The provisions of paragraph 4 shall not preclude the right of each State to impose, in accordance with its own laws, a tax on gains from the alienation of shares or "jouissance" rights in a company which is a resident of that State, where such gains are derived by an individual who is a resident of the other State and who has been a resident of the first-mentioned State during the five years immediately preceding the alienation.

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 of a similar character in the other State shall be deemed to have 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 fiscal 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, 21 and 22, salaries, wages and other similar remuneration derived by a resident of one of the States in respect of an employment shall be taxable only in that State unless the employment is exercised in the other State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

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

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

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

3. Notwithstanding the preceding provisions of this article, remuneration derived by a resident of one of the States in respect of an employment exercised aboard a means of transport in international traffic may be taxed only in that State.

Article 17. COMPANY ADMINISTRATORS AND DIRECTORS ("BESTUURDERS" OR "COMMISSARISSEN")

1. Directors' fees and other remuneration derived by a resident of the Netherlands in his capacity as a member of the board of directors of a joint stock company which is a resident of Romania may be taxed in Romania.

2. Directors' fees and other remuneration derived by a resident of Romania in his capacity as a director (*bestuurder* or *commissaris*) of a joint stock company which is a resident of the Netherlands may be taxed in the Netherlands.

3. Notwithstanding the provisions of paragraphs 1 and 2, remuneration of the kind therein referred to, which is derived by a person actually performing regular functions in a permanent establishment situated in the State other than that of which the company is a resident, and which is borne as such by such permanent establishment, may be taxed in that other State.

Article 18. ARTISTS AND ATHLETES

1. Notwithstanding the provisions of articles 15 and 16, income derived by public entertainers, such as theatre, motion picture, radio or television artists, and musicians, and by athletes, from their personal activities as such may be taxed in the State in which these activities are exercised.

2. Notwithstanding the provisions of paragraph 1, income derived by a resident of one of the States in respect of activities of the kind referred to in paragraph 1 which are exercised in the other State within the framework of a cultural exchange approved by the two States may be taxed only in the first-mentioned State.

Article 19. PENSIONS

Pensions, including pensions under a public social security system other than pensions of the kind referred to in article 20, paragraph 1, and other similar remuneration paid to a resident of one of the States, as well as life annuities paid to such resident, shall be taxable only in that State.

Article 20. GOVERNMENT SERVICE

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

2. However, the provisions of articles 16, 17 and 19 shall apply to remuneration or pensions in respect of services rendered in conection with a business carried on by one of the States or a territorial-administrative or political subdivision or a local authority thereof.

3. The provisions of paragraph 1 shall not apply if services are rendered to one of the States in the other State by an individual who is a resident and a national of that other State.

Article 21. TEACHERS

1. Remuneration derived in respect of teaching by professors and other teachers who are residents of one of the States and are teaching in a university or any other educational institution in the other State shall be taxable only in the first-mentioned State for a period not exceeding two years from the start of their teaching.

2. This provision shall apply also to remuneration derived by an individual who is a resident of one of the States in respect of research done in the other State, provided that such research is undertaken in the public interest rather than primarily for the private benefit of an enterprise or a person.

Article 22. STUDENTS, APPRENTICES AND TRAINEES

1. Payments which a student or business apprentice, including any person receiving vocational training, who is or was formerly a resident of one of the States and who is present in the other State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that other State, provided that such payments arise from sources outside that other State.

2. Any person referred to in paragraph 1 who is gainfully employed in the other State with a view to supplementing the resources needed for his maintenance, education and training shall not be taxed in the latter State in respect of any remuneration for such employment which does not exceed 6,000 Netherlands guilders or the equivalent in Romanian lei in any calendar year, for a period not exceeding four years.

Article 23. OTHER INCOME

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

CHAPTER IV

Article 24. TAXATION OF 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. Means of transport operated in international traffic, and movable property pertaining to the operation of such means of transport, shall be taxable only in the State in which the place of effective management of the enterprise is situated, due regard being had to the provisions of article 8, paragraph 2.

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

CHAPTER V

Article 25. METHODS FOR THE ELIMINATION OF DOUBLE TAXATION

It is understood that double taxation shall be avoided as follows:

A. In the case of Romania:

Netherlands tax paid by a Romanian resident in respect of income or capital which, in accordance with the provisions of this Convention, may be taxed in the Netherlands shall be deducted from the amount of Romanian tax due under Romanian taxation law.

B. In the case of the Netherlands:

1. In determining tax due by its residents, the Netherlands may include in the tax base elements of income or of capital which, in accordance with the provisions of this Convention, may be taxed in Romania.

2. However, subject to the provisions of its domestic laws concerning the compensation of losses, the Netherlands shall deduct from the total tax calculated in accordance with paragraph 1 an amount equal to that part of such tax which bears the same proportion to the aforesaid tax as the amount of the elements of income or of capital included in the tax base referred to in paragraph 1 which may be taxed in Romania under articles 6, 7, 10 (paragraph 5), 11 (paragraph 5), 12 (paragraph 4), 13 (paragraph 4), 14 (paragraphs 1 and 2), 15, 16 (paragraph 1), 17 (paragraphs 1 and 3), 20 and 24 (paragraphs 1 and 2) of this Convention bears to the amount of the total income or capital which forms the tax base according to paragraph 1.

3. In respect of such items of income as are included in the tax base referred to in paragraph 1 and as may be taxed in Romania under articles 10 (paragraph 2), 11 (paragraph 2), 12 (paragraph 2), 13 (paragraph 2) and 18, the Netherlands shall allow a deduction from the Netherlands tax so calculated equal to the lesser of the following amounts:

(*a*) An amount equal to the Romanian tax levied under article 18 or according to the rates provided for in articles 10 (paragraph 2), 11 (paragraph 2), 12 (paragraph 2) and 13 (paragraph 2);

(*b*) An amount equal to that part of the Netherlands tax calculated in accordance with paragraph 1 which bears the same proportion to such tax as the amount of the aforesaid items of income bears to the total amount of the income which forms the tax base referred to in paragraph 1.

CHAPTER VI. SPECIAL PROVISIONS

Article 26. NON-DISCRIMINATION

1. Nationals of one of the States, whether or not they are residents of that State, shall not be subjected in the other State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The term "nationals" means:

(*a*) All individuals possessing the nationality of one of the two States;

(*b*) All legal persons, partnerships and associations deriving their status as such from the laws in force in one of the two States.

3. The taxation on a permanent establishment which an enterprise of one of the States has in the other State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging one of the States to grant to residents of the other State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

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

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

Article 27. APPLICATION OF THE CONVENTION

The competent authorities of the two States shall determine the manner in which this Convention is to be applied.

Article 28. MUTUAL AGREEMENT PROCEDURE

1. Where a resident of one of the States considers that the actions of one or both of the States result or will result for him in taxation not in accordance with this Convention, he may, irrespective of 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 objection appears to it to be justified and if it is not itself able to arrive at a satisfactory 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 Convention.

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

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

Article 29. EXCHANGE OF INFORMATION

1. The competent authorities of the two States shall exchange such information as is normally available to them for carrying out the provisions of this Convention, in particular for the prevention of fraud.

Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of the Convention.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on either State 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 information which is not obtainable under the laws or in the normal course of the administration of that or of the other State;

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

Article 30. DIPLOMATIC AND CONSULAR OFFICIALS

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

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

Article 31. TERRITORIAL EXTENSION

1. This Convention may be extended, either in its entirety or with any necessary modifications, to the Netherlands Antilles, where that country imposes taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed through an exchange of diplomatic notes.

2. Unless otherwise agreed, when this Convention is no longer in force, its provisions shall continue to apply to the Netherlands Antilles if it was extended thereto in accordance with this article.

CHAPTER VII. FINAL PROVISIONS

Article 32. ENTRY INTO FORCE

This Convention shall be ratified in accordance with the constitutional provisions in force in each of the two States. It shall enter into force on the thirtieth day following the date on which the parties have notified each other that these provisions have been complied with. The Convention shall apply in respect of tax years and periods beginning on or after 1 January of the year of its entry into force.

Article 33. TERMINATION

This Convention shall remain in force for an indefinite period. Either State may, by 30 June of a calendar year beginning with the fifth year following that of its entry into force, terminate it in writing through the diplomatic channel. In such event, this Convention shall cease to have effect for tax years and periods beginning on or after 1 January of the calendar year immediately following that in which notice of termination is given.

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

DONE at Bucharest on 27 March 1979, in duplicate in the Dutch, Romanian and French languages, the three texts being equally authentic. Where the Dutch and Romanian texts may lend themselves to differing interpretations, the French text shall prevail.

For the Government of the Kingdom of the Netherlands:

C. A. VAN DER KLAAUW

For the Government of the Socialist Republic of Romania:

ST. A. ANDREI

PROTOCOL

On signing the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, concluded this day between the Kingdom of the Netherlands and the Socialist Republic of Romania, the undersigned have agreed upon the following provisions, which form an integral part of the Convention.

I. Ad *Articles 2 and 25*

For the purposes of articles 2 and 25, the mandatory remission by Romanian State enterprises of part of their profits shall be deemed to be Romanian tax within the meaning of these articles.

II. Ad *Article 5*

Press, radio broadcasting and television facilities shall not be deemed to be permanent establishments if the information obtained is transmitted only to the enterprise which uses the facilities.

III. Ad *article 10*

It is agreed that the tax imposed in Romania under article 13 of Decree No. 425 of 2 November 1972 on the distribution of the profits of mixed companies transferred abroad shall be deemed to be a tax on dividends within the meaning of article 10, paragaraph 4.

IV. Ad *articles 10, 11, 12 and 13*

For the purposes of articles 10, 11, 12 and 13, requests for reimbursement shall be submitted to the competent authority of the State which imposed the tax within three years from the end of the calendar year during which the tax was imposed.

V. Ad *article 25*

It is agreed that, so far as the Netherlands income tax and the Netherlands company tax are concerned, the tax based referred to in article 25, B, paragraph 1, shall be the total semi-net income (*onzuivere inkomen*) or the profits (*winst*) within the meaning of the Netherlands laws relating, respectively, to the income tax and the company tax.

VI. Ad *article 29*

The obligation to exchange information shall not extend to information from banks or equivalent institutions. The term "equivalent institutions" shall include, *inter alia*, insurance companies.

DONE at Bucharest on 27 March 1979, in duplicate, in the Dutch, Romanian and French languages, the three texts being equally authentic. Where the Dutch and Romanian texts may lend themselves to differing interpretations, the French text shall prevail.

For the Government
of the Kingdom of Netherlands:

C. A. VAN DER KLAAUW

For the Government
of the Socialist Republic of Romania:

ST. A. ANDREI