No. 21302

NETHERLANDS
and
POLAND

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 Warsaw on 20 September 1979

Authentic texts: Dutch, English and Polish.
Registered by the Netherlands on 4 November 1982.

PAYS-BAS
et
POLOGNE

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu et sur la fortune (avec protocole). Signée à Varsovie le 20 septembre 1979

Textes authentiques : néerlandais, anglais et polonais.
Enregistrée par les Pays-Bas le 4 novembre 1982.

CONVENTION[1] BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC 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 Polish People's Republic,

Desiring to further develop and facilitate their economic relationships, and to conclude to that end 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 income and on capital imposed on behalf of one 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 the Convention shall apply are, in particular:

(*a*) In 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 Poland:

— *Podatek dochodowy* (income tax),

— *Podatek od wynagrodzén* (tax on wages or salaries),

[1] Came into force on 7 November 1981, i.e., the thirtieth day following the exchange of notes (effected on 26 March 1980 and 8 October 1981) by which the Contracting Parties informed each other of its approval in conformity with their legal requirements, in accordance with article 30 (1).

— *Podatek wyrównawczy* (surcharge on the income tax or on the tax on wages or salaries)

(hereinafter referred to as "Polish tax").

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the States shall notify each other of substantial 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 the Netherlands or Poland, as the context requires; the term "States" means the Netherlands and Poland;

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

(*c*) The term "Poland" means the Polish People's Republic and comprises any area outside the territorial sea of Poland within which in accordance with international law the rights of Poland with respect to the exploration and exploitation of the natural resources on the seabed or in its subsoil may be exercised;

(*d*) The term "person" includes 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 "international traffic" means any transport performed by a ship, aircraft, rail-transport vehicle or road-transport vehicle being operated by an enterprise whose place of effective management is situated in one of the States, except for the case where the use of a ship, aircraft or vehicle is confined solely to places within the other State;

(*h*) The term "nationals" means:

1. All individuals possessing the nationality of one of the States;
2. All legal persons, partnerships and associations deriving their status as such from the laws in force in one of the States;

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

1. In the Netherlands the Minister of Finance or his authorized representative;
2. In Poland the Minister of Finance or his authorized representative.

2. As regards the application of the Convention by one of the States any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

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. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of pararaph 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 closer (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 the question of residence cannot be determined according to the provisions of sub-paragraph (*c*), the competent authorities of the States shall settle the question by mutual agreement.

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

Article 5. PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an 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, and

(*f*) A mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than eighteen months.

4. Notwithstanding the preceding provisions of this article, the term "permanent establishment" shall be deemed not 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 of collecting information, for the enterprise;

(*e*) The maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(*f*) The maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (*a*) to (*e*), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person — other than an agent of an independent status to whom paragraph 6 applies — is acting on behalf of an enterprise and has, and habitually exercises, in one of the States an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in one of the States merely because it carries on business in that 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.

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

CHAPTER III. TAXATION OF INCOME

Article 6. INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of one of the States from immovable property (including income from agriculture and forestry) situated in the other State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

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

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal 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 determining 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 contained 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, then the provisions of those articles shall not be affected by the provisions of this article.

Article 8. 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. Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the State in which the place of effective management is situated.

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

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

5. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or 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 one of the States includes in the profits of an enterprise of that State — and taxes accordingly — profits on which an enterprise of the other State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and 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. However, such dividends may be taxed in the State of which the company paying the dividends is a resident, and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

3. Notwithstanding the provisions of paragraph 2 the State of which the company paying the dividends is a resident shall not levy a tax on dividends, if the dividends are beneficially owned by a company (other than a partnership) which is a resident of the other State and holds directly at least 25 per cent of the capital of the company paying the dividends.

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

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

6. The term "dividends" as used in this article means income from shares 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 laws of the State of which the company making the distribution is a resident.

7. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner 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 indepen-

dent personal 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 case the provisions of article 7 or article 14, as the case may be, shall apply.

8. 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 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 shall be taxable only in that other State.

2. The competent authorities of the States shall by mutual agreement settle the mode in which the State in which the interest arises abandons its taxation.

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

4. The provisions of paragraph 1 shall not apply if the beneficial owner 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 independent personal 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 case the provisions of article 7 or article 14, as the case may be, shall apply.

5. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner 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 be taxed in the State in which they arise, and according to the laws 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 the royalties.

3. Notwithstanding the provision of paragraph 2 royalties received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scien-

tific work including cinematograph films, shall be taxable only in the State of which the beneficial owner of the royalties is a resident.

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

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

6. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner 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 independent personal 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 case the provisions of article 7 or article 14, as the case may be, shall apply.

7. 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 or a fixed base in connection with which the contract under which the royalties are paid was concluded, and such royalties are borne by such permanent establishment of fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

8. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner 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. CAPITAL GAINS

1. Gains derived by a resident of one of the States from the alienation of immovable property referred to in article 6 and situated in the other State may be taxed in that other State.

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 independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships, aircraft, rail-transport vehicles or road-transport vehicles operated in international traffic, boats engaged in inland waterways transport or movable property pertaining to the operation of such ships, aircraft, vehicles or boats, 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 3 of article 8 shall apply.

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

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

Article 14. INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of one of the States in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

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

Article 15. DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of one of the States in respect of an employment shall be taxable only in that State unless the employment is exercised in the other State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

(*a*) The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the 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, aircraft, rail-transport vehicle or road-transport vehicle in international traffic, or aboard a boat engaged in inland waterways transport, shall be taxable only in that State.

Article 16. DIRECTORS' FEES

1. Remuneration and other 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 Poland may be taxed in Poland.

2. Remuneration and other payments derived by a resident of Poland 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 17. ARTISTES AND ATHLETES

1. Notwithstanding the provisions of articles 14 and 15, income derived by a resident of one of the States as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of articles 7, 14 and 15, be taxed in the State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived from such activities as defined in paragraph 1 performed under a cultural agreement or arrangement between the States, shall be exempt from tax in the State in which these activities are exercised.

Article 18. PENSIONS

Subject to the provisions of paragraph 2 of article 19, pensions and other similar remuneration paid to a resident of one of the States in consideration of past employment shall be taxable only in that State.

Article 19. 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 an individual in respect of services rendered to that State or subdivision or authority 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 individual is a resident of that State who:

1. Is a national of that State; or
2. Did not become a resident of that State solely for the purpose of rendering 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 an individual in respect of services rendered to that State or subdivision or authority may be taxed in that State.

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

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

Article 20. 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 21. STUDENTS

1. Payments which a student or business apprentice who is or was immediately before visiting one of the States a resident of the other State and who is present in the first-mentioned 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 State, provided that such payments arise from sources outside that State.

2. A student at a university or other educational institution in one of the States, who during a temporary stay in the other State holds an employment in that other State for a period not exceeding 100 days in a calendar year for the purpose of obtaining practical experience in connection with his studies, shall not be taxed in that other State in respect of remuneration derived from such employment, to an amount not exceeding 5000 guilders or its equivalent in Polish currency in such period.

Article 22. 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 Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of article 6, if the recipient of such 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 independent personal 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 case the provisions of article 7 or article 14, as the case may be, shall apply.

CHAPTER IV. TAXATION OF CAPITAL

Article 23. CAPITAL

1. Capital represented by immovable property referred to in article 6, owned by a resident of one of the States and situated in the other State, may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of one of the States has in the other State or by movable property pertaining to a fixed base available to a resident of one of the States in the other State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital represented by ships, aircraft, rail-transport vehicles or road-transport vehicles operated in international traffic and by boats engaged in inland waterways transport, and by movable property pertaining to the operation of such ships, aircraft, vehicles or boats, 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 3 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 24. 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 Convention, may be taxed in Poland.

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 meant in paragraph 1 of this article and may be taxed in Poland according to articles 6, 7, 10 (paragraph 7), 11 (paragraph 4), 12 (paragraph 6), 13 (paragraphs 1 and 2), 14, 15 (paragraph 1), 16 (paragraph 1), 19, 22 (paragraph 2) and 23 (paragraphs 1 and 2), of this Convention, 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 Poland according to articles 10 (paragraph 2), 12 (paragraph 2) and 17, and are included in the basis referred to in paragraph 1 of this article.

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

(*a*) The amount equal to the Polish tax;

(*b*) The amount of the Netherlands tax which bears the same proportion to the amount of tax computed in conformity with paragraph 1 of this article as the amount of the said items of income bears to the amount of income which forms the basis referred to in paragraph 1 of this article.

4. Where a resident of Poland derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the Netherlands, Poland shall, except in the case referred to in paragraph 5 of article 13 and subject to the provisions of paragraph 5 of this article, exempt such income or capital from tax but may, in calculating tax on the remaining income or capital of that person, apply the rate of tax which would have been applicable if the exempted income or capital had not been so exempted.

5. Where a resident of Poland derives income, which in accordance with the provisions of articles 10 and 12 may be taxed in the Netherlands, Poland shall allow as a deduction from the tax on the income of that person, an amount equal to the tax paid in the Netherlands. Such deduction shall not, however, exceed that part of the tax as computed before the deduction is given, which is appropriate to the income which may be taxed in the Netherlands.

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 13, that other State shall allow a deduction from its tax on such gains to an amount equal to the tax levied in the first-mentioned State on the said gains.

CHAPTER VI. SPECIAL PROVISIONS

Article 25. NON-DISCRIMINATION

1. Nationals of one of the States 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. This provision shall, notwithstanding the provisions of article 1, also apply to persons who are not residents of one or both the States.

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 5 of article 11, or paragraph 8 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 conditions 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 under the same conditions 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 the first-mentioned State are or may be subjected.

5. The term "taxation" as used in this article means taxes of every kind and description, except for the Polish residence-registration fees and Polish fees for the permit for opening an enterprise.

6. The provisions of this article shall not affect the diversified collection of taxes on income, profits and capital, which is established in Poland for the socialist enterprises.

Article 26. MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the State of which he is a resident or, if his case comes under paragraph 1 of article 25, to that of the State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a 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 which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law 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 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 States may communicate with each other directly for the purpose of reaching an agreement in the sense of preceding paragraphs.

Article 27. EXCHANGE OF INFORMATION

1. The competent authorities of the States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the States concerning taxes covered by the Convention insofar as the taxation thereunder is in accordance with the Convention. 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 covered by the Convention. Such persons or authorities shall use the information only for such purposes. They 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 and administrative practice of that or 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 28. DIPLOMATIC AND CONSULAR OFFICIALS

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

2. The Convention shall not apply to international organisations, organs and officials thereof and members of a diplomatic or consular mission of a third State, being present in one of the States, if they are not subjected therein to the same obligations in respect of taxes on income or on capital as are residents of that State.

Article 29. TERRITORIAL EXTENSION

1. This Convention 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 the Convention applies. Any such extension shall take effect from such date and subject to such modifications and

conditions, including conditions as to termination, as may be specified and agreed in notes to be exchanged through diplomatic channels.

2. Unless otherwise agreed the termination of the Convention shall not also terminate any extension of the Convention to the Netherlands Antilles.

CHAPTER VII. FINAL PROVISIONS

Article 30. ENTRY INTO FORCE

1. This Convention shall enter into force on the 30th day after an exchange of notes confirming its approval in accordance with the legal requirements of each Contracting Party.

2. The provisions of the Convention shall have effect for taxable years and periods beginning on or after the first day of January 1978.

Article 31. TERMINATION

This Convention shall remain in force indefinitely, but either of the Contracting Parties may, on or before 30th June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting Party, through diplomatic channels, written notice of termination. In such event the Convention shall cease to have effect for taxable years and periods beginning after the end of the calendar year in which the notice of termination has been given.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention and have affixed their seals thereto.

DONE at Warsaw this 20 day of September 1979, in duplicate, in the Netherlands, Polish and English languages, the three texts having equal authenticity. In case there is any divergence of interpretation between the Netherlands and Polish texts, the English text shall prevail.

For the Government
of the Kingdom of the Netherlands:

[*Signed*]

ANDREAS A. M. VAN AGT
Minister President

[*Signed*]

CHRISTOPH A. VAN DER KLAAUW
Minister for Foreign Affairs

For the Government
of the Polish People's Republic:

[*Signed*]

PIOTR JAROSZEWICZ
President of the Council of Ministers

[*Signed*]

EMIL WOJTASZEK
Minister for Foreign Affairs

PROTOCOL

At the moment of signing the Convention 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 Government of the Kingdom of the Netherlands and the Government of the Polish People's Republic, the undersigned have agreed that the following provisions shall form an integral part of the Convention.

I. Ad *article 4*

An individual living aboard a ship without any real domicile 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 *article 7*

In respect of paragraphs 1 and 2 of article 7, where an enterprise of one of the States sells goods or merchandise or carries on business in the other State through a permanent establishment situated therein, the profits of this permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but only on the basis of the remuneration which is attributable to the actual activity of the permanent establishment for such sales or business.

III. Ad *article 8*

It is understood that the provisions of paragraphs 1, 2 and 4 of article 8 cover profits from the following activities:

(*a*) The operation of ships, boats engaged in inland waterways transport, aircraft, rail-transport vehicles or road-transport vehicles leased;

(*b*) Providing containers and special under-carriage for transportation to the port of departure and on board the ship during the sea transportation;

(*c*) Providing containers for rail-, road- and air transport;

(*d*) Transferring containers from the under-carriage or from railway carriages on board the ship;

(*e*) Transportation on board the ship;

(*f*) Unloading containers on special under-carriage or railway carriages in the port of destination;

(*g*) Providing containers and special under-carriages for transportation from the port of destination to the customer;

(*h*) The operation of lighters operated in the lighters-aboard-ship system (LASH);

(*i*) The operation of other equipment related to transports by ships, boats engaged in inland waterways transport, aircraft, rail- or road-transport vehicles,

provided that, insofar the activities mentioned in items *b*), *c*) and *g*) are concerned, no special charge is imposed on the customer for those ancillary activities.

IV. Ad *articles 10, 11 and 12*

Where tax has been levied at source in excess of the amount of tax chargeable under the provisions of articles 10, 11 and 12, applications for the refund of the excess amount of tax have to be lodged with the competent authority of the State having levied the tax, within a period of three years after the expiration of the calendar year in which the tax has been levied.

V. Ad *article 12*

It is understood that only the provisions of articles 7 or 14, as the case may be, shall apply to payments of any kind received as a consideration for the use of, or the right to use, industrial, commercial, or scientific equipment, for services consisting of technical or scientific studies or research, or for advisory, controlling or supervisory services.

VI. Ad *articles 12 and 24*

The State in which the royalties arise shall allow a refund of the tax levied in accordance with paragraph 2 of article 12, if and to the extent that the recipient of the royalties shows proof, by means of a statement certified by the competent authority of the State of which he is a resident, that the tax levied in the first-mentioned State cannot be credited against the tax which is attributable to these royalties in the last-mentioned State, because of the limitations laid down in subparagraph (*b*) of paragraph 3 or in the last sentence of paragraph 5 of article 24.

VII. Ad *article 16*

It is understood that *bestuurder* or *commissaris* of a Netherlands company means persons, who are nominated as such by the general meeting of shareholders or by any other competent body of such company and are charged with the general management of the company and the supervision thereof, respectively.

VIII. Ad *article 24*

It is understood that, insofar as the Netherlands income tax or company tax is concerned, the basis meant in paragraph 1 of article 24 is the gross income (*onzuivere inkomen*) or profits (*winst*) in terms of the Netherlands Income Tax Law or Company Tax Law, respectively.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Protocol and have affixed their seals thereto.

DONE at Warsaw this 20 day of September 1979, in duplicate, in the Netherlands, Polish and English languages, the three texts having equal authenticity. In case there is any divergence of interpretation between the Netherlands and Polish texts, the English text shall prevail.

For the Government
of the Kingdom of the Netherlands:

[*Signed*]

ANDREAS A. M. VAN AGT
Minister-President

[*Signed*]

CHRISTOPH A. VAN DER KLAAUW
Minister for Foreign Affairs

For the Government
of the Polish People's Republic:

[*Signed*]

PIOTR JAROSZEWICZ
President of the Council of Ministers

[*Signed*]

EMIL WOJTASZEK
Minister for Foreign Affairs