

No. 21905

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**NETHERLANDS  
and  
ZAMBIA**

**Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (with protocol). Signed at Lusaka on 19 December 1977**

*Authentic text: English.*

*Registered by the Netherlands on 31 May 1983.*

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**PAYS-BAS  
et  
ZAMBIE**

**Convention en vue d'éviter les doubles impositions et de prévenir l'évasion fiscale en matière d'impôts sur le revenu (avec protocole). Signée à Lusaka le 19 décembre 1977**

*Texte authentique : anglais.*

*Enregistrée par les Pays-Bas le 31 mai 1983.*

# CONVENTION<sup>1</sup> BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE REPUBLIC OF ZAMBIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

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

Desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

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. The taxes which are the subject of this Convention are:

a) In the Netherlands:

—*De inkomstenbelasting* (income tax),

—*De loonbelasting* (wages tax),

—*De vennootschapsbelasting* (company tax),

—*De dividendbelasting* (dividend tax),

(hereinafter referred to as “Netherlands tax”);

b) In Zambia:

—The income tax,

—The mineral tax,

—The personal levy,

(hereinafter referred to as “Zambian tax”).

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

## CHAPTER II. DEFINITIONS

### *Article 3. GENERAL DEFINITIONS*

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

a) The term “State” means the Netherlands or Zambia, as the context requires;

<sup>1</sup> Came into force on 9 November 1982, the date of the last of the notifications by which the Parties informed each other of the completion of their required constitutional formalities, in accordance with article 28 (1).

The term "States" means the Netherlands and Zambia;

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 "Zambia" means the Republic of Zambia;

d) The term "person" includes an individual, a company or any body of persons corporate or not corporate;

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" includes traffic between places in one country in the course of a journey which extends over more than one country;

h) The term "competent authority" means:

1. In the Netherlands the Minister of Finance or his authorized representative;
2. In Zambia the Commissioner of Taxes or his authorized representative.

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

#### *Article 4. FISCAL DOMICILE*

1. For the purposes of this Convention, the term "resident of one of the States" means, subject to the provisions of paragraphs 2 and 3 of this Article, any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. The terms "resident of the Netherlands" and "resident of Zambia" shall be construed accordingly.

2. Where by reason of the provisions of paragraph 1 of this Article an individual is a resident of both States, then his residence shall be determined in accordance with the following rules:

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

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

c) If he has an habitual abode in both States or in neither of them, 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.

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

*Article 5. PERMANENT ESTABLISHMENT*

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

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

- a) A place of management;
- b) A branch;
- c) An office;
- d) A factory;
- e) A workshop;
- f) A mine, oil well, quarry or other place of extraction of natural resources;
- g) A building site or construction or assembly project which exists for more than six months.

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

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

4. An enterprise of one of the States shall be deemed to have a permanent establishment in the other State if it carries on supervisory activities in that other State for more than six months in connection with a construction, installation, or assembly project which is being undertaken in that other State.

5. A person acting in one of the States on behalf of an enterprise of the other State—other than an agent of an independent status to whom paragraph 6 of this Article applies—shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

6. An enterprise of one of the States shall not be deemed to have a permanent establishment in the other State merely because it carries on business in that other State through a broker, general commission agent or any other agent

of an independent status, where such persons are acting in the ordinary course of their business.

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

### CHAPTER III. TAXATION OF INCOME

#### *Article 6. INCOME FROM IMMOVABLE PROPERTY*

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

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

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

#### *Article 7. BUSINESS PROFITS*

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

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

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise (other than expenses which would not be deductible if the permanent establishment were a separate enterprise) 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 apportion-

ment of the total profits of the enterprise to its various parts, nothing in paragraph 2 of this Article 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 of this Article, 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. SHIPPING AND AIR TRANSPORT*

1. Notwithstanding the provisions of Articles 5 and 7, profits from the operation of ships or aircraft in international traffic shall be taxable only in the State in which the place of effective management of the enterprise is situated.

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

#### *Article 9. ASSOCIATED ENTERPRISES*

Where

- a) An enterprise of one of the States participates directly or indirectly in the management, control or capital of an enterprise of the other State, or
- b) The same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the States and an enterprise of the other State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly,

#### *Article 10. DIVIDENDS*

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

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

- a) 5 per cent of the gross amount of the dividends if the recipient is a 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) In all other cases 15 per cent of the gross amount of the dividends.

3. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraph 2 of this Article.

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

5. The term "dividends" as used in this Article means income from shares, *jouissance* rights (profit sharing notes), founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident.

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

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

#### Article 11. INTEREST

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

2. However, such interest may be taxed in the State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 of this Article, interest arising in one of the States and paid to the Government of the other State or local authority thereof or any agency or instrumentality (including financial institution) wholly owned by that Government or local authority shall be exempt from tax in the first-mentioned State.

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

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

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

7. Interest shall be deemed to arise in one of the States when the payer is that State itself, a political subdivision, a local authority or a resident of that

State. Where, however, the person paying the interest, whether he is a resident of one of the States or not, has in one of the States a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

8. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each State, due regard being had to the other provisions of this 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 law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraph 2 of this Article.

4. 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 for use in connection with television or video tapes for use in connection therewith or tapes for use in connection with radio), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

5. The provisions of paragraphs 1 and 2 of this Article 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 giving rise to the royalties is effectively connected. In such a case, the provisions of Article 7 shall apply.

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

7. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article



shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each State, due regard being had to the other provisions of this Convention.

*Article 13. CAPITAL GAINS*

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6, may be taxed in the State in which such property is situated.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of one of the States has in the other State or of movable property pertaining to a fixed base available to a resident of one of the States in the other State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State.
3. Notwithstanding the provisions of paragraph 2 of this Article, gains from the alienation of ships and aircraft operated in international traffic, and movable property pertaining to the operation of such ships and aircraft shall be taxable only in the State in which the place of effective management of the enterprise is situated.
4. Gains from the alienation of any property other than those mentioned in paragraphs 1, 2 and 3 of this Article, shall be taxable only in the State of which the alienator is a resident.
5. The provisions of paragraph 4 of this Article shall not affect the right of each of the States to levy according to its own law a tax on gains from the alienation of shares or *jouissance* rights (profit sharing notes) 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 *jouissance* rights.

*Article 14. INDEPENDENT PERSONAL SERVICES*

1. Income derived by a resident of one of the States in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

*Article 15. DEPENDENT PERSONAL SERVICES*

1. Subject to the provisions of Articles 16, 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 of this Article, 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 or charge year concerned, and
- b) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- c) The remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

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

#### *Article 16. DIRECTORS' FEES*

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 company which is a resident of Zambia may be taxed in Zambia.

2. Directors' fees and other remuneration derived by a resident of Zambia 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.

3. Where the remuneration mentioned above is derived by persons, who exercise activities in real and regular functions in a permanent establishment situated in the other State than the State of which the company is a resident, and is borne as such by that permanent establishment, then, notwithstanding the provisions of paragraphs 1 and 2 of this Article, such remuneration may be taxed in the State in which the permanent establishment is situated.

#### *Article 17. ARTISTES AND ATHLETES*

Notwithstanding the provisions of Articles 5, 7, 14 and 15, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such, or income derived from the furnishing by an enterprise of the services of such public entertainers or athletes, may be taxed in the State in which these activities or services are exercised.

#### *Article 18. PENSIONS*

Subject to the provisions of paragraph 1 of Article 19:

- a) Pensions and other similar remuneration, which are paid by a resident of one of the States to a resident of the other State in consideration of an employment formerly exercised in the first-mentioned State, may be taxed in that first-mentioned State;
- b) All other pensions and other similar remuneration paid to a resident of one of the States in consideration of past employment shall be taxable only in that State.

#### *Article 19. GOVERNMENTAL FUNCTIONS*

1. Remuneration, including pensions, paid by, or out of funds created by, one of the States or a political subdivision or a local authority thereof to any

individual in respect of services rendered to that State or subdivision or local authority thereof in the discharge of functions of a governmental nature may be taxed in that State.

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

#### *Article 20.* STUDENTS

1. Payments which a student, researcher or business apprentice who is or was formerly a resident of one of the States and who is present in the other State solely for the purpose of his education, research or training receives for the purpose of his maintenance, education or training shall not be taxed in that other State, provided that such payments are made to him from sources outside that other State.

2. Remuneration which a student at a university, college, school or similar educational institution in one of the States derives in respect of labour or personal services performed in the other State during a period or periods not exceeding in the aggregate 100 days in the fiscal or charge year, shall not be taxed in that State.

#### *Article 21.* INCOME NOT EXPRESSLY MENTIONED

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

### CHAPTER IV

#### *Article 22.* 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, which according to the provisions of this Convention may be taxed in Zambia.

2. Without prejudice to the application of the provisions concerning the compensation of losses in the unilateral regulations for the avoidance of double taxation the Netherlands shall allow a deduction from the amount of tax computed in conformity with the first paragraph of this Article equal to such part of that tax which bears the same proportion to the aforesaid tax, as the part of the income which is included in the basis mentioned in the first paragraph of this Article and may be taxed in Zambia according to Articles 6 and 7, paragraph 6 of Article 10, paragraph 6 of Article 11, paragraph 5 of Article 12, paragraphs 1 and 2 of Article 13, Article 14, paragraph 1 of Article 15, paragraphs 1 and 3 of Article 16 and Article 19 of this Convention bears to the total income which forms the basis mentioned in the first paragraph 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 Zambia according to paragraph 2 of Article 10, paragraph 2 of Article 11, paragraph 2 of Article 12, Article 17, and sub-paragraph *a*) of Article 18, and are included in the basis mentioned in para-

graph 1 of this Article. The amount of this deduction shall be the lesser of the following amounts:

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

4. Where, by reason of the relief given under the Zambian Pioneer Industries (Relief from Income Tax) Act, Chapter 666, dividends paid by a company which is a resident of Zambia are exempt from tax or taxed at a rate lower than the rate mentioned in Article 10, paragraph 2, sub-paragraph *b*), then the amount equal to the Zambian tax as meant in sub-paragraph *a*) of paragraph 3 of this Article on such dividends shall be deemed to be the amount of tax which Zambia, in the absence of this Convention and the above-mentioned Act, would have levied thereon according to its tax laws as in force on the 1st of July, 1973.

5. Subject to the provisions of the law of Zambia regarding the allowance as a credit against Zambian tax of tax payable in a territory outside Zambia (which shall not affect the general principle hereof) Netherlands tax payable under the laws of the Netherlands and in accordance with this Convention whether directly or by deduction on profits, income or chargeable gains from sources within the Netherlands shall be allowed as a credit against any Zambian tax computed by reference to the same profits, income or chargeable gains by reference to which the Netherlands tax is computed.

Provided that in the case of a dividend the credit shall take into account only such tax thereof as is additional to any tax payable by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient without reference to any tax so payable.

6. For the purposes of paragraph 5 of this Article profits, income and capital gains owned by a resident of Zambia which may be taxed in the Netherlands in accordance with this Convention shall be deemed to arise from sources in the Netherlands.

7. If 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 V. SPECIAL PROVISIONS

### *Article 23.* NON-DISCRIMINATION

1. The 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.

2. The term "nationals" means:

- a) All individuals possessing the nationality of one of the States;
- b) All legal persons, partnerships and associations deriving their status as such from the law in force in one of the 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 nor as obliging Zambia to grant to non-nationals the relief available to Zambian nationals under section 43C of the Zambian Income Tax Act, 1966.

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

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

#### *Article 24. MUTUAL AGREEMENT PROCEDURE*

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

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

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 this Convention. They may also consult together for the elimination of double taxation in cases not provided for in this Convention.

4. The competent authorities of the States may communicate with each other directly for the purpose of applying the provisions of this Convention.

#### *Article 25. EXCHANGE OF INFORMATION*

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

Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than persons, including a court or other adjudicating authority, concerned with the assessment or collection of those taxes or the determination of appeals in relation thereto.

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

- a) To carry out administrative measures at variance with the laws or the administrative practice of that or of the other State;
- b) To supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other State;
- c) To supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

*Article 26. 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. An individual who is a member of a diplomatic or consular mission of one of the States in the other State or in a third State, shall for the purposes of this Convention be deemed to be a resident of the sending State if:

- a) He is not a national of the receiving State; and
- b) He is subjected in the sending State to the same obligations in respect of taxes on income as are residents of that State.

3. This 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 in that State to the same obligations in respect of taxes on income as are residents of that State.

*Article 27. TERRITORIAL EXTENSION*

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 this 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.

CHAPTER VI. FINAL PROVISIONS

*Article 28. ENTRY INTO FORCE*

1. The Convention shall enter into force on the last of the dates on which the Contracting Governments have notified each other in writing that the formalities constitutionally required in their respective countries have been complied with, and its provisions shall have effect:

a) In the Netherlands:

—For taxable years and periods beginning on or after the first day of January of the year following the date of entry into force;

b) In Zambia:

—For the charge years beginning on or after the first day of April of the year following the date of entry into force.

2. Upon entry into force of this Convention, the Convention between the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at London on the 15th of October 1948,<sup>1</sup> as provided for in the Exchanges of Notes between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of the Netherlands dated the 20th and 27th of December 1962<sup>2</sup> and the 7th and 23rd of December 1963,<sup>3</sup> shall, in the relation between the Kingdom of the Netherlands and the Republic of Zambia, cease to have effect and the provisions of this Convention shall be effective. However, the provisions of the 1948 Convention and of the said Exchanges of Notes shall continue in effect for taxable years and periods, which are expired before the entry into force of this Convention.

*Article 29. TERMINATION*

This Convention shall remain in force until terminated by one of the Contracting Governments. Either Government may terminate the Convention, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year after the expiration of a period of five years from the date of entry into force. In such event the Convention shall cease to have effect:

*a) In the Netherlands:*

—For taxable years and periods beginning after the end of the calendar year in which the notice of termination has been given;

*b) In Zambia:*

—For the charge years beginning on or after the first day of April of the calendar year following the year in which the notice of termination has been given.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Convention.

DONE at Lusaka, this day of 19 December 1977 in duplicate in the English language.

For the Government of the Kingdom of the Netherlands:  
G. VAN VLOTEN

For the Government of the Republic of Zambia:  
J. M. MWANAKATWE

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, this day concluded between the Government of the Kingdom of the Netherlands and

<sup>1</sup> United Nations, *Treaty Series*, vol. 74, p. 3.

<sup>2</sup> *Ibid.*, vol. 474, p. 306.

<sup>3</sup> *Ibid.*, vol. 560, p. 240.

the Government of the Republic of Zambia, the undersigned have agreed that the following provisions shall form an integral part of the Convention.

*Ad Article 4*

I. 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.

*Ad Articles 10, 11 and 12*

II. Applications for the restitution of tax levied contrary to the provisions of Articles 10, 11 and 12 have to be lodged with the competent authority of the State having levied the tax within a period of six years after the expiration of the calendar or charge year in which the tax has been levied.

*Ad Article 16*

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

*Ad Article 22*

IV. After a period of 10 years after the entry into force of the Convention the competent authorities shall consult each other in order to determine whether it is opportune to review paragraph 4 of Article 22 of the Convention.

*Ad Article 22*

V. It is understood that, in so far as the Netherlands income tax or company tax is concerned, the basis meant in the first paragraph of Article 22 is the gross income (*ouzuivere inkomsten*) or profits (*winst*) in terms of the Netherlands Income Tax Law or Company Tax Law, respectively.

*Ad Article 25*

VI. The obligation to exchange information does not include information obtained from banks or from institutions of a similar nature. The term "institutions of a similar nature" means *inter alia* insurance companies.

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

DONE at Lusaka, this day of 19 December 1977 in duplicate in the English language.

For the Government of the Kingdom of the Netherlands:

G. VAN VLOTEN

For the Government of the Republic of Zambia:

J. M. MWANAKATWE