

No. 21934

**FINLAND
and
LUXEMBOURG**

Convention for the avoidance of double taxation with respect to taxes on income and on capital (with protocol). Signed at Luxembourg on 1 March 1982

Authentic texts: Finnish and French.

Registered by Finland on 10 June 1983.

**FINLANDE
et
LUXEMBOURG**

Convention tendant à éviter les doubles impositions en matière d'impôts sur le revenu et sur la fortune (avec protocole). Signée à Luxembourg le 1^{er} mars 1982

Textes authentiques : finnois et français.

Enregistrée par la Finlande le 10 juin 1983.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN FINLAND AND LUXEMBOURG FOR THE
AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO
TAXES ON INCOME AND ON CAPITAL

The Government of Finland and the Government of Luxembourg,
Desiring to conclude a Convention for the avoidance of double taxation with
respect to taxes on income and on capital,
Have agreed as follows:

Article 1. PERSONAL SCOPE

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

Article 2. TAXES COVERED

1. This Convention shall apply to taxes on income and on capital imposed on
behalf of a Contracting State or of its 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 ap-
preciation.

3. The existing taxes to which the Convention shall apply are:

(a) In Finland:

- (i) The State income tax and capital tax (*tulo- ja varallisuusvero*);
- (ii) The communal tax (*kunnallisvero*);
- (iii) The church tax (*kirkollisvero*);
- (iv) The sailors' tax (*merimiesvero*); and
- (v) Tax withheld at source on the income of non-residents (*lähdevero*);
(hereinafter referred to as "Finnish tax");

(b) In Luxembourg:

- (i) The tax on the income of individuals (*l'impôt sur le revenu des personnes phy-
siques*);
- (ii) The corporation tax (*l'impôt sur le revenu des collectivités*);
- (iii) The special tax on directors' fees (*l'impôt spécial sur les tantièmes*);
- (iv) The capital tax (*l'impôt sur la fortune*);
- (v) The communal trade tax (*l'impôt commercial communal*); and
- (vi) The communal payroll tax (*l'impôt communal sur le total des salaires*);
(hereinafter referred to as "Luxembourg tax").

¹ Came into force on 27 March 1983, i.e., 30 days after the date of the last of the notifications (effected on 25 February 1983) by which the Parties informed each other of the completion of the constitutional requirements, in accordance with article 30 (2).

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 Contracting States shall notify each other of changes which have been made in their respective taxation laws.

Article 3. GENERAL DEFINITIONS

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

(a) The term "Finland" means the Republic of Finland and, when used in a geographical sense, the territory of the Republic of Finland and any region adjacent to the territorial waters of the Republic of Finland over which Finland may, in accordance with Finnish legislation and international law, exercise its rights in respect of the exploration and exploitation of natural resources of the sea-bed and its sub-soil;

(b) The term "Luxembourg" means the Grand Duchy of Luxembourg and, when used in a geographical sense, the territory of the Grand Duchy of Luxembourg;

(c) The term "person" includes an individual, a company and any other body of persons;

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

(e) The terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(f) The term "national" means any individual possessing the nationality of a Contracting State and any body corporate, partnership and association constituted in accordance with the law in force in a Contracting State;

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

(h) The term "competent authority" means:

(i) In the case of Finland, the Ministry of Finance or its authorized representative;

(ii) In the case of Luxembourg, the Minister of Finance or his authorized representative.

2. As regards the application of the Convention by a Contracting State, 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 a Contracting State" means any person who, under the laws 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 undivided estate of a deceased person is considered for purposes of taxation in Finland as being a resident of Finland if the deceased was a resident of Finland, by virtue of the preceding sentence or the provisions of paragraph 2, at the time of his death. However, the term "resident of a Contracting

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

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting 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 a habitual abode;
- (c) If he has a habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) If he is a national of both States or of neither of them, the competent authorities of the Contracting 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 Contracting 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, a quarry or any other place of extraction of natural resources.

3. A building site or a construction, assembly or installation project shall not constitute a permanent establishment unless the site or project continues for a period of more than 12 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 a combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination continues to be 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 a Contracting State 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 a Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting 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.

Article 6. INCOME FROM IMMOVABLE PROPERTY

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

2. (a) The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated, subject to the provisions of subparagraphs (b) and (c).

(b) The term “income from immovable property” 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.

(c) Ships and aircraft shall not be regarded as immovable property.

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

4. Where the ownership of shares or other corporate rights in a company entitles the owner of such shares or corporate rights to the enjoyment of immovable property owned by the company, the income from the direct use, letting or use in any other form of such right to enjoyment may be taxed in the Contracting State in which the immovable property is situated.

5. 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.

6. The provisions of paragraph 4 shall also apply to income from a right to enjoyment mentioned in paragraph 4, which belongs to an enterprise and to income from a right to enjoyment used for the performance of independent personal services.

Article 7. BUSINESS PROFITS

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

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business 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. In so far as it has been customary in a Contracting State 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 Contracting 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 these articles shall not be affected by the provisions of this article.

Article 8. SHIPPING AND AIR TRANSPORT

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting 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 Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. 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

Where

- (a) An enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) The same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting 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 a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting 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:

- (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly or indirectly at least 25 per cent of the company paying the dividends;
- (b) 15 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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

3. The term "dividends" as used in this article means income from shares or other rights, not being debt-claims, 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.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent 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.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax

on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other State or in so far 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 a Contracting State and paid to a resident of the other Contracting State may be taxed only in that other State if the resident is the beneficial owner.

2. The term "interest" as used in this article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this article.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting 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.

4. 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 Contracting State, due regard being had to the other provisions of this Convention.

Article 12. ROYALTIES

1. Subject to the provisions of paragraph 2, royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State, if the resident in question is the beneficial owner.

2. Royalties of the kind referred to in paragraphs (b) and (c) of paragraph 3 may also be taxed in the Contracting State in which they arise, and according to the law of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term "royalties" as used in this article means payments of any kind made:

(a) For the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematographic films and films or tapes for television or radio broadcasting;

- (b) For the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or industrial, commercial or scientific equipment;
- (c) For information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting 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.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a public service or utility, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base, in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. 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 payment shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13. CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in paragraph 2 of article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains derived by a resident of a Contracting State from the alienation of shares or other corporate rights referred to in paragraph 4 of article 6 may be taxed in the Contracting State in which the immovable property owned by the company is situated.

3. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting 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.

4. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

5. Gains from the alienation of any property other than that referred to in the preceding paragraphs of this article shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14. INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State 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 Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting 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 a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting 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 a Contracting State in respect of an employment exercised in the other Contracting 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 in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16. DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the Board of Directors, Board of Overseers or any similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17. ENTERTAINERS AND ATHLETES

1. Notwithstanding the provisions of articles 14 and 15, income derived by a resident of a Contracting State 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 Contracting 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 Contracting State in which the activities of the entertainer or athlete are exercised.

Article 18. PENSIONS

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

2. Notwithstanding the provisions of paragraph 1, pensions and other amounts paid under the social security legislation of a Contracting State shall be taxable only in that State.

Article 19. GOVERNMENT SERVICE

1. (a) Remuneration, other than a pension, paid by a Contracting State or a public service or utility or a local authority thereof to an individual in respect of services rendered to that State or that service or utility or that authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the Contracting State of which the individual is a resident if the services are rendered in that State and the individual:

- (i) Is a national of that State; or
- (ii) Did not become a resident of that State solely for the purpose of performing the services.

2. Any pension paid by, or out of funds created by, a Contracting State or a public service or utility or a local authority thereof to an individual in respect of services rendered to that State or that service or utility or that authority shall be taxable only in 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 a Contracting State or a public service or utility or a local authority thereof.

Article 20. STUDENTS

1. Payments which a student or business, technical, agricultural or forestry apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting 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 institution of higher education in a Contracting State, or a business, industrial, technical, agricultural or forestry apprentice who is or was immediately before visiting the other Contracting State a resident of the first-mentioned State and who is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned shall not be taxed in the other Contracting State in respect of remuneration for services rendered in that other State, provided that the services are in connection with his studies or training and the remuneration constitutes earnings necessary for his maintenance.

Article 21. OTHER INCOME

1. Items of income of a resident of a Contracting State, 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 a Contracting State, carries on business in the other Contracting 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.

Article 22. CAPITAL

1. Capital represented by immovable property, as defined in paragraph 2 of article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by shares or other corporate rights referred to in paragraph 4 of article 6 owned by a resident of a Contracting State may be taxed in the Contracting State in which the immovable property owned by the company is situated.

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

4. Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

5. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 23. ELIMINATION OF DOUBLE TAXATION

1. In Finland, double taxation shall be avoided as follows:

(a) Where a resident of Finland derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Luxembourg, Finland shall, subject to the provisions of subparagraph (c), allow:

- (i) As a deduction from the taxes on the income of that person, an amount equal to the income tax paid in Luxembourg;
- (ii) As a deduction from the tax on the capital of that person, an amount equal to the capital tax paid in Luxembourg.

Such deduction in either case shall not, however, exceed that part of the income or capital tax, as computed before the deduction is given, which is appropriate, as the case may be, to the income or the capital which may be taxed in Luxembourg.

(b) Notwithstanding any other provision of this Convention, an individual residing in Luxembourg who, under Finnish taxation law, is also considered to be a

resident of Finland in so far as the Finnish taxes as defined in article 2 is concerned may be taxed in Finland. However, Finland shall, in accordance with the provisions of subparagraph (a), deduct from the Finnish tax any income or capital tax paid in Luxembourg. The provisions of this subparagraph shall not apply to individuals possessing Finnish, but not Luxembourg, nationality for the year in which such individuals left Finland and for the next three years thereafter.

(c) Dividends paid by a company which is a resident of Luxembourg to a company which is a resident of Finland shall be exempt from Finnish tax to the extent that the dividends would have been exempt from tax under Finnish taxation law if both companies had been residents of Finland.

(d) Where in accordance with any provision of this Convention income derived or capital owned by a resident of Finland is exempt from tax in Finland, Finland may nevertheless take into account, in calculating the amount of tax on the remaining income or capital of such resident, the exempted income or capital.

2. In Luxembourg, double taxation shall be avoided as follows:

(a) Where a resident of Luxembourg derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Finland, Luxembourg shall, subject to the provisions of subparagraphs (b) and (c), exempt such income or capital from tax.

(b) Where a resident of Luxembourg derives items of income which, in accordance with the provisions of articles 10 and 12, may be taxed in Finland, Luxembourg shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Finland. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from Finland.

(c) Where in accordance with any provision of this Convention income derived or capital owned by a resident of Luxembourg is exempt from tax in Luxembourg, Luxembourg may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

Article 24. NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting 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 of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting 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 a Contracting State to grant to residents of the other Contracting 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 article 9, paragraph 4 of article 11, or paragraph 6 of article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting 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 a Contracting State to a resident of the other Contracting 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 a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting 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 provisions of this article shall, notwithstanding the provisions of article 2, apply to taxes of every kind and description.

Article 25. MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting 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 Contracting State of which he is a resident or, if his case comes under paragraph 1 of article 24, to that of the Contracting 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 Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention.

3. The competent authorities of the Contracting 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. In particular, they may consult together with a view to reaching an agreement on the attribution of income in the cases referred to in article 9.

4. In the event that the competent authorities reach such an agreement, the Contracting States shall tax the income and grant reimbursements or tax credits in accordance with the agreement. The agreement shall be implemented without regard to the time-limits stipulated in the domestic laws of the Contracting States.

5. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article 26. EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by article 1. Any information received by a Contract-

ing State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the 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 a Contracting State the obligation:

- (a) To carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting 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 Contracting 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 27. AID IN RECOVERY OF TAXES

1. The Contracting States shall lend aid and assistance to each other in order to notify and recover taxes mentioned in article 2, including advances, as well as supplements and additions to those taxes, interest, costs and fines of a non-penal nature.

2. At the request of a Contracting State, the other Contracting State shall secure, in accordance with the legal provisions or the administrative practice applicable to the recovery of its own taxes, the recovery of fiscal debt-claims referred to in paragraph 1, provided that such debt-claims are definitively owed. Such debt-claims shall not be considered as preferential claims in the requested State and that State shall not be obliged to apply any means of enforcement which are not authorized by the legal provisions or the administrative practice of the requesting State.

3. The Contracting State making a recovery under the provisions of paragraph 2 shall be responsible to the requesting State for the amounts thus recovered.

4. With regard to fiscal debt-claims referred to in paragraph 1 which are open to appeal, a Contracting State may, in order to safeguard its rights, request the other Contracting State to take the protective measures provided for in the laws of that other State. The provisions of the second sentence of paragraph 2 shall apply accordingly to such measures.

5. The provisions of paragraph 1 of article 26 shall apply also to any information which under this article is supplied to the requested State.

6. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this article.

Article 28. DIPLOMATIC AGENTS AND CONSULAR OFFICERS

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

Article 29. EXCLUSION OF CERTAIN COMPANIES

This Convention shall not apply to holding companies as defined in the special Luxembourg legislation currently governed by the Act of 31 July 1929 and the Grand-Ducal Order of 17 December 1938. Neither shall it apply to the income derived

by a resident of Finland from companies of this type or from shares or other investment certificates from such companies owned by the person in question.

Article 30. ENTRY INTO FORCE

1. The Governments of the Contracting States shall notify each other that the constitutional requirements for the entry into force of this Convention have been fulfilled.

2. This Convention shall enter into force 30 days after the date of the latter of the notifications referred to in paragraph 1 and its provisions shall have effect:

- (a) In respect of taxes withheld at source, on income derived on or after 1 January 1980;
- (b) In respect of other taxes on income and capital, on taxes owed for any tax year beginning on or after 1 January 1980.

Article 31. TERMINATION

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention, through the diplomatic channel, by giving notice of termination at least six months before the end of any calendar year following the period of five years from the date on which it enters into force. In such event, the Convention shall cease to have effect:

- (a) In respect of taxes withheld at source, on income derived on or after 1 January of the calendar year next following the year in which the notice is given;
- (b) In respect of other taxes on income and capital, on taxes owed for any tax year beginning on or after 1 January in the calendar year next following the year in which the notice is given.

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

DONE in duplicate at Luxembourg on 1 March 1982 in the Finnish and French languages, both texts being equally authentic.

For the Government of Finland:

PAAVO KAARLEHTO

For the Government of Luxembourg:

FLESCH

PROTOCOL

At the time of signature of the Convention between Finland and Luxembourg for the avoidance of double taxation with respect to income and on capital, the undersigned have agreed upon the following provisions, which constitute an integral part of the Convention.

1. *Ad article 4, paragraph 1*

The provisions of the second sentence of this paragraph shall not be construed as preventing Luxembourg from taxing, in accordance with the domestic laws of

Luxembourg and the provisions of the Convention, a beneficiary for his share of income or capital in an undivided estate considered to be a resident of Finland.

2. *Ad article 10, paragraph 2*

Within the meaning of this paragraph, indirect participation shall be acceptable where a company which is a resident of a Contracting State holds jointly with one or more companies which are residents of that State at least 25 per cent of the capital of a company which is a resident of the other Contracting State, provided that the first-mentioned company holds more than 50 per cent of the capital of the other company or companies which are residents of the first-mentioned State.

3. *Ad article 23, paragraph 1*

Where the undivided estate of a deceased person is considered to be a resident of Finland and is treated as a separately taxable entity for tax purposes in Finland, Finland shall deduct from the tax imposed on income or capital from the undivided estate an amount equal to the tax on income or capital paid in Luxembourg on the share of the beneficiary in the income or capital from the undivided estate. Such deduction shall not, however, exceed that part of the Finnish tax on income or capital, as computed before the deduction is given, which is appropriate, as the case may be, to the income or the capital which may be taxed in Luxembourg.

4. *Ad article 27, paragraph 1*

Tax advances shall be recovered in the requested State only if they cover a period or periods for which the corresponding final tax liability has already been attributed to the taxpayer.

5. *Ad article 27, paragraph 2*

Within the meaning of this paragraph, a fiscal debt-claim shall be considered to be definitively owed even if the time-period during which application for extraordinary relief can be made in Finland has not elapsed.

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

Done in duplicate at Luxembourg on 1 March 1982 in the Finnish and French languages, both texts being equally authentic.

For the Government of Finland:

PAAVO KAARLEHTO

For the Government of Luxembourg:

FLESCH
