No. 22873

NETHERLANDS
and
SRI LANKA

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital (with protocol). Signed at Colombo on 17 November 1982

Authentic texts: Dutch, Sinhala and English.
Registered by the Netherlands on 23 April 1984.

PAYS-BAS
et
SRI LANKA

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu et sur la fortune (avec protocole). Signée à Colombo le 17 novembre 1982

Textes authentiques : néerlandais, cinghalais et anglais.
Enregistrée par les Pays-Bas le 23 avril 1984.

CONVENTION[1] BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Kingdom of the Netherlands and the Government of the Democratic Socialist Republic of Sri Lanka,

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

Have agreed as follows:

Article 1. PERSONAL SCOPE

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

Article 2. TAXES COVERED

1. This Convention shall apply to taxes on income and on capital imposed on behalf of one of the States or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

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

(*a*) In the Netherlands:

— *De inkomstenbelasting* (income tax),
— *De loonbelasting* (wages tax),
— *De vennootschapsbelasting* (company tax),
— *De dividendbelasting* (dividend tax),
— *De vermogensbelasting* (capital tax),

(hereinafter referred to as "Netherlands tax");

(*b*) In Sri Lanka:

— The income tax, including the income tax levied on enterprises licensed by the Greater Colombo Economic Commission,
— The wealth tax,

(hereinafter referred to as "Sri Lanka tax").

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to,

[1] Came into force on 24 January 1984, the date of the last of the notifications (effected on 27 April 1983 and 24 January 1984) by which the Parties informed each other in writing of the completion of the required constitutional formalities, in accordance with article 30.

or in place of, the existing taxes. The competent authorities of the States shall notify each other of substantial changes which have been made in their respective taxation laws.

Article 3. GENERAL DEFINITIONS

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

(*a*) The term "State" means the Netherlands or Sri Lanka, as the context requires; the term "States" means the Netherlands and Sri Lanka;

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

(*c*) The term "Sri Lanka" means the Democratic Socialist Republic of Sri Lanka, including any area outside the territorial sea of Sri Lanka which in accordance with international law has been or may hereafter be designated, under the laws of Sri Lanka concerning the Continental Shelf, as an area within which the rights of Sri Lanka with respect to the sea-bed and subsoil and the natural resources may be exercised;

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

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

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

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

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

1. Any individual possessing the nationality of one of the States;
2. Any legal person, partnership and association deriving its status as such from the laws in force in one of the States;

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

1. In the Netherlands the Minister of Finance or his duly authorized representative;
2. In Sri Lanka the Commissioner-General of Inland Revenue.

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

Article 4. RESIDENT

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

2. Where by reason of the provisions of paragraph (1) an individual is a resident of both States, then his status shall be determined as follows:

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

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

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

(*d*) If 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) a person other than an individual is a resident of both States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5. PERMANENT ESTABLISHMENT

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

2. The term "permanent establishment" includes especially:

(*a*) A place of management;

(*b*) A branch;

(*c*) An office;

(*d*) A factory;

(*e*) A workshop;

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

(*g*) An agricultural or farming estate or plantation.

3. The term "permanent establishment" likewise encompasses:

(*a*) A building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than 183 days;

(*b*) The furnishing of services including consultancy services by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than 183 days within any twelve-month period.

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 or display 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 or display;

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

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

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

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

5. Notwithstanding the provisions of paragraphs (1) and (2), where a person — other than an agent of an independent status to whom paragraph (7) applies — is acting on behalf of an enterprise and has, and habitually exercises, in one of the States an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph (4) which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of one of the States shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph (7) applies.

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

8. 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.

Article 6. INCOME FROM IMMOVABLE PROPERTY

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

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

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

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

Article 7. BUSINESS PROFITS

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

2. Subject to the provisions of paragraph (3), where an enterprise of one of the States carries on business in the other State through a permanent establishment situated therein, there shall in each State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

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

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

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

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

Article 8. SHIPPING AND AIR TRANSPORT

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

2. Profits from the operation of ships in international traffic may be taxed in the State in which the place of effective management of the enterprise is situated.

However, if the operation of a ship in the other State is more than casual, such profits may also be taxed in that other State and according to the laws of that State, but only so much of them as is derived from that other State.

For the purposes of this paragraph:

(*a*) Profits derived from the other State mean profits from the carriage of passengers or freight embarked in that other State;

(*b*) The amount of such profits shall not exceed 6 per cent of the sums receivable in respect of such carriage;

(*c*) The tax chargeable in the other State on the amount of such profits shall be reduced by 50 per cent.

3. The provisions of paragraphs (1) and (2) of this Article shall likewise apply in respect of profits from the participation in a pool, a joint business or international operating agency of any kind by enterprises engaged in the operation of ships or aircraft in international traffic.

4. 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

1. Where

(*a*) An enterprise of one of the States participates directly or indirectly in the management, control or capital of an enterprise of the other State, or

(*b*) The same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the States and an enterprise of the other State,

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

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

Article 10. DIVIDENDS

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

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

(*a*) 10 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;

(*b*) 15 per cent of the gross amount of the dividends in all other cases.

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

4. The term "dividends" as used in this Article means income from shares, *jouissance* rights, mining shares, founders' shares or other rights participating in profits, as well as income from profit-sharing bonds and 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.

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

6. Where a company which is a resident of one of the States derives profits or income from the other State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11. INTEREST

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

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

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

4. 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. However, this term does not include income dealt with in Article 10. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the interest, being a resident of one of the States, carries on business in the other State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in one of the States when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of one of the States or not, has in one of the States a permanent establishment or a fixed base in

connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each State, due regard being had to the other provisions of this Convention.

Article 12. ROYALTIES

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

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

3. 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, or tapes for television or broadcasting, 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.

4. The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the royalties, being a resident of one of the States, carries on business in the other State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in one of the States when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of one of the States or not, has in one of the States a permanent establishment or a fixed base in connection with which the 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 payments shall remain taxable according to the laws of each State, due regard being had to the other provisions of this Convention.

Article 13. CAPITAL GAINS

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

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

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the State in which the place of effective management of the enterprise is situated. For the purposes of this paragraph the provisions of paragraph (4) of Article 8 shall apply.

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

5. The provisions of paragraph (4) shall not affect the right of each of the States to levy according to its own law a tax on gains from the alienation of shares or *jouissance* rights in a company, the capital of which is wholly or partly divided into shares and which is a resident of that State, derived by an individual who is a resident of the other State and has been a resident of the first-mentioned State in the course of the last five years preceding the alienation of the shares or *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 activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base. A resident of one of the States performing such professional services or other activities of an independent character in the other State shall be deemed to have such a fixed base available to him in that other State if he is present in that other State for a period or periods exceeding in the aggregate 183 days in any twelve-month period.

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

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

(*a*) The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period, 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 operated in international traffic, shall be taxable only in that State.

Article 16. DIRECTORS' FEES

1. Directors' fees or other remuneration derived by a resident of one of the States in his capacity as a member of the board of directors, a *bestuurder* or a *commissaris* of a company which is a resident of the other State may be taxed in that other State.

2. Where the remuneration mentioned in paragraph (1) is derived by a person who exercises activities of a regular and substantial character in a permanent establishment situated in the State other than the State of which the company is a resident and the remuneration is deductible in determining the taxable profits of that permanent establishment, then, notwithstanding the provisions of paragraph (1) of this Article, the remuneration, to the extent to which it is so deductible, may be taxed in the State in which the permanent establishment is situated.

Article 17. ARTISTES AND ATHLETES

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

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

Article 18. PENSIONS AND ANNUITIES

1. Subject to the provisions of paragraph (2) of Article 19 any pension or other similar remuneration in consideration of past employment and any annuity paid to a resident of one of the States shall be taxable only in that State.

2. However, where such remuneration is not of a periodical nature and it is paid in consideration of past employment in the other State, it may be taxed in that other State.

3. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 19. GOVERNMENT SERVICE

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

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

1. Is a national of that State; or
2. Did not become a resident of that State solely for the purpose of rendering the services.

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

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

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

Article 20. PROFESSORS AND TEACHERS

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

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

Article 21. STUDENTS

1. An individual who immediately before visiting one of the States is a resident of the other State and is temporarily present in the first-mentioned State for the primary purpose of:

(*a*) Studying at a recognized university, college or school in that first-mentioned State; or

(*b*) Securing training as a business apprentice,

shall be exempt from tax in the first-mentioned State in respect of:

(i) All remittances from abroad for the purpose of his maintenance, education or training, and

(ii) Any remuneration for personal services performed in the first-mentioned State in an amount that does not exceed 5,000 Netherlands guilders or its equivalent in Sri Lanka currency for any twelve-month period.

The benefits under this paragraph shall only extend for such period of time as may be reasonable or customarily required to effectuate the purpose of the visit.

2. An individual who immediately before visiting one of the States is a resident of the other State and is temporarily present in the first-mentioned State for a period not exceeding three years for the purpose of study, research or training solely as a

recipient of a grant, allowance or award from a scientific, educational, religious or charitable organization or under a technical assistance programme entered into by one of the two States, a political subdivision or a local authority thereof shall be exempt from tax in the first-mentioned State on:

(*a*) The amount of such grant, allowance or award; and

(*b*) Any remuneration for personal services performed in the first-mentioned State provided such services are in connection with his study, research or training or are incidental thereto, in an amount that does not exceed 5,000 Netherlands guilders or its equivalent in Sri Lanka currency for any twelve-month period.

3. An individual who immediately before visiting one of the States is a resident of the other State and is temporarily present in the first-mentioned State for a period not exceeding twelve months as an employee of, or under contract with the last-mentioned State, a political subdivision or a local authority thereof, or an enterprise of the last-mentioned State, for the purpose of acquiring technical, professional or business experience, shall be exempt from tax in the first-mentioned State on:

(*a*) All remittances from the last-mentioned State for the purpose of his maintenance, education or training, and

(*b*) Any remuneration for personal services performed in the first-mentioned State, provided such services are in connection with his study or training or are incidental thereto, in an amount that does not exceed 15,000 Netherlands guilders or its equivalent in Sri Lanka currency.

However, the benefits under this paragraph shall not be granted if the technical, professional or business experience is acquired either from a company 50 per cent or more of the voting stock of which is owned by the enterprise having sent the employee or the person working under contract or from a company which owns 50 per cent or more of the voting stock of the enterprise having sent the employee or the person working under contract.

Article 22. CAPITAL

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

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

3. Capital represented by ships and aircraft operated in international traffic, and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the State in which the place of effective management of the enterprise is situated. For the purposes of this paragraph the provisions of paragraph (4) of Article 8 shall apply.

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

Article 23. ELIMINATION OF DOUBLE TAXATION

1. The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed the items of income or capital which, according to the provisions of this Convention, may be taxed in Sri Lanka.

2. However, where a resident of the Netherlands derives items of income or owns capital which according to Article 6, Article 7, paragraph (5) of Article 10, paragraph (5) of Article 11, paragraph (4) of Article 12, paragraphs (1) and (2) of Article 13, Article 14, paragraph (1) of Article 15, Article 16, Article 19 and paragraphs (1) and (2) of Article 22 of this Convention may be taxed in Sri Lanka and are included in the basis referred to in paragraph (1), the Netherlands shall exempt such items by allowing a reduction of its tax. This reduction shall be computed in conformity with the provisions of Netherlands law for the avoidance of double taxation. For that purpose the said items of income shall be deemed to be included in the total amount of the items of income which are exempt from Netherlands tax under those provisions.

3. Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for the items of income which according to paragraph (2) of Article 8, paragraph (2) of Article 10, paragraph (2) of Article 11, paragraph (2) of Article 12, Article 17 and paragraph (2) of Article 18 of this Convention may be taxed in Sri Lanka to the extent that these items are included in the basis referred to in paragraph (1). The amount of this deduction shall be equal to the tax paid in Sri Lanka on these items of income, but shall not exceed the amount of the reduction which would be allowed if the items of income so included were the sole items of income which are exempt from Netherlands tax under the provisions of Netherlands law for the avoidance of double taxation.

4. Where, by reason of special incentive measures designed to promote economic development in Sri Lanka, the Sri Lanka tax actually levied on dividends, interest and royalties arising in Sri Lanka is lower than the tax Sri Lanka may levy according to paragraph (2) of Article 10, paragraph (2) of Article 11 and paragraph (2) of Article 12, respectively, then, for the purpose of the preceding paragraph the tax paid in Sri Lanka on such dividends, interest and royalties shall be deemed to have been paid at the rates of tax mentioned in the said provisions.

5. The laws in force in Sri Lanka shall continue to govern the taxation of income or capital in Sri Lanka except when express provision to the contrary is made in this Convention. When income or capital is subject to tax in both Sri Lanka and the Netherlands, relief from double taxation shall be given in accordance with the following paragraphs of this Article.

6. Subject to the provisions of the law of Sri Lanka regarding the allowance as a credit against Sri Lanka tax of tax payable in a territory outside Sri Lanka (which shall not affect the general principle hereof) Netherlands tax payable under the law of the Netherlands and in accordance with the Convention, whether directly or by deduction, on profits, income, chargeable gains from sources within the Netherlands or on capital situated therein (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall, except in the case referred to in paragraph (5) of Article 13, be allowed as credit against any Sri Lanka tax computed by reference to the same items of income or capital by reference to which the Sri Lanka tax is computed. Provided that such credit shall not exceed Sri Lanka tax (as computed before allowing any such credit), which is appropriate to the income derived from sources within the Netherlands or to capital situated therein.

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

8. Where a resident of one of the States derives gains which may be taxed in the other State in accordance with paragraph (5) of Article 13, that other State shall allow a deduction from its tax on such gains to an amount equal to the tax levied in the first-mentioned State on the said gains.

Article 24. NON-DISCRIMINATION

1. Nationals of one of the States shall not be subjected in the other State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the States.

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

3. Except where the provisions of paragraph (1) of Article 9, paragraph (7) of Article 11, or paragraph (6) of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of one of the States to a resident of the other State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of one of the States to a resident of the other State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

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

5. The 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 States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the State of which he is a resident or, if his case comes under paragraph (1) of Article 24, to that of the State of which he is a national. The case must be presented within three years from the first

notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time-limits in the domestic law of the States.

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

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

Article 26. EXCHANGE OF INFORMATION

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

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

(*a*) To carry out administrative measures at variance with the laws and administrative practice of that or of the other State;

(*b*) To supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other State;

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

Article 27. DIPLOMATIC AGENTS AND CONSULAR OFFICERS

1. 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.

2. For the purposes of the Convention an individual, who is a member of a diplomatic or consular mission of one of the States in the other State or in a third State and who is a national of the sending State, shall be deemed to be a resident of the sending State if he is subjected therein to the same obligations in respect of taxes on income and on capital as are residents of that State.

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

Article 28. REGULATIONS

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

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

Article 29. TERRITORIAL EXTENSION

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

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

Article 30. ENTRY INTO FORCE

This Convention shall enter into force on the later of the dates on which the respective Governments have notified each other in writing that the formalities constitutionally required in their respective States have been complied with, and its provisions shall have effect:

(*a*) In the case of the Netherlands for taxable years and periods beginning on or after the first day of January 1979;

(*b*) In the case of Sri Lanka for income or capital assessable for any year of assessment beginning on or after the first day of April 1979.

Article 31. TERMINATION

This Convention shall remain in force indefinitely but either State may, on or before June 30 in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other State, through diplomatic channels, written notice of termination. In such event the Convention shall cease to have effect:

(*a*) In the case of 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 the case of Sri Lanka for income or capital assessable for any year of assessment beginning on or after the first day of April in the calendar year next following that in which such notice has been given.

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

DONE at Colombo this seventeenth day of November 1982 in duplicate, in the Dutch, Sinhala and English languages, the three texts being equally authentic. In case there is any divergence of interpretation between the Dutch and Sinhala texts, the English text shall prevail.

For the Government of the Kingdom of the Netherlands:

F. PH. KÜTHE

For the Government of the Democratic Socialist Republic of Sri Lanka:

J. A. R. FELIX

PROTOCOL

At the moment of signing the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, this day concluded between the Kingdom of the Netherlands and the Democratic Socialist Republic of Sri Lanka, the undersigned have agreed that the following provisions shall form an integral part of the Convention.

I. *With reference to Article 4*

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

II. *With reference to Article 7*

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

Especially, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the State where the permanent establishment is situated. The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the State of which the enterprise is a resident.

(*b*) In the application of paragraph (3) of Article 7 no deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific

services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office to the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

III. *With reference to Article 11 and Article 23*

(*a*) Notwithstanding the provisions of paragraph (2) of Article 11 the tax charged on interest arising in one of the States and derived and beneficially owned by a bank or other financial institution, which is a resident of the other State, shall not exceed 5 per cent of the gross amount of the interest. If, however, after a period of three years after the entry into force of the Convention, under any convention for the avoidance of double taxation concluded between Sri Lanka and a third State being a member of the European Communities (other than the United Kingdom of Great Britain and Northern Ireland) the tax on such interest in Sri Lanka is levied at a rate, which is lower than 5 per cent, then, as from that date, the same rate shall apply under the present Convention.

(*b*) (i) The provisions of paragraph (3) of Article 23 shall apply accordingly to interest meant in paragraph (*a*).

(ii) Where, by reason of special incentive measures designed to promote economic development in Sri Lanka, the Sri Lanka tax actually levied on interest meant in paragraph (*a*) above is lower than the tax Sri Lanka may levy according to that paragraph, then, for the purpose of paragraph (3) of Article 23, the tax paid in Sri Lanka on such interest shall be deemed to have been paid at the rate of tax Sri Lanka may levy according to paragraph (*a*).

IV. *With reference to Articles 10, 11 and 12*

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

V. *With reference to Article 12*

Payments received as a consideration for technical services, including studies or surveys of a scientific, geological or technical nature, or for engineering contracts including blue prints related thereto, or for consultancy or supervisory services shall be deemed to be payments to which the provisions of Article 7 or Article 14 apply.

VI. *With reference to Article 16*

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

VII. *With reference to Article 23*

After a period of 10 years following the entry into force of the Convention the competent authorities shall consult each other in order to determine whether it is opportune to amend the provisions of paragraph (4) of Article 23 of the Convention.

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

DONE at Colombo this seventeenth day of November 1982 in duplicate, in the Dutch, Sinhala and English languages, the three texts being equally authentic. In case there is any divergence of interpretation between the Dutch and Sinhala texts, the English text shall prevail.

For the Government
of the Kingdom of the Netherlands:

F. PH. KÜTHE

For the Government
of the Democratic Socialist Republic
of Sri Lanka:

J. A. R. FELIX