

**CONVENTION BETWEEN  
THE KINGDOM OF THE NETHERLANDS AND  
THE REPUBLIC OF ITALY  
FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON  
INCOME AND ON CAPITAL<sup>1</sup>**

The Government of the Kingdom of the Netherlands and the Government of the Republic of Italy, desiring to replace the Convention signed at the Hague on 24 January 1957 for the avoidance of double taxation with respect to taxes on income and on capital by a new Convention, have agreed as follows:

CHAPTER I - Scope of the Convention

*Article 1 - Personal scope*

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

*Article 2 - Taxes covered*

1. This Convention shall apply to taxes on income and on capital imposed on behalf of one of the States or of its political or administrative 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 case of the Netherlands:
    - the individual income tax (de inkomstenbelasting);
    - the wages tax (de loonbelasting);
    - the corporate income tax (de vennootschapsbelasting), including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mining Act of 1810 (Mijnwet 1810) with respect to concessions issued from 1967, or pursuant to the Netherlands Continental Shelf Mining Act of 1965 (Mijnwet Continentaal Plat 1965);
    - the dividend tax (de dividendbelasting);

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- the capital tax (de vermogensbelasting);

- the municipal tax on immovable property (de gemeentelijke onroerend-goedbelasting); even if these taxes are levied by withholding at source (hereinafter referred to as "Netherlands tax");

(b) in the case of Italy:

- the individual income tax (l'imposta sul reddito delle persone fisiche);

- the corporate income tax (l'imposta sul reddito delle persone giuridiche);

- the local income tax (l'imposta locale sui redditi); even if these taxes are levied by withholding at source (hereinafter referred to as "Italian tax").

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

## CHAPTER II - Definitions

### *Article 3 - General definitions*

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

(a) the term "State" means the Netherlands or Italy, as the context requires; the term "States" means the Netherlands and Italy;(b) the term "the Netherlands" means the part of the Kingdom of the Netherlands which is situated in Europe and the part of the seabed and its subsoil under the North Sea over which the Kingdom of the Netherlands has sovereign rights in accordance with international law;

(c) the term "Italy" means the Republic of Italy and includes any area beyond the territorial waters of Italy which, in accordance with customary international law and the laws of Italy concerning the exploration for and exploitation of natural resources, may be designated as an area within which the sovereign rights of Italy with respect to the seabed and its subsoil as well as their 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 otherState;

(h) the term "nationals" means:

(i) all individuals possessing the nationality of one of the States;

(ii) all legal persons, partnerships and associations deriving their status as such from the laws in force in one of the States;

(i) the term "competent authority" means:

(i) in the Netherlands: the Minister of Finance or his authorized representative;

(ii) in Italy: the Ministry of Finance.

2. As regards the application of the Convention by each 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 - 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" shall include especially:
  - (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop;
  - (f) a mine, quarry or any other place of extraction of natural resources;
  - (g) a building site or construction or assembly project which exists for more than twelve months.
3. The term "permanent establishment" shall not be deemed to include:
  - (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
  - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
  - (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.
4. A person acting in one of the States on behalf of an enterprise of the other State - other than an agent of an independent status to whom paragraph 5 applies - shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises, in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.
5. An enterprise of one of the States shall not be deemed to have a permanent establishment in the other State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

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

### CHAPTER III - Taxation of income

#### *Article 6 - Income from immovable property*

1. Income 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, as well as rights to which the provisions of general law respecting landed property apply. The term "immovable property" shall also include 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 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 ships or aircraft in international traffic shall be taxable only in the State in which the place of effective management of the enterprise is situated.

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

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 one of the States participates directly or indirectly in the management, control or capital of an enterprise of the other State, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the States and an enterprise of the other State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

## Article 10 - Dividends

1. Dividends paid by a company which is a resident of one of the States to a resident of the other State may be taxed in that other State.
2. However, such dividends may 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) (i) 5% of the gross amount of the dividends if the beneficial owner is a company which has held more than 50% of the voting shares of the company paying the dividends for a period of twelve months preceding the date the dividends were declared; and  
  
(ii) 10% of the gross amount of the dividends if the beneficial owner is a company which is not entitled to the treatment of clause (i) but which has held at least 10% of the voting shares of the company paying the dividends for a period of twelve months preceding the date the dividends were declared; and
  - (b) 15% in all other cases. The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
3. A resident of the Netherlands who receives dividends distributed by a company resident in Italy is entitled to a refund of the amount corresponding to the "maggiorazione di conguaglio" owed, if applicable, by that company in respect of those dividends, subject to the deduction of the withholding taxes mentioned in paragraph 2. The refund is to be requested, within the time limits fixed by Italian law, through the intermediary of the distributing company, which in such a case is to act in its own name and on behalf of the aforementioned resident of the Netherlands. This provision applies to dividends declared on or after the date of entry into force of this Convention. The distributing company may pay the above-mentioned amount to a resident of the Netherlands at the time of the payment of the dividends due to that resident and deduct that amount from tax due in its first income tax return filed after the payment. The payment of the amount corresponding to the "maggiorazione di conguaglio" to a resident of the Netherlands is allowed on condition that he is the beneficial owner of the dividends on the date the dividends are declared and, in cases mentioned in paragraph 2(a), the shares have been held for a period of 12 months preceding that date. If the taxable income of the distributing company is increased in a subsequent redetermination, or its reserves or other funds are subsequently taxed, the reduction of the tax owed by the company for the tax period in which the adjustment has become final shall be limited to that part of the tax which is attributable to the dividends subject to the "maggiorazione di conguaglio" and which has actually been paid to the State.
4. The competent authorities of both States shall by mutual agreement settle the mode of application of paragraphs 2 and 3.
5. (a) The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights participating in profits, as well as income from debt-claims participating in profits 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.  
  
(b) Dividends paid by a company resident in Italy shall also include the gross amounts mentioned in paragraph 3 relating to the dividends distributed by that company which have been refunded by reason of the "maggiorazione di conguaglio".

6. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the dividends, being a resident of one of the States, carries on business in the other State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State 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 a case, the dividends may be taxed in that other State in accordance with its domestic laws.

7. Where a company which is a resident of one of the States derives profits or income from the other State, that other State may not impose any tax on the dividends paid by the company, 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% of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in one of the States shall be exempt from tax in that State if:

(a) the payer of the interest is the Government of that State, a political or administrative subdivision or local authority thereof; or

(b) the interest is paid to the Government of the other State, a political or administrative subdivision or local authority thereof or entities or bodies (including financial institutions) wholly owned by that State, a political or administrative subdivision or a local authority thereof; or

(c) the interest is paid to other entities or bodies (including financial institutions) by reason of financing contracted by them under agreements concluded between the Governments of the States.

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

5. The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage, as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises; but it does not include income as referred to in Article 10.



6. The provisions of paragraphs 1, 2 and 3 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 a case, the interest may be taxed in that other State in accordance with its domestic laws.

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

8. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the 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 a 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 of the royalties is the beneficial owner thereof, the tax so charged shall not exceed 5% of the gross amount of the royalties. The competent authorities of the States shall by mutual agreement settle the mode of application of this paragraph.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films and recordings for radio and television 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 a case, the royalties may be taxed in that other State in accordance with its domestic laws.

5. Royalties shall be deemed to arise in one of the States when the payer is that State itself, a political or administrative 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 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 a 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 and aircraft operated in international traffic, as well as 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; the provisions of paragraph 2 of Article 8 shall be applicable.

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 either State to levy according to its own law a tax on gains derived 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 by an individual who is a resident of the other State, who is a national of the first-mentioned State not being a national of the other State and who has been a resident of the first-mentioned State at any time during the five years immediately preceding the alienation.

#### Article 14 - *Independent personal services*

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

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

#### *Article 15 - Dependent personal services*

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

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

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

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

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

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

#### *Article 16 - Directors' fees*

1. Directors' fees and other similar payments derived by a resident of one of the States in his capacity as a member of the board of directors or supervisory board of a company which is a resident of the other State may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, such remuneration derived by persons who perform real and permanent functions in a permanent establishment situated in the State other than the State of which the company is a resident and borne as such by that permanent establishment may be taxed in that other State.

#### *Article 17 - Artists 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*

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

2. Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration which are not of a periodical nature and which are paid in consideration of past employment exercised in the other State to a resident of one of the States who is a national of the other State not being a national of the first-mentioned State may be taxed in that other State.

#### Article 19 - *Government service*

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

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

(i) is a national of that State not being a national of the other State; or

(ii) not being a national of the other State, was a resident of the first-mentioned State before he rendered his services there.

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

(b) However, such pension shall be taxable only in the other State if the recipient is a resident and a national of that State, not being a national of the State from which the pension originates.

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 or administrative subdivision or a local authority thereof.

#### Article 20 - *Professors and scientific researchers*

1. Remuneration derived by a professor, any other member of the teaching staff or a scientific researcher who is, or was immediately before his visit to one of the States, a resident of the other State, and who is present in the first-mentioned State solely for the purpose of teaching or scientific research, in respect of those activities, may not be taxed in that State for a period not exceeding two years.

2. The provisions of paragraph 1 shall not apply to income derived from carrying out scientific research, if such research is undertaken not in the general interest but primarily for the private benefit of a specific person or persons.

#### *Article 21 - Students*

Payments which a student or business apprentice who is, or was immediately before visiting one of the States, a resident of the other State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

#### *Article 22 - Other income*

1. Items of income of a resident of one of the States, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of one of the States, carries on business in the other State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such a case, the items of income may be taxed in the other State in accordance with its domestic laws.

### CHAPTER IV - Taxation of capital

#### *Article 23 - Capital*

1. Capital represented by immovable property referred to in Article 6, owned by a resident of one of the States and situated in the other State, may be taxed in that other State.
2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of one of the States has in the other State or by movable property pertaining to a fixed base available to a resident of one of the States in the other State for the purpose of performing independent personal services, may be taxed in that other State.
3. Capital represented by ships 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 State in which the place of effective management of the enterprise is situated; the provisions of paragraph 2 of Article 8 shall apply.
4. All other elements of capital of a resident of one of the States shall be taxable only in that State.

## CHAPTER V

### *Article 24 - Methods for elimination of double taxation*

1. The Netherlands, when imposing tax on its residents, may include in the base upon which such taxes are imposed the items of income or capital which, according to the provisions of this Convention, may be taxed in Italy.
2. Where, however, a resident of the Netherlands derives items of income or owns items of capital which according to the provisions of Articles 6 and 7, paragraph 6 of Article 10, paragraph 6 of Article 11, paragraph 4 of Article 12, paragraphs 1 and 2 of Article 13, Article 14, paragraph 1 of Article 15, Articles 16 and 19, paragraph 2 of Article 22 and paragraphs 1 and 2 of Article 23 of this Convention may be taxed in Italy and are included in the base referred to in paragraph 1, the Netherlands shall exempt such income 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, which may be subject to modifications without affecting the general principle thereof. For that purpose said items shall be deemed to be included in the total amount of the items of income or capital 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 10, paragraph 2 of Article 11, paragraph 2 of Article 12, and Article 17 of this Convention may be taxed in Italy to the extent that these items are included in the base referred to in paragraph 1. The amount of this deduction shall be equal to the tax paid in Italy 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 in the taxable base were the sole items of income which were exempt from Netherlands tax under the provisions of Netherlands law for the avoidance of double taxation.
4. Where a resident of Italy derives items of income which may be taxed in the Netherlands, Italy may, when imposing tax on income as referred to in Article 2 of this Convention, include these items of income in the taxable base upon which aforementioned taxes are imposed, unless specific provisions of this Convention provide otherwise. In that case Italy shall deduct from the taxes so calculated the income tax paid in the Netherlands, but the amount of such deduction may not exceed that part of the Italian tax which is attributable to that income in the ratio that such income bears to total income. Nevertheless, no deduction shall be granted if the item of income is subjected in Italy, according to Italian law and upon request of the recipient, to taxation by way of withholding at source. In determining the amount of the Netherlands tax, no account shall be taken of the investment premiums and bonuses and disinvestment payments as provided for by the Netherlands Investment Account Law (*Wet investeringsrekening*).
5. Where gains or income which may be taxed in one of the States by virtue of paragraph 5 of Article 13 or paragraph 2 of Article 18, respectively, is derived by a resident of the other State, the first-mentioned State shall allow as a deduction from its tax on such gains or income an amount equal to the tax levied on those gains or that income in the other State. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction, which is attributable to the gains or income that may be taxed in the first-mentioned State.

## CHAPTER VI - Special provisions

### *Article 25 - Non-discrimination*

1. Nationals of one of the States shall not be subjected in the other State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both 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 Article 9, paragraph 8 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 26 - Mutual agreement procedure*

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

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 27 - Exchange of information*

1. The competent authorities of both 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, as well as for the prevention of fiscal evasion. 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 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 - Territorial extension*

1. This Convention may be extended, either in its entirety or with any necessary modifications, to any part of the Kingdom of the Netherlands not situated in Europe, which imposes taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from the date and subject to the modifications and conditions, including conditions as to termination, as may be agreed in diplomatic notes to be exchanged or in any other manner in accordance with the constitutional procedures of both States.

2. Unless otherwise agreed, the termination of the Convention shall also terminate the application of the Convention to any part of the territory of the Kingdom of the Netherlands to which it has been extended under this Article.



## CHAPTER VII - Final provisions

### *Article 30 - Entry into force*

1. This Convention shall enter into force on the thirtieth day following that on which both Governments have notified each other that the formalities constitutionally required in their respective States have been complied with.
2. The Convention shall have effect:
  - (a) with respect to taxes withheld at source: to income paid or credited on or after the first day of the month following the date of entry into force;
  - (b) with respect to other taxes: for taxable years and periods beginning on or after 1 January of the year of entry into force.
3. Upon the entry into force of this Convention, the Convention signed at The Hague on 24 January 1957 between the Kingdom of the Netherlands and the Republic of Italy for the avoidance of double taxation with respect to taxes on income and on capital, together with the exchange of notes, shall be terminated. The provisions of that Convention shall cease to have effect from the date on which, according to paragraph 2 of this Article, the provisions of this Convention shall apply for the first time.

### *Article 31 - Termination*

- This Convention shall remain in force until terminated by one of the States. Either State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the expiration of a period of five years from the date of entry into force. In such event, the Convention shall apply for the last time:
- (a) with respect to taxes withheld at source: to income paid or credited on or before 31 December of the year in which the notice of termination is given;
  - (b) with respect to other taxes: for taxable years and periods ending on or before 31 December of the year in which the notice of termination is given.

In witness whereof, the undersigned, duly authorized thereto, have signed this Convention.

Done at The Hague on 8 May 1990, in duplicate, in the Dutch, Italian and French languages, all three texts being equally authentic. In case of divergence of interpretation of the Dutch and Italian texts, the French text shall prevail.

For the Government of the Kingdom of the Netherlands:  
H. van den Broek

For the Government of the Republic of Italy:  
A. Pietromarchi

## **PROTOCOL**

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

1. With reference to Article 2

If a capital tax is introduced in Italy after the Convention has been signed, Italy may approach the Netherlands with respect to including such tax in the Convention concluded today.

2. With reference to Article 4

(a) 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.

(b) For the purposes of this 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 capital as are residents of that State.

3. With reference to Article 7

(a) In respect of paragraphs 1 and 2 of Article 7, where an enterprise of one of the States sells goods or merchandise or carries on business in the other State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise but only on the basis of such part thereof which is attributable to the actual activity of the permanent establishment for such sales or business. In the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or facilities, or in the case 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 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 relating 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 respect of paragraph 3 of Article 7, "expenses incurred for the purposes of that permanent establishment" shall be deemed to be expenses relating directly to the activity of the permanent establishment.

4. With reference to Article 9

(a) It is understood that the fact that associated enterprises have concluded arrangements such as cost-sharing arrangements or general service agreements for, or based on, the allocation of executive, general administrative, technical and commercial expenses, research and development expenses and other similar expenses, shall not of itself constitute a condition as referred to in Article 9.

(b) Where one of the States adjusts, in accordance with the principle laid down in this Article, the tax payable by a person, then the other State shall, insofar as it recognizes that the adjustment is based on conditions which would be agreed to between independent persons, make an appropriate adjustment to the tax payable by persons who are associated with the first-mentioned person and who are subjected to the fiscal jurisdiction of that other State; such adjustments shall only take place in accordance with the mutual agreement procedure as referred to in Article 26 of the Convention and Section 11 of this Protocol.

5. With reference to Articles 10, 11 and 12

International organizations, their bodies and officials present in the territory of one of the States shall not be entitled in the other State to any reduction of or exemption from tax referred to in Articles 10, 11 and 12 concerning dividends, interest and royalties arising in that other State, if such items of income are not subjected to a tax on income in the first-mentioned State.

6. With reference to Articles 10, 11, 12 and 22

As regards paragraph 6 of Article 10, paragraph 6 of Article 11, paragraph 4 of Article 12, and paragraph 2 of Article 22, the last sentence included therein cannot be interpreted so that the principles contained in Articles 7 and 14 of this Convention are not taken into consideration.

7. With reference to Articles 11 and 12

In determining the withholding tax rates as provided for in paragraph 2 of Article 11 and paragraph 2 of Article 12, it has been taken into account that the Netherlands does not levy a special withholding tax on interest and royalties paid to non-residents.

8. With reference to Article 16

The term "member of the board of directors or supervisory board" means:

(a) in the case of a company resident in the Netherlands, a "bestuurder" or "commissaris";

(b) in the case of a company resident in Italy, a member of the "consiglio d'amministrazione" or of the "collegio sindacale".

9. With reference to Article 19

(a) The provisions of paragraphs 1 and 2 of Article 19 shall also apply to remuneration and pensions paid by the following Italian services or organizations to their employees:

- the Italian Railway Administration (F.S.);

- the Administration of Postal and Telecommunication Services (PP.TT);

- the Italian National Tourist Office (E.N.I.T.);

- the Institute for Foreign Trade (I.C.E);

- the Bank of Italy.

(b) Where, by reason of the provisions of Article 19, remuneration or pensions derived by a resident of one of the States are exempt from tax in that State, that State may nevertheless, when computing the amount of tax on other income or capital of that resident, take into account the exempted remuneration and pensions.

10. With reference to Article 24

It is understood that for the computation of the reduction as referred to in paragraph 2 of Article 24 the items of capital mentioned in paragraph 1 of Article 23 shall be taken into account for the value thereof as reduced by the value of the debts secured by mortgage on that capital, and the items of capital referred to in paragraph 2 of Article 23 shall be taken into account for the value thereof as reduced by the value of the debts pertaining to the permanent establishment or fixed base.

11. With reference to Article 26

(a) With respect to paragraph 1 of Article 26, the term "irrespective of the remedies provided by the domestic law" means that invoking a mutual agreement procedure cannot replace the domestic remedies which, in any case, must first be resorted to if the dispute is related to an application of Italian taxes not in conformity with the Convention.

(b) An adjustment of taxes by reason of this Article may only take place before the final assessment of those taxes.

12.

(a) As regards the application of this Convention in Italy, the taxes levied by way of withholding at source and in accordance with the rates provided for by Italian domestic law shall be refunded at the request of the interested party, provided that the right to levy those taxes is limited by the provisions of the Convention. Requests for refund must be submitted within the time limits fixed by Italian law and must be accompanied by a certificate of the competent Netherlands authorities stating that the conditions required for entitlement to the exemptions or reductions provided for by the Convention have been fulfilled. These provisions shall not be construed as preventing the competent authorities of Italy from establishing other procedures for the application of the tax reductions provided for by the Convention.

(b) In the case of the Netherlands, requests for refund of Netherlands tax levied not in conformity with the provisions of this Convention must be submitted to the competent authority which levied the tax, within the time limits fixed by Netherlands law.

In witness whereof, the undersigned, duly authorized thereto, have signed this Protocol.

Done at The Hague on 8 May 1990, in duplicate, in the Dutch, Italian and French languages, all three texts being equally authentic. In case of divergence of interpretation of the Dutch and Italian texts, the French text shall prevail.

For the Government of the Kingdom of the Netherlands:  
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