

## **2004 Income and Capital Tax Convention and Final Protocol**

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### **CONVENTION BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE REPUBLIC OF ALBANIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL**

The Kingdom of the Netherlands and the Republic of Albania desiring, for the purpose of further developing and facilitating their economic relationship, to conclude a Convention for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income and on capital, have agreed as follows:

#### Chapter I

##### Scope of the Convention

#### **Article 1 Persons Covered**

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

#### **Article 2 Taxes Covered**

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its 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) including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mijnwet 1810 (the Mining Act of 1810) with respect to concessions issued from 1967, or pursuant to the Mijnwet Continentaal Plat 1965 (the Netherlands Continental Shelf Mining Act of 1965);

– de dividendbelasting (dividend tax);

(hereinafter referred to as "Netherlands tax");

b) in Albania:

(i) tatimet mbi te ardhurat (përfshirë tatimin mbi fitimet e kompanive dhe tatimin mbi te ardhurat personale) (the income taxes (including corporate profits tax and personal income tax));

(ii) tatimin mbi biznesin e vogël (the tax on small business activities); and

(iii) tatimin mbi pasurinë (the property tax);

(hereinafter referred to as "Albanian Tax").

4. The Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that 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 terms "a Contracting State" and "the other Contracting State" mean the Kingdom of The Netherlands (the Netherlands) or Albania as the context requires;

the term "Contracting States" means the Kingdom of the Netherlands (the Netherlands) and Albania;

b) the term "the Netherlands" means the part of the Kingdom of the Netherlands that is situated in Europe, including its territorial sea, and any area beyond the territorial sea within which the

Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights with respect to the sea bed, its sub-soil and its superjacent waters, and their natural resources;

c) the term "Albania" means the Republic of Albania, and when used in a geographical sense means the territory of the Republic of Albania including territorial waters and air space over them as well as any area beyond the territorial waters of the Republic of Albania which, under its laws and in accordance with international law, is an area within which the Republic of Albania may exercise its rights with respect to the seabed and subsoil and their natural resources;

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

e) the term "company" means any legal entity which is treated as a juridical person for tax purposes;

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

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

h) the term "national" means:

(i) any individual possessing the nationality of a Contracting State;

(ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;

i) the term "competent authority" means:

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

(ii) in the case of Albania the General Taxation Department.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

#### **Article 4 Resident**

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of registration, or any other criterion of a similar nature and also includes that State and any political subdivision or local authority thereof. This term, however, 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 Contracting States, then his status shall be determined as follows:

a) he shall be deemed to be a resident only 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 only 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 only 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 only of the State of which he is a national;

d) if from the preceding criteria it is not possible to determine the Contracting State in which the person is resident only, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

#### **Article 5 Permanent Establishment**

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

2. The term "permanent establishment" includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;  
e) a workshop, and

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

3. The term "permanent establishment" likewise encompasses:

a) a building site or construction or installation project if it lasts more than nine months, and  
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 within the country for a period or periods aggregating more than nine months in any twelve month period commencing or ending in the fiscal year concerned.

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.

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

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that 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. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.

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

Chapter III

Taxation of Income

### **Article 6 Income From Immovable Property**

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

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. 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 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 a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In 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 a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

## **Article 8 International Shipping and Air Transport**

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.
3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

## **Article 9 Associated Enterprises**

1. Where
  - a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
  - b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.
2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting 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 Contracting States shall if necessary consult each other.

## **Article 10 Dividends**

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, but the tax so charged shall not exceed:
  - a) 0 percent of the gross amounts of the dividends if the beneficial owner is a company which holds directly or indirectly at least 50 percent of the capital of the company the capital of which is wholly or partly divided into shares paying the dividends and has invested more than \$ 250.000 in the capital of the company paying the dividends;
  - b) 5 percent of the gross amounts of the dividends if the beneficial owner is a company which holds directly or indirectly at least 25 percent of the capital of the company the capital of which is wholly or partly divided into shares paying the dividends;
  - c) 15 percent of the gross amounts of the dividends in all other cases.
3. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraph 2.
4. 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.
5. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares, or other rights not being 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.
6. The provisions of paragraphs 1, 2 and 8 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14 as the case may be, shall apply.
7. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except 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.
8. Notwithstanding the provisions of paragraphs (1) and (2), dividends paid by a company whose capital is divided into shares and which under the laws of a State is a resident of that State, to an individual who is a resident of the other State may be taxed in the first-mentioned State in accordance with the laws of that State if that individual – either alone or with his or her spouse – or one of their relations by blood or marriage in the direct line directly or indirectly holds at least 5 per cent of the issued capital of a particular class of shares in that company. This provision shall apply only if the individual to whom the dividend is paid has been a resident of the first-mentioned State in the course of the last ten years preceding the year in which the dividend is paid and provided that, at the time he became a resident of the other State, the abovementioned conditions regarding share ownership in the said company were satisfied.

In cases where, under the domestic laws of the first-mentioned State, an assessment has been issued to the individual to whom the dividend is paid in respect of the alienation of the aforesaid shares deemed to have taken place at the time of his emigration from the first-mentioned State, the above shall apply only as long as part of the assessment is still outstanding.

### **Article 11 Interest**

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient of the interest is the beneficial owner of the interest the tax so charged shall not exceed:
  - a) 5 percent of the gross amount of interest, in the case of interest arising in a Contracting State and paid on a loan granted by a bank or any other financial institution of the other Contracting State, including investment banks and savings banks, and insurance companies; and
  - b) 10 percent of the gross amount of the interest in all other cases.
3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner thereof shall be taxable only in that

other State if the payer or the recipient of the interest is the Government of a Contracting State, a political subdivision or local authority thereof or the central bank of a Contracting State, or if the interest is paid in respect of a loan granted, approved, guaranteed or insured, directly or indirectly, by the Government of a Contracting State, the central bank of a Contracting State or any agency or instrumentality (including a financial institution) owned or controlled by the Government of a Contracting State.

4. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraph 2.

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

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

7. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or a fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or a 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 case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

## **Article 12 Royalties**

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraph 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment or performs in that other State independent personal services from a fixed base situated therein, situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment.

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

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

payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the lastmentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

### **Article 13 Capital Gains**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting 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 a Contracting State has in the other Contracting State, or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base may be taxed in that other State.
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 Contracting State in which the place of effective management of the enterprise is situated. If the place of effective management of a shipping enterprise is aboard a ship then, for the purposes of this paragraph, it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.
4. Where a resident of a Contracting State owns more than 5 per cent of the shares or other rights in a company of which the property consists, directly or indirectly, principally of immovable property situated in the other Contracting State, gains from the alienation of such shares may be taxed in that other Contracting State.
5. Gains from the alienation of any property other than that referred to in preceding paragraphs of this Article shall be taxable only in the Contracting State of which the alienator is a resident.
6. Notwithstanding the provisions of paragraph 5, a Contracting State may, in accordance with its own laws, including the interpretation of the term "alienation", levy tax on gains derived by an individual who is a resident of the other Contracting State from the alienation of shares in, "jouissance" rights or debt claims on a company whose capital is divided into shares and which, under the laws of the first-mentioned Contracting State, is a resident of that State, and from the alienation of part of the rights attached to the said shares, "jouissance" shares or debt claims, if that individual – either alone or with his or her spouse – or one of their relations by blood or marriage in the direct line directly or indirectly holds at least 5 per cent of the issued capital of a particular class of shares in that company. This provision shall apply only if the individual who derives the gains has been a resident of the first-mentioned State in the course of the last ten years preceding the year in which the gains are derived and provided that, at the time he became a resident of the other Contracting State, the above-mentioned conditions regarding share ownership in the said company were satisfied. In cases where, under the domestic laws of the first-mentioned State, an assessment has been issued to the individual in respect of the alienation of the aforesaid shares deemed to have taken place at the time of his emigration from the first-mentioned State, the above shall apply only in so far as part of the assessment is still outstanding.

### **Article 14 Independent Personal Services**

1. Income derived by an individual who is a resident of a Contracting State in respect of professional or other similar services of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:
  - a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or
  - b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any 12-month period commencing or ending in the calendar year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, dentists, lawyers, engineers, architects and accountants.

### **Article 15 Income From Employment**

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

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the firstmentioned State if all the following conditions are met:

- 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 commencing or ending 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 in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

### **Article 16 Directors' Fees**

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

2. Where the payment mentioned in paragraph 1 is derived by a person who exercises activities of a regular and substantial character in a permanent establishment situated in a State other than a State of which the company is a resident and the payment is deductible in determining the taxable profit of that permanent establishment then, notwithstanding the provision of paragraph 1 of this Article, to the extent to which is so deductible, shall be taxable only in the State in which the permanent establishment is situated.

### **Article 17 Entertainers and Sportspersons**

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

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

### **Article 18 Pensions, Annuities and Social Security Payments**

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment, as well as annuities paid to a resident of a Contracting State, shall be taxable only in that State. Any pension and other payment paid out under the provisions of a social security system of a Contracting State to a resident of the other Contracting State shall be taxable only in that other State.

2. Notwithstanding the provisions of paragraph 1, a pension or other similar remuneration, annuity, or any pension and other payment paid out under the provisions of a social security system of a Contracting State, may also be taxed in the Contracting State from which it is derived, in accordance with the laws of that State:

- a) if and in so far as the entitlement to this pension or other similar remuneration or annuity in the Contracting State from which it is derived is exempt from tax, or the contributions associated with the pension or other similar remuneration or annuity made to the pension scheme or insurance company were deducted in the past when calculating taxable income in that State or qualified for other tax relief in that State; and
- b) if and in so far as this pension or other similar remuneration or annuity is in the Contracting State of which the recipient thereof is a resident not taxed at the generally applicable rate for income derived from employment, or less than 90 per cent of the gross amount of the pension or other similar remuneration or annuity is taxed; and
- c) if the total gross amount of the pensions and other similar remuneration and annuities, and any pension and other payment paid out under the provisions of a social security system of a Contracting State, in any calendar year exceeds the sum of 20.000 Euro.

3. Notwithstanding the provisions of paragraphs 1 and 2, if this pension or other similar remuneration is not periodic in nature, is paid in respect of past employment in the other Contracting State and is paid out before the date on which the pension commences, or if a lump-sum payment is made in lieu of the right to an annuity before the date on which the annuity commences, the payment or this lump-sum may also be taxed in the Contracting State from which it is derived.

4. A pension or other similar remuneration or annuity is deemed to be derived from a Contracting State if and insofar as the contributions or payments associated with the pension or other similar remuneration or annuity, or the entitlements received from it qualified for tax relief in that State. The transfer of a pension from a pension fund or an insurance company in a Contracting State to a pension fund or an insurance company in another State will not restrict in any way the taxing rights of the first-mentioned State under this Article.

5. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraph 2. They shall also decide what details the resident of a Contracting State must submit for the purpose of the proper application of the Convention in the other Contracting State, in particular so that it can be established whether the conditions referred in subparagraphs (a), (b) and (c) of paragraph 2 have been met.

6. 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.

7. Whether and to what extent a pension or similar remuneration falls under this Article or under Article 19, is determined by the nature of the past employment, as private or governmental, during which the entitlement to that part of the pension or similar remuneration was built up.

#### **Article 19 Government Service**

1. a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State 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 salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

(ii) 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, a Contracting State 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 Contracting 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 salaries, wages and other similar remuneration and to pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

#### **Article 20 Students and Apprentices**

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

2. In respect of grants, scholarships and remuneration from employment not covered by paragraph 1, a student or business apprentice described in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the State which he is visiting.

#### **Article 21 Other Income**

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is

effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be shall apply.

### **Article 22 Capital**

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

#### Chapter IV

#### Elimination of Double Taxation

### **Article 23 Elimination of Double Taxation**

1. Double taxation shall be eliminated as follows in the Netherlands:
  - a) 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 Albania.
  - b) However, where a resident of the Netherlands derives items of income or capital which according to Article 6, Article 7, paragraph 6 of Article 10, paragraph 6 of Article 11, paragraph 4 of Article 12, paragraphs 1 and 2 of Article 13, paragraph 1 of Article 14, paragraph 1 of Article 15, paragraph 2 of Article 18, paragraphs 1 (subparagraph a) and 2 (subparagraph a) of Article 19, paragraph 2 of Article 21 and paragraphs 1 and 2 of Article 22 of this Convention may be taxed in Albania and are included in the basis referred to in paragraph 1, the Netherlands shall exempt such items of income or capital 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 or capital shall be deemed to be included in the amount of the items of income or capital which are exempt from Netherlands tax under those provisions.
  - c) Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for the items of income which according to paragraph 2 (subparagraph b and c) of Article 10, paragraph 2 of Article 11, paragraph 2 of Article 12, Article 16, Article 17 and paragraphs 2, 4, 5 and 6 of Article 23A of this Convention may be taxed in Albania 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 Albania on these items of income, but shall, in case the provisions of the Netherlands law for the avoidance of double taxation provides so, 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.  
This subparagraph shall not restrict allowance now or hereafter accorded by the provisions of the Netherlands law for the avoidance of double taxation, but only as far as the calculation of the amount of the reduction of Netherlands tax is concerned with respect to the aggregation of income from more than one country.
  - d) Notwithstanding the provisions of paragraph 2, the Netherlands shall allow a deduction from the Netherlands tax for the tax paid in Albania on items of income which according to Article 7, paragraph 6 of Article 10, paragraph 6 of Article 11, paragraph 4 of Article 12, Article 14 and paragraph 2 of Article 21 of this Convention may be taxed in Albania to the extent that these items are included in the basis referred to in paragraph 1, if and insofar as the Netherlands under the provisions of Netherlands law for the avoidance of double taxation allows a deduction from the Netherlands tax of the tax levied in another country on such items of income. For the computation of this deduction the provisions of paragraph 3 of this Article shall apply accordingly.
2. Double taxation shall be eliminated as follows in Albania:
  - a) Where a resident of Albania derives income or owns capital which, in accordance with the provisions of this Convention may be taxed in the Netherlands, Albania shall allow:
    - (i) as a deduction from Albanian tax on the income of that resident an amount equal to the income tax paid in the Netherlands; and

(ii) as a deduction from Albanian tax on the capital of that resident, an amount equal to the capital tax paid in the Netherlands. Such deduction in either case shall not, however, exceed that part of the Albanian tax on income or on capital as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in the Netherlands.

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

Chapter V

Special Provisions

### **Article 23A Offshore Activities**

1. The provisions of this Article shall apply notwithstanding any other provision of this Convention.

2. A person who is a resident of a Contracting State and carries on activities offshore in the other Contracting State in connection with the exploration or exploitation of the seabed and subsoil and their natural resources situated in that other State shall, subject to paragraphs 3 and 4 of this Article, be deemed in relation to those activities to be carrying on business in that other State through a permanent establishment or fixed base situated therein.

3. The provisions of paragraph 2 shall not apply where the activities are carried on for a period not exceeding 30 days in the aggregate in any twelve-month period. However, for the purposes of this paragraph:

a) activities carried on by an enterprise associated with another enterprise shall be regarded as carried on by the enterprise with which it is associated if the activities in question are substantially the same as those carried on by the last-mentioned enterprise;

b) two enterprises shall be deemed to be associated if one is controlled directly or indirectly by the other, or both are controlled directly or indirectly by a third person or persons.

4. Profits derived by a resident of a Contracting State from the transportation of supplies or personnel to a location, or between locations, where activities in connection with the exploration or exploitation of the seabed and subsoil and their natural resources are being carried on in a Contracting State, or from the operation of tugboats and other vessels auxiliary to such activities, shall be taxable only in the Contracting State of which the enterprise is a resident. This provision shall not apply if the vessel or aircraft is operated by a permanent establishment in the sense of Article 5 of this Convention, or activities are continued for more than 6 months in any twelve-month period.

5. a) Subject to sub-paragraph (b) of this paragraph, salaries, wages and similar remuneration derived by a resident of a Contracting State in respect of an employment connected with the exploration or exploitation of the seabed and subsoil and their natural resources situated in the other Contracting State may, to the extent that the duties are performed offshore in that other State, be taxed in that other State. However, such remuneration shall be taxable only in the first-mentioned State if the employment is carried on offshore for an employer who is not a resident of the other State and for a period or periods not exceeding in the aggregate 30 days in any twelve-month period.

b) Salaries, wages and similar remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft engaged in the transportation of supplies or personnel to a location, or between locations, where activities connected with the exploration or exploitation of the seabed and subsoil and their natural resources are being carried on in the other Contracting State, or in respect of an employment exercised aboard tugboats or other vessels operated auxiliary to such activities, may be taxed in the Contracting State of which the enterprise carrying on such activities is a resident. This provision shall not apply if the vessel or aircraft is operated by a permanent establishment in the sense of Article 5 of this Convention, or the activities are continued for more than 6 months in any twelve-month period.

6. Gains derived by a resident of a Contracting State from the alienation of:

a) exploration or exploitation rights; or

b) property situated in the other Contracting State and used in connection with the exploration of the seabed and subsoil and their natural resources situated in that other State; or

c) shares deriving their value or the greater part of their value directly or indirectly from such rights or such property or from such rights and such property taken together, may be taxed in that other State.

In this paragraph "exploration or exploitation rights" means rights to assets to be produced by the exploration or exploitation of the seabed and subsoil and their natural resources in the other Contracting State, including rights to interests in or to the benefit of such assets.

## **Article 24 Non-Discrimination**

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Except where the provisions of paragraph 1 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 a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
5. Contributions paid by, or on behalf of, an individual who is a resident of a Contracting State to a pension plan that is recognized for tax purposes in the other Contracting State will be treated in the same way for tax purposes in the first-mentioned State as a contribution paid to a pension plan that is recognized for tax purposes in that first-mentioned State, provided that
  - a) such individual was contributing to such pension plan before he became a resident of the first-mentioned State; and
  - b) the competent authority of the first-mentioned State agrees that the pension plan corresponds to a pension plan recognized for tax purposes by that State. For the purpose of this paragraph, "pension plan" includes a pension plan created under a public social security system.
6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description. However, this paragraph does not apply to taxes levied in respect of services applied.

## **Article 25 Mutual Agreement Procedure**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. If any difficulty or doubt arising as to the interpretation or application of the Convention cannot be resolved by the competent authorities of the Contracting States in a mutual agreement procedure pursuant to the previous paragraphs of this Article within a period of two years after the question was raised, the case may, at the request of either Contracting State, be submitted for arbitration, but only after fully exhausting the procedures available under paragraphs 1 to 4 of this Article and provided the taxpayer or taxpayers involved agree in writing to be bound by the decision of the arbitration board. The arbitration board shall be installed by the competent authorities of the Contracting States. The competent authorities of the Contracting States shall agree on and instruct the arbitration board regarding specific rules of procedure, such as appointment of a chairman, procedures for reaching a decision and the establishment of time limits. The decision of the arbitration board in a particular case shall be binding on both Contracting States and the taxpayer or taxpayers involved with respect to that case.

#### **Article 26 Exchange of Information**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1 and 2. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes referred to in the first sentence. 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. The Contracting States may release to the arbitration board, established under the provisions of paragraph 5 of Article 25, such information as is necessary for carrying out the arbitration procedure. Such release of information shall be subject to the provisions of Article 28. The members of the arbitration board shall be subject to the limitations on disclosure described in paragraph 1 of this Article with respect to any information so released.

#### **Article 27 Assistance in Collection**

1. The Contracting States agree to lend each other assistance and support with a view to the collection, in accordance with their respective laws or administrative practice, of the taxes to which this Convention shall apply and of any increases, surcharges, overdue payments, interests and costs pertaining to the said taxes.

2. At the request of the applicant Contracting State the requested Contracting State shall recover tax claims of the first-mentioned State in accordance with the law and administrative practice for the recovery of its own tax claims. However, such claims do not enjoy any priority in the requested State and cannot be recovered by imprisonment for debt of the debtor. The requested State is not obliged to take any executory measures which are not provided for in the laws of the applicant State.

3. The provisions of paragraph 2 shall apply only to tax claims which form the subject of an instrument permitting their enforcement in the applicant State and, unless otherwise agreed between the competent authorities, which are not contested.

However, where the claim relates to a liability to tax of a person as a non-resident of the applicant State, paragraph 2 shall only apply, unless otherwise agreed between the competent authorities, where the claim may no longer be contested.

4. The requested State shall not be obliged to accede to the request:

- a) if the applicant State has not pursued all means available in its own territory, except where recourse to such means would give rise to disproportionate difficulty;
- b) if and insofar as it considers the tax claim to be contrary to the provisions of this Convention or of any other agreement to which both of the States are parties.

5. The instrument permitting enforcement in the applicant State shall, where appropriate and in accordance with the provisions in force in the requested State, be accepted, recognised, supplemented or replaced as soon as possible after the date of the receipt of the request for assistance by an instrument permitting enforcement in the requested State.

6. The competent authorities of the States shall by common agreement prescribe rules concerning the application of this Article.

#### **Article 28 Limitation of Articles 26 and 27**

In no case shall the provisions of Articles 26 and 27 be construed so as to impose on a Contracting State the obligation:

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

### **Article 29 Members of Diplomatic Missions and Consular Posts**

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

Chapter VI

Final Provisions

### **Article 30 Entry Into Force**

This Convention shall enter into force on the fifteenth day after the latter 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 for taxable years and periods beginning on or after the first day of January in the calendar year following that in which the Convention has entered into force.

### **Article 31 Termination**

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention, through diplomatic channels, by giving the written notice of termination at least six months before the end of any calendar year beginning after the expiration of a period of five years from the date of its entry into force. In such event the Convention shall cease to have effect for taxable years and periods beginning after the end of the calendar year in which the notice of termination has been given.

The undersigned, duly authorized thereto, have signed this Convention.

Done at Tirana this 22 day of July 2004, in duplicate, in the Netherlands, Albanian and English languages, the three texts being equally authentic. In case there is any divergence of interpretation between the Netherlands and Albanian texts, the English text shall prevail.

#### **FOR THE KINGDOM OF THE NETHERLANDS:**

*B. R. Bot*

#### **FOR THE REPUBLIC OF ALBANIA:**

*K. Islami*

### **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 Republic of Albania, the undersigned have agreed that the following provisions shall form an integral part of the Convention.

I Ad Article 2

It is understood that this Convention shall apply to taxes on capital as soon as after the signature of this Convention both States would introduce a general tax on capital.

II Ad paragraph 1, subparagraph e of Article 3

In case an entity that is treated as a body corporate for tax purposes is liable as such to tax in a Contracting State, but the income of that entity is taxed in the other Contracting State as income of the participants in that entity, the competent authorities shall take such measures that on the one hand no double taxation remains, but on the other hand it is prevented that merely as a result of application of the Convention income is (partly) not subject to tax. If necessary the competent authorities can take measures deviating from their national legislation but in accordance with the context of the Convention.

III Ad Articles 3, 4, 8, 13 and 22

It is understood that when establishing the "place of effective management" as meant in subparagraph g of paragraph 1 of Article 3, paragraph 3 of Article 4, paragraph 1 of Article 8, paragraph 3 of Article 13, and in paragraph 3 of Article 22 circumstances which may, inter alia, be taken into account are the place where a company is actually managed and controlled, the place where the decision-making at the highest level on the important policies essential for the management of a

company takes place, the place that plays a leading part in the management of a company from an economic and functional point of view and the place where the most important accounting books are kept.

#### IV Ad Article 4

1. The term "resident of a Contracting State" also includes a pension fund that is recognized and controlled according to the statutory provisions of a Contracting State and the income of which is generally exempt from tax in that State.

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

#### V Ad Article 5

1) It is understood that the use of facilities solely for the purpose of delivery of goods or merchandise belonging to an enterprise of a Contracting State does in itself not constitute a permanent establishment of that enterprise in the other Contracting State within the meaning of Article 5. If, however, such delivery takes place in combination with any activity, other than the activities mentioned in paragraph 4 of Article 5, of that enterprise in the other Contracting State, than that enterprise will be deemed to carry on business in that other Contracting State through a permanent establishment situated in therein.

2) It is further understood, that any combination of the activities mentioned in subparagraphs a) through e) of paragraph 4 of Article 5 carried on by an enterprise of a Contracting State in the other Contracting State will not be deemed to constitute a permanent establishment of the enterprise in that other Contracting State, provided that the overall activity is to be considered as an activity of an auxiliary or of a preparatory character.

#### VI Ad Articles 5, 6, 7, 13 and 23A

It is understood that exploration and exploitation rights of natural resources shall be regarded as immovable property situated in the Contracting State the sea bed and sub-soil of which they are related to, and that these rights shall be deemed to pertain to the property of a permanent establishment in that State. Furthermore, it is understood that the aforementioned rights include rights to interests in, or to the benefits of, assets to be produced by such exploration or exploitation.

#### VII Ad Article 5, 7, 10, 11, 12, 13, 15, 21, 22, 24

It is understood that a fixed place of business of an enterprise through which the business is wholly or partly carried on means a fixed place of business through which an enterprise of a Contracting State, wholly or partly, carries on business in the other Contracting State.

#### VIII Ad Article 7

In respect of paragraphs 1 and 2 of Article 7, it is understood that where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall be determined only on the basis of that portion of the income of the enterprise that is attributable to the actual activity of the permanent establishment in respect of such sales or business. Specifically, 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 attributable to such permanent establishment shall be determined only on the basis of that part of the contract that is effectively carried out by the permanent establishment in the Contracting 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 Contracting State of which the enterprise is a resident.

#### IX Ad Article 7

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

#### X Ad Article 8

It is understood that for the purposes of Article 8, profits derived from the operation in international traffic of ships and aircraft include profits derived from the rental on a bareboat basis of ships and aircraft if operated in international traffic if such rental profits are an occasional source of income to the profits described in paragraph 1 of Article 8.

#### XI Ad Article 9

Concerning the application of Article 9, it is understood that agreements concluded between associated enterprises, such as costsharing agreements or general services agreement, for or based on the allocation of the executive, general administrative, technical and commercial expenses and other similar expenses, is not in itself a condition as meant in paragraph 1 of Article 9 and will be

treated according to the principles of Article 9 and may be adjusted for tax purposes in the same way like any other transaction between associated enterprises.

#### XII Ad Article 10

Notwithstanding the provisions of paragraph 2, the Contracting State of which the company is a resident shall not levy a tax on dividends paid by that company, if the beneficial owner of the dividends is a pension fund referred to in paragraph IV of this Protocol.

#### XIII Ad Articles 10, 11 and 12

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

#### XIV Ad Articles 10 and 13

It is understood that income received in connection with the (partial) liquidation of a company or a purchase of own shares by a company is treated as income from shares and not as capital gains.

#### XV Ad Article 13, paragraph 4

It is understood that the competent authorities of the Contracting States shall in mutual agreement in each separate case determine whether or not the property of a company, directly or indirectly, principally consists of immovable property.

#### XVI Ad Article 10, paragraph 8 and Article 13, paragraph 6

As regards the application of paragraph 8 of Article 10 and paragraph 6 of Article 13 the term "a company which under the laws of a Contracting State is a resident of that State" includes:

- a) a company that has its place of effective management in that Contracting State; and
- b) a company which place of effective management is transferred from that Contracting State, provided that the place effective management of that company, prior to the aforementioned transfer of its place of effective management, was situated for a period of at least five years in that Contracting State. In that case that company will be deemed to be a resident of that Contracting State only for a period of ten years after the transfer of its place of effective management.

#### XVII Ad Article 16

1. It is, however, understood that Article 16 also applies to remuneration paid to a person as mentioned in Article 16 on account of other functions performed for the enterprise.
2. It is understood that in the case of the Netherlands a member of the board of director or a similar organ includes a "bestuurder or commissaris" of a Netherlands company, meaning persons, who are nominated as such by the general meeting of shareholders or by any other competent body of such company and are charged with the general management of the company and the supervision thereof, respectively.

#### XVIII Ad Article 25

The competent authorities of the States may also agree, with respect to any agreement reached as a result of a mutual agreement procedure as meant in Article 25, if necessary contrary to their respective national legislation, that the State, in which there is an additional tax charge as a result of the aforementioned agreement, will not impose any increases, surcharges, interest and costs with respect to this additional tax charge, if the other State in which there is a corresponding reduction of tax as a result of the agreement, refrains from the payment of any interest due with respect to such a reduction of tax.

#### XIX Ad Article 26

Article 26 will, for political subdivisions or local authorities, not be applicable to other taxes than those covered by this Convention.

#### XX

It is understood that if the Netherlands Antilles and/or Aruba have introduced a tax system which is in conformity with internationally accepted taxation principles (the so-called OECD-standards) and provided that the policy of execution of their laws is also in conformity with the aforementioned principles, Albania is prepared to consider discussions with those countries on the possibility of concluding a bilateral convention for the avoidance of double taxation and the prevention of fiscal evasion.

The undersigned, duly authorized thereto, have signed this Protocol.

Done at Tirana this 22 day of July 2004, in duplicate, in the Netherlands, Albanian and English languages, all the three texts being equally authentic. In case there is any divergence of interpretation between the Netherlands and Albanian texts, the English text shall prevail.

**FOR THE KINGDOM OF THE NETHERLANDS:**

*B. R. Bot*

**FOR THE REPUBLIC OF ALBANIA:**  
*K. Islami*