AGREEMENT OF 17TH SEPTEMBER, 1970 AS AMENDED BY PROTOCOLS OF 11TH DECEMBER, 2002 AND 16TH JULY, 2009

AGREEMENT BETWEEN BELGIUM AND LUXEMBOURG FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE REGULATION OF CERTAIN OTHER MATTERS WITH RESPECT TO TAXES ON INCOME AND FORTUNE

I. Scope of the Agreement

Article 1
Personal Scope

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

Article 2
Taxes Covered

1. This Agreement shall apply to taxes on income and on fortune imposed on behalf of each 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 fortune all taxes imposed on total income, on total fortune or on elements of income or of fortune, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by employers, as well as taxes on capital appreciation.

3. The current taxes to which the Convention applies are:

(1) Insofar as Belgium is concerned:

a) income tax for individuals (l'impôt des personnes physiques);

b) income tax for companies (l'impôt des sociétés);

c) income tax for legal persons (l'impôt des personnes morales);

d) income tax for non-residents (l'impôt des non-résidents);

including any tax withholdings, additional surcharges for said taxes and tax withholdings as well as additional taxes for individual income tax,

(hereinafter referred to as "Belgian tax");

(2) Insofar as the Grand Duchy of Luxembourg is concerned:

a) personal income tax (l'impôt sur le revenu des personnes physiques);

b) income tax for legal persons (l'impôt sur le revenu des collectivités);

c) capital tax (l'impôt capital);

d) community business tax (l'impôt commercial communal);

e) property tax (l'impôt foncier),

(hereinafter referred to as "Luxembourg tax").

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

II. Definitions

Article 3
General Definitions

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

(1) The term "Belgium", when used in a geographical sense, means the territory of the Kingdom of Belgium; it includes any territory outside Belgian national sovereignty which by Belgian legislation concerning the continental shelf and in accordance with international law has been or may hereafter be designated as territory over which the rights of Belgium with respect to the sea-bed and subsoil and their natural resources may be exercised;

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

(3) The terms "a contracting State" and "the other Contracting State" mean Belgium or Luxembourg, as the context requires;

(4) The term "person" comprises an individual and a company;

(5) The term "company" means any body corporate or any entity which is liable to taxation as such in respect of its income or its fortune in the State of which it is a resident, as well as any general partnership or limited partnership under Luxembourg law;

(6) 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;

(7) The term "competent authority" means:

(a) In the case of Belgium, the authority which is competent under its national laws, and

(b) In the case of Luxembourg, the Minister responsible for direct taxation or his authorized deputy.

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

Article 4
Fiscal Domicile

1. For the purpose of this Agreement, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature; it also means any general partnership or limited partnership under Luxembourg law which has its place of effective management in Luxembourg, as well any company or partnership under Belgian law – other than a company or partnership limited by shares (société par actions) – which has elected to have its profits subjected to the tax on individuals.

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

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

(2) If the Contracting 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 Contracting State, he shall be deemed to be a resident of the Contracting State in which he has a habitual abode;

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

(4) Notwithstanding the provisions of subparagraphs (1), (2) and (3):

(a) Wage-earners and salaried persons who are employed on a boat engaged in inland waterways transport and operated in international traffic and whose only permanent home is aboard that boat shall be deemed to be residents of the Contracting State in which the place of effective management of the enterprise operating the boat is situated;

(b) Boatmen whose only permanent home is aboard a boat which they operate in international traffic shall be deemed to be residents of the Contracting State of which they are nationals;

(5) If an individual to whom subparagraph (3) or subparagraph (4) (b) applies is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

4. If the place of effective management of an inland waterways transport enterprise which operates in international traffic is aboard a boat, then it shall be deemed to be situated in the Contracting State of which the sole or principal operator is a resident.

Article 5
Permanent Establishment

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

2. The term “permanent establishment” shall include especially:

(1) A place of management;

(2) A branch;

(3) An office;

(4) A factory;

(5) A workshop;

(6) A mine, quarry or other place of exploitation of natural resources;

(7) A building site or construction or assembly project which exists for more than six months.

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

(1) The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(2) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

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

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

(5) 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 – other than an agent of an independent status to whom paragraph 5 applies – acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment of the enterprise 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 a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

This provision shall not apply to an agent acting on behalf of an insurance enterprise who has and habitually exercises an authority to conclude contracts in the name of that enterprise.

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

III. Taxation of Income

Article 6
Income From Immovable Property

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

2. The term "immovable property" shall be defined in accordance with 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, boats and aircraft shall not be regarded as immovable property.

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

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional 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. Without prejudice to the application 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 acting wholly independently.

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

4. Where there are no regular accounts or other records from which it is possible to determine how much of the profits of an enterprise of one of the Contracting States is attributable to its permanent establishment situated in the other Contracting State, the tax in that other State may be determined in accordance with the law of that other State, in particular by taking as a basis the normal profits of similar enterprises of that other State carrying on the same or similar activities under the same or similar conditions.

In the case referred to in the preceding subparagraph, the profits to be attributed to the permanent establishment may also be determined on the basis of an apportionment of the total profits of the enterprise to its various parts, provided that the result is in accordance with the principles laid down in this article.

If the application of the provisions of this paragraph results in double taxation of the same profits, the competent authorities of the two Contracting States shall consult together for the elimination of such double taxation.

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 the profits of an enterprise include items of income which are dealt with separately in other articles of this Agreement, then the provisions of this article shall not affect the provisions of those articles as concerns the taxation of such items of income.

Article 8
Profits of Shipping, Inland Waterways Transport and Air Transport Enterprises

Notwithstanding the provisions of article 7, paragraphs 1 to 6:

(1) Profits from the operation of ships or aircraft in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated;

(2) Profits from the operation of boats engaged in inland waterways transport may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 9
Interdependent Enterprises

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

Article 10
Dividends

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

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

(a) Ten per cent of the gross amount of the dividends if the recipient is a company (with the exception of general partnerships, limited partnerships and cooperative societies) whose direct participation, held since the beginning of its financial year, in the capital of the company (with the exception of general partnerships, limited partnerships and cooperative societies) paying the dividends is at least 25 per cent or has an acquisition price of at least 250 million francs;

(b) In all other cases, 15 per cent of the gross amount of the dividends.

The provisions of paragraph 1 (a) shall also apply where the dividends are paid to two or more companies (with the exception of general partnerships, limited partnerships and co-operative societies) the sum of whose participations, held since the beginning of their respective financial years, in the capital of the company (with the exception of general partnerships, limited partnerships and co-operative societies) paying the dividends is at least 25 per cent or has an acquisition price of at least 250 million francs and where one of the recipient companies owns more than 50 per cent of the registered capital of each of the other recipient companies.

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

3. The term “dividends” as used in this article means income from shares, jouissance shares or jouissance rights, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights treated in the same way as income from shares under the taxation law of the State of which the company making the distribution is a resident.

The said term also refers to:

(1) Income, even if paid in the form of interest, which is taxable as income from capital invested by partners in partnerships – other than partnerships limited by shares – which are residents of Belgium;

(2) Income derived in respect of his investment in a Luxembourg enterprise by a sleeping partner whose remuneration is proportionate to the profits.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of article 7 shall apply; they shall not preclude the imposition of the tax payable by deduction at the source on such dividends, in accordance with the law of that other Contracting State.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by that company to a resident of the first-mentioned State, or subject the company's undistributed profits to any additional taxation, even if the dividends distributed or the undistributed profits consist wholly or partly of profits or income arising in such other State; this provision shall not prevent that other State from taxing dividends pertaining to a holding which is effectively connected with a permanent establishment maintained in such other State by a resident of the first-mentioned State.

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 be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest shall not be taxed in the Contracting State in which it arises if it is paid to an enterprise of the other Contracting State.

The preceding subparagraph shall not apply in the case of:

(1) Interest on bonds and debentures and other loan securities, with the exception of trade bills representing commercial debt-claims;

(2) Interest paid by a company which is a resident of a Contracting State to a company, being a resident of the other Contracting State, which holds directly or indirectly at least 25 per cent of the voting stock or voting shares of the first-mentioned company.

4. Subject to the provisions of the following subparagraph, the term “interest” as used in this article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the profits of the payer, especially income from deposits, government securities, bonds or debentures, including premiums and lottery prizes pertaining thereto, and all other income treated in the same way as income from money lent or deposited under the taxation law of the State in which the income arises.

The said term does not include income which, in accordance with article 10, paragraph 3, second subparagraph, is treated as dividends.

5. The provisions of paragraphs 1 to 3 shall not apply if the recipient of the interest, being a resident of a Contracting State, has in the other Contracting State in which the interest arises a permanent establishment with which the debt-claim from which the interest arises is effectively connected. In such a case, the provisions of article 7 shall apply; they shall not preclude the imposition of the taxes payable by deduction at the source on such interest, in accordance with the law of that other Contracting State.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connexion with which the indebtedness on which the interest is paid was incurred, and the interest is paid directly to the

recipient by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

7. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the 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 recipient in the absence of such relationship, the rate limitation and the exemption provided for in paragraphs 2 and 3 shall apply only to the last-mentioned amount. The excess amount of the interest may be taxed in the Contracting State in which the interest arises, in accordance with the law of that State.

Article 12
Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

2. 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 the use of, or the right to use, industrial, commercial or scientific equipment, not being immovable property within the meaning of article 6, or for information concerning industrial, commercial or scientific experience.

3. The provisions of paragraph 1 shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of article 7 shall apply.

4. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connexion with which the contract giving rise to the royalties was concluded, and the royalties are paid directly to the recipient by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

5. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the normal amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of paragraph 1 shall apply only to the last-mentioned amount. In that case, the excess amount of the royalties may be taxed in the Contracting State in which the royalties arise, in accordance with the law of that State.

6. If, in the case referred to in paragraph 5, the enterprise paying the royalties is effectively dependent on or controlled by the enterprise receiving the royalties or vice versa, of if both the said enterprises are effectively dependent on or controlled by a third enterprise or by enterprises which are juridically distinct but are dependent members of a single group, the normal amount of the royalties may be determined on the basis of the cost of acquisition, improvement and protection of the rights, property or information giving rise to the royalties, plus a normal profit, where the said normal amount cannot be determined on the basis of other and more suitable criteria, in particular by comparison with royalties freely agreed upon between genuinely independent enterprises for similar uses, rights or information.

Article 13
Capital Gains

1. Gains from the alienation of immovable property, as defined in article 6, paragraph 2, may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of 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 professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State. The rules laid down in article 7, paragraphs 2 and 3, shall apply to the determination of the amount of such gains.

However, gains from the alienation of movable property of the kind referred to in article 22, paragraph 3, shall be taxable only in the Contracting State in which such movable property is taxable according to the said article.

3. Gains from the alienation of any other property shall be taxable only in the Contracting State of which the alienator is a resident.

This rule shall apply, inter alia, to gains from the alienation of a holding, not forming part of the business property of a permanent establishment as referred to in paragraph 2, first subparagraph, in an enterprise carried on by a company limited by shares or other joint-stock company.

Article 14
Professional Services

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

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

Article 15
Dependent Personal Services

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

2. The provisions of paragraph 1 notwithstanding, any remuneration which a resident of a Contracting State receives for paid employment that is exercised in the other Contracting State shall only be taxable in the first State in case:

(a) the beneficiary owner resides in the other State for a period or periods which, in the aggregate, do not exceed 183 days during any period of twelve months commencing or ending during the calendar year in question, and

(b) any remuneration is paid by an employer 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 place of business which the employer has in the other State.

3. Notwithstanding paragraphs 1 and 2 and subject to the proviso contained in paragraph 1, any remuneration derived in respect of paid employment exercised aboard a ship, an aircraft or a railway or road vehicle operated in international traffic, or aboard a boat used in inland navigation in international traffic[sic],

shall be considered to be related with an activity exercised in the Contracting State where the place of effective management of the enterprise is located and is subject to tax in that State.

Article 16
Company Directors

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

The preceding provision also applies to consideration received for the exercise of functions which, by virtue of the legislation of the Contracting State of which the company is a resident, are treated as functions whose nature is similar to those exercised by a person covered by such provision.

2. Any remuneration which a person covered by paragraph 1 receives from a company which is a resident of a Contracting State for the exercise of an daily management or technical, commercial, or financial activity is taxable pursuant to the provisions of Article 15 as if such remuneration were remuneration of an employee for paid employment and as if the employer were the company. This present provision also applies to remuneration which a resident of Luxembourg receives for his or her daily activity as a partner in a company other than a stock company which is a resident of Belgium.

Article 17
Artists and Athletes

1. Notwithstanding the provisions of Articles 7, 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 sportsman, 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 sportsman in his capacity as such accrues not to the entertainer or sportsman 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 sportsman are exercised.

Article 18
Pensions

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

2. Pensions and other recurring or non-recurring payments which are paid pursuant to the social legislation of a Contracting State by that State or a political subdivision, a local authority or a public corporation thereof may be taxed in that State.

3. The provisions of paragraph 1 notwithstanding, any pensions and other similar remuneration arising in Luxembourg and paid to a resident of Belgium shall not be subject to tax in Belgium in the event that these payments are based on contributions, benefits or insurance premiums invested in a complementary pension plan by the beneficiary owner or on his or her behalf, or contributions by the employer to a corporate plan, and in case these contributions, benefits, insurance premiums or contributions have been effectively taxed in Luxembourg.

4. The provisions of paragraph 1 notwithstanding, assets and redemption values of pensions paid for prior employment to a resident of Luxembourg that originate in Belgium shall be taxable in Belgium.

Article 19
Public Remuneration and Pensions

1. Remuneration, including pensions, paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof in respect of services rendered to that State or a political subdivision or a local authority thereof may be taxed in that State.

This provision shall not apply if the recipient of such income is a national of the other Contracting State but is not at the same time a national of the first-mentioned State.

2. Paragraph 1 shall not apply to remuneration or pensions in respect of services rendered in connexion with any trade or business carried on by one of the Contracting States or a political subdivision or a local authority thereof.

Article 20
Teachers and Students, Apprentices or Business Trainees

1. Any remuneration paid to professors and other teachers who are residents of a Contracting State and who are temporarily present in the other Contracting State for the purpose of teaching or carrying on scientific research at a university or other officially recognized educational or research institution in that State for a period not exceeding two years shall be taxable only in the first-mentioned State.

2. Payments which a student, apprentice or business trainee who is or was formerly a resident of a Contracting State and who is present in the other Contracting 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 other State, provided that such payments are made to him from sources outside that other State.

Article 21
Income Not Expressly Mentioned

A resident of a Contracting State shall not be liable to tax in the other Contracting State in respect of items of income which are not expressly mentioned in the foregoing articles if, under the law of the first-mentioned State, he is liable to tax in that first-mentioned State in respect of such items of income.

IV. Taxation of Fortune

Article 22

1. Fortune represented by immovable property, as defined in article 6, paragraph 2, may be taxed in the Contracting State in which such property is situated.

2. Subject to the provisions of paragraph 3, fortune represented by movable property forming part of the business property of a permanent establishment of an enterprise, or by movable property pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

3. Ships and aircraft operated in international traffic and boats engaged in inland waterways transport, and movable property pertaining to the operation of such ships, aircraft and boats, 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 fortune of a resident of a Contracting State shall be taxable only in that State.

This rule shall apply, inter alia, to a holding, not forming part of the business property of a permanent establishment as referred to in paragraph 2, in an enterprise carried on by a company limited by shares or other joint-stock company.

V. Methods for Avoidance of Double Taxation

Article 23

1. In the case of residents of Luxembourg, double taxation shall be avoided as follows:

(1) Income arising in Belgium – with the exception of income as specified in item (2) below – and elements of fortune situated in Belgium which, according to the foregoing articles, may be taxed in that State shall be exempt from Luxembourg tax. This exemption shall not limit the right of Luxembourg to take into account, in determining the rate of its taxes, the income and elements of fortune so exempted.

If the provisions of Luxembourg law are amended in such a way as to allow losses sustained in a permanent establishment situated in a State with which Luxembourg has concluded an agreement for the avoidance of double taxation to be offset against the taxable net income for the same tax year and to be deducted from the total net income accruing in subsequent tax years, then in cases where the losses sustained by a Luxembourg enterprise in a permanent establishment situated in Belgium are, for the purpose of the taxation of that enterprise, effectively deducted from its income taxable in Luxembourg, the exemption provided for in the preceding subparagraph shall not apply in Luxembourg to the profits for other taxable periods which are attributable to such establishment, to the extent that such profits have also been exempted from tax in Belgium by reason of their being offset by the said losses;

(2) The tax levied in Belgium in accordance with this Agreement:

(a) On dividends to which the rule laid down in article 10, paragraph 2, applies with the exception of income from capital invested in a general partnership or a limited partnership which is a resident of Belgium, and,

(b) On interest to which the rule laid down in article 11, paragraph 2, applies shall be allowed as a deduction from the tax on the same income levied in Luxembourg. Such deduction shall not, however, exceed either that part of the tax which is proportionate to the income derived from Belgium or an amount corresponding to the tax which is deducted at the source in Luxembourg on similar income paid to residents of Belgium. The said tax levied in Belgium shall be deductible from the income taxable in Luxembourg only in so far as it exceeds the tax which is deducted at the source in Luxembourg on similar income paid to residents of Belgium.

(3) Notwithstanding the provisions of item (2) (a), the rule laid down in the first subparagraph of item (1) shall apply to dividends and payments upon liquidation distributed by a company limited by shares, being a resident of Belgium, which are subject to the rule laid down in article 10, paragraph 2, and which are received by a joint-stock company, being a resident of Luxembourg, whose direct participation, held since the beginning of its financial year, in the capital of the company paying the dividends is at least 25 per cent or has an acquisition price of at least 250 million francs. In such a case, the tax deducted at the source in Belgium is neither deductible from the said income exempted in Luxembourg nor allowable as a deduction from the Luxembourg tax.

The aforementioned stock or shares of a company which is a resident of Belgium shall, in the same conditions, also be subject to the rule laid down in the first subparagraph of item (1).

The provisions of the two preceding subparagraphs shall also apply where the sum of the participation of two or more joint-stock companies which are residents of Luxembourg amounts to at least 25 per cent of the registered capital of the company limited by shares which is a resident of Belgium or has an acquisition price of at least 250 million francs and where one of the joint-stock companies which are residents of Luxembourg owns more than 50 per cent of the registered capital of each of the other joint-stock companies which are residents of Luxembourg.

2. In the case of residents of Belgium, double taxation shall be avoided as follows:

(1) Income arising in Luxembourg – with the exception of income as specified in items (2) and (3) – and elements of fortune situated in Luxembourg which, according to the foregoing articles, may be taxed in that State shall be exempt from taxes in Belgium. This exemption shall not limit the right of Belgium to take into account, in determining the rate of its taxes, the income and elements of fortune so exempted;

(2) In the case of dividends to which the rule laid down in article 10, paragraph 2, applies, in the case of interest to which the rule laid down in article 11, paragraph 2 or 7, applies and in the case of excess amounts of royalties as specified in article 12, paragraph 5, the quota of foreign tax provided for under Belgian law shall be allowed as a deduction, under the conditions and at the rate laid down by the said law, from the tax on individuals in respect of dividends – with the exception of distributions upon liquidation – or from the tax on individuals or the company tax in respect of such interest or excess amounts of royalties as may be taxed in Luxembourg in accordance with the law of that State and with article 11, paragraph 2 or 7, or article 12, paragraph 5;

(3) Where a company which is a resident of Belgium owns stock or shares in a joint-stock company which is a resident of Luxembourg, dividends – including distributions upon liquidation – paid by the last-mentioned company to the first-mentioned company which are subject to the rule laid down in article 10, paragraph 2, shall be exempt from the company tax in Belgium, to the extent that exemption would be granted if both companies were residents of Belgium. This provision shall not preclude the levying, in respect of such dividends, of the movable property tax collected in advance (précompte mobilier) payable under Belgian law;

(4) Where stock or shares in a joint-stock company which is a resident of Luxembourg and which is liable to the corporation tax in that State have been held throughout the said company's financial year by a company which is a resident of Belgium, as sole owner, the last-mentioned company may also be exempted from the movable property tax collected in advance which is payable under Belgian law in respect of dividends on the said stock or shares, provided that it makes written application for such exemption within the prescribed time for the submission of its annual tax return; however, the dividends so exempted may not, when they are passed on to the shareholders of the last-mentioned company, be deducted from the distributed dividends which are subject to the movable property tax collected in advance. This provision shall not apply if the Belgian company has elected to have its profits subjected to the tax on individuals.

If the provisions of Belgian law exempting from the company tax the net amount of dividends which a company being a resident of Belgium receives from another company being a resident of Belgium are amended in such a way as to limit the exemption to dividends pertaining to holdings of a certain size in the capital of the last-mentioned company, then the provisions of the preceding subparagraph shall apply only to dividends paid by companies being residents of Luxembourg which pertain to holdings of the same size in the capital of the said companies.

(5) Where, under Belgian law, losses sustained by a Belgian enterprise in a permanent establishment situated in Luxembourg have been effectively deducted from the profits of such enterprise for the purpose of its taxation in Belgium, the exemption provided for in item (1) shall not apply to the profits for other taxable periods which are attributable to such establishment, to the extent that such profits have also been exempted from tax in Luxembourg by reason of their being offset by the said losses.

VI. Special Provisions

Article 24
Non-Discrimination

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The term "nationals" means:

(1) All individuals possessing the nationality of a Contracting State;

(2) All companies deriving their status as such from the law in force in a Contracting State.

3. Stateless persons shall not be subjected in a Contracting State to any taxation or any requirements connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that State in the same circumstances are or may be subjected.

4a. An individual being a resident of Belgium who, in accordance with article 7 and articles 14 to 19, is liable to tax in Luxembourg on more than 50 per cent of his earned income shall, at his request, be taxed in Luxembourg, in respect of income taxable in that State in accordance with article 6, article 7 and articles 13 to 19 of the Agreement, at the average rate of tax which, taking into account his civil status and family responsibilities and the total of his income generally, would apply to him if he were a resident of Luxembourg.

4b. Individuals who are residents of Luxembourg and who, in accordance with the provisions of Chapter III (Taxation of Income), are subject to tax in Belgium shall not be subjected in Belgium to any taxation or any requirement connected to such income, 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. Any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which Belgium grants to its own residents shall also be granted to residents of Luxembourg on a prorated basis depending on the income originating in Belgium as compared with total income, regardless of origin, of which these persons are the beneficiary owners.

5a. 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.

5b. The taxation of an agricultural or forestry business which a resident of a Contracting State has in the other Contracting State shall not be less favorable in that other State than taxation of residents of that other State who exercise the same activity.

6. 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 Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

7. In this article the term "taxation" means taxes of every kind and description.

Article 25
Mutual Agreement Procedure

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in double taxation not in accordance with this Agreement, he may, without prejudice to the remedies provided by the national laws of those States, make written application for a review of the said taxation, indicating his reasons, to the competent authority of the Contracting State of which he is a resident. In order to be admissible, such application must be submitted within two years from the date of notification or of deduction at the source of the second taxation.

2. The competent authority referred to in paragraph 1 shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of double taxation not in accordance with the Agreement. The agreement shall be applicable regardless of the time limits set forth in the domestic laws 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 application of the Agreement.

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.

Article 26
Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed by or on behalf of the Contracting States, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 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 paragraph 1, or the oversight of the above. 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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorizes such use.

3. In no case shall the provisions of paragraphs 1 and 2 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 order (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though it may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3, but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information requested by the other Contracting State solely because the information is held by a bank, other financial institution, trust, foundation, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 27
Miscellaneous Provisions

1. Nothing in the Agreement shall affect the fiscal privileges of members of diplomatic missions and consulates under the general rules of international law or under the provisions of special agreements.

2. For the purposes of the Agreement, persons who are members of a diplomatic mission or consulate of a Contracting State in the other Contracting State or in a third State and who are nationals of the sending State shall be deemed to be residents of the sending State if they are submitted therein to the same obligations in respect of taxes on income and fortune as are the residents of that State.

3. The Agreement shall not apply to international organizations, to organs or officials thereof and to persons who are members of a diplomatic mission or consulate of a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income and fortune.

4. The competent authorities of the Contracting States shall agree on the administrative measures required for the implementation of the provisions of the Agreement, and in particular on the evidence to be produced by residents of each State in order to enjoy in the other State the tax exemptions or reductions provided for in this Agreement.

5. The Ministers of the two Contracting States responsible for direct taxation or their authorized deputies shall communicate with each other directly for the purposes of the application of the Agreement.

VII. Final Provisions

Article 28
Entry Into Force and Termination of Previous Agreements

1. This Agreement shall be ratified and the instruments of ratification shall be exchanged at Brussels as soon as possible.

2. It shall enter into force on the fifteenth day following the date of the exchange of instruments of ratification and shall apply:

(1) In Belgium:

(a) To taxes payable by deduction at the source in respect of income normally accruing or paid on or after the first day of January of the year in which the instruments of ratification are exchanged;

(b) To other taxes levied on income for taxable periods ending on or after the thirty-first day of December of the year in which the instruments of ratification are exchanged;

(2) In Luxembourg:

(a) To taxes payable by deduction at the source in respect of income accruing on or after the first day of January of the year in which the instruments of ratification are exchanged;

(b) To other taxes payable in respect of the tax year bearing the date of the year in which the instruments of ratification are exchanged and of any subsequent tax year.

3. The Convention concluded between Belgium and the Grand Duchy of Luxembourg for the prevention of double taxation as regards direct taxes and to guarantee reciprocal co-operation between the two countries in the collection of such taxes, signed at Brussels on 9 March 1931, as amended by the Additional Protocol of 7 February 1952 and subsequently by exchanges of letters of 9 and 11 March 1965 and of 16 November and 14 December 1965, and the provisions for the implementation of the said Convention set forth in the Arrangements of 22 July 1938, 25 March 1948 and 28 December 1949 shall terminate and cease to apply to the Belgian and Luxembourg taxes referred to in article 2, paragraph 3, of the present Agreement as regards income and elements of fortune to which the present Agreement is applicable by virtue of paragraph 2, subparagraphs (1) and (2), of this article.

Article 29
Termination

This Agreement shall continue in effect indefinitely, but either Contracting State may, on or before the thirtieth day of June of any calendar year beginning with the fifth year after the year of its ratification, give written notice of termination, through the diplomatic channel, to the other Contracting State. In the event of notice of termination given before the first day of July of any such year, the Agreement shall apply for the last time:

(1) In Belgium:

(a) To taxes payable by deduction at the source in respect of income normally accruing or paid on or before the thirty-first day of December of the same year;

(b) To other taxes levied on income for taxable periods normally ending on or before the thirtieth day of December of the year following that in which notice of termination is given;

(2) In Luxembourg:

(a) To taxes payable by deduction at the source in respect of income accruing on or before the thirty-first day of December of the same year;

(b) To other taxes payable in respect of the tax year bearing the date of the year in which notice of termination is given.