

AGREEMENT OF 5TH JUNE, 1986

The Netherlands

CONVENTION BETWEEN THE GOVERNMENT OF THE HUNGARIAN PEOPLE'S REPUBLIC, AND THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS ON THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF TAX EVASION IN THE AREA OF INCOME AND PROPERTY TAXES

The Government of the Hungarian People's Republic, and the Government of the Kingdom of the Netherlands

Desiring to replace the Convention signed in the Hague on 15 November 1938 in respect of the avoidance of double taxation in the area of direct taxes with a new Convention, and to further develop and facilitate their economic relations

Have agreed on the following:

Chapter I **SCOPE OF THE CONVENTION**

Section 1 **Personal Scope**

This Convention shall extend to the persons who are resident in Either State, or both States.

Section 2 **Taxes Covered by the Convention**

(1) Regardless of the manner in which taxes are levied, this Convention shall extend to the taxes which are levied on income and property for either of the States, for their political units or local authorities.

(2) Any taxes which are levied on the full income, full property, or parts of the income or property, including any taxes on profits from the alienation of movable or immovable property, any taxes for the full amount of wages and salaries paid by enterprises, and any taxes on appreciation in values, shall qualify as income and property taxes.

(3) The currently existing taxes to which this Convention shall apply are the following, in particular:

- a) in the Netherlands:
 - income tax (de inkomstenbelasting),
 - wage tax (de loonbelasting),
 - corporate tax (de vennootschaps- belasting),

including any net profit-sharings obtained from the exploitation of natural resources, and levied in accordance with the Act on Mining of 1810 (Mijnwet 1810), with regard to the concessions granted since 1967, or the Act on Dutch Continental Shelf Mining of 1965 (Mijnwet Continentaal Plat 1965),

- dividend tax (de dividendbelasting),
- property tax (de vermogensbelasting),

(hereinafter "Dutch tax").

b) in the Hungarian People's Republic:

- income taxes (jövedelemadók);
- profit taxes (nyereségadók);
- special corporate tax (társulati különadó);
- town and settlement contribution (városi és községi hozzájárulás);
- duty on the dividend and profit-sharing payments of commercial companies (kereskedelmi társaságok osztalék- és nyereségkifizetései utáni illeték);

(hereinafter "Hungarian tax").

(4) The Convention shall apply to all identical or similar future taxes which are introduced following the signature of this Convention, in addition to or in lieu of the existing taxes. The competent authorities of the States shall notify one another of any major changes in their relevant tax rules.

Chapter II

DEFINITIONS

Section 3

General Definitions

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

- a)* the term "State" shall mean the Hungarian People's Republic or the Netherlands, as the context requires; the term "States" shall mean the Hungarian People's Republic and the Netherlands;
- b)* the term "the Netherlands" shall mean the part of the Kingdom of the Netherlands situated in Europe, including the part of the seabottom and its subsoil under the Northern Sea, to the extent as it qualifies, or may, in future, qualify, in accordance with the Dutch legal rules, in harmony

with international law, as a territory in which the Netherlands may exercise certain rights in respect of the exploration and exploitation of the natural resources of the seabottom and its subsoil;

- c)* the term "Hungarian People's Republic" shall, in the geographical sense, mean the territory of the Hungarian People's Republic;
- d)* the term "person" shall include natural persons, companies, and all other associations of individuals;
- e)* the term "company" shall mean the legal entities, or subjects of law, who qualify as legal entities for taxation purposes;
- f)* the terms "enterprise of either of the States" and "enterprise of the other State" shall mean an enterprise operated by an individual who is a resident of either of the States, or resident of the other State, respectively;
- g)* "international traffic" shall include all transportation which is effected by a sea-going ships, inland ships or aircraft operated by an enterprise, the actual business management of which is located in either of the States, unless such sea-going ships, inland ships or aircraft are operated only between destinations situated in the other State;
- h)* the term "citizens" shall include the following:
 - 1. all the natural persons who are citizens of either of the States;
 - 2. all legal entities, associations of individuals and partnerships, the legal status of which arises from the legal rules of either of the States;
- i)* the term "competent authority" shall mean
 - 1. the Minister of Finance or a duly authorized representative thereof, in the Netherlands;
 - 2. the Minister of Finance or a duly authorized representative thereof, in the Hungarian People's Republic.

(2) For the purposes of application of this Convention by either of the States, unless otherwise required by context, any terms not defined therein shall have the meaning defined in the legal rules of that State concerning the taxes covered by this Convention.

Section 4

Fiscal Domicile

(1) For the purposes of this Convention, the term "a person who is a resident of either of the States" shall mean a person who, according to the legal rules of that State, is liable to pay tax in that State, by reason of his permanent domicile, legal seat or any other criterion of a

similar nature. Nevertheless, this term shall not include the persons who can be taxed in that State only on their incomes from resources located therein, or on their property located therein.

(2) If a natural person is a resident of both States in accordance with the provision of subsection (1), the following shall apply to his status:

- a)* such a person shall qualify as a resident of the State in which he has permanent residence; if such a person has permanent residence in both States, the person shall qualify as resident of the State with which he has closer personal and economic ties (centre of vital interests);
- b)* if it cannot be defined in which State the centre of the person's vital interests is, or the person has no permanent residence in either State, the person shall be deemed to be a resident of the State in which his usual residence is;
- c)* if the person has usual residence in both States, or has no usual residence in either, the person shall be deemed to be a resident of the State, which he is a citizen of;
- d)* if the person is a citizen of both States, or is a citizen of neither, then the competent authorities of the States shall settle the matter, based on mutual agreement.

(3) If a person, other than a natural person, is resident in both States, in accordance with the provisions of subsection (1), the person shall be deemed to be a resident of the State in which it has its place of actual business management.

Section 5

Permanent Establishment

(1) For the purposes of this Convention, the term "permanent establishment" shall mean a fixed place of business where the enterprise pursues its activity wholly or partly.

(2) The term "permanent establishment" shall include the following, in particular:

- a)* seat of management;
- b)* branch offices;
- c)* offices;
- d)* plants;
- e)* workshops, and
- f)* mines, oil and gas wells, quarries, and all other premises used for the purpose of exploiting natural resources.

(3) Building construction or installation shall only be deemed to be a permanent establishment, if the period thereof is in excess of 12 months.

(4) Notwithstanding the provisions of the previous Article, the following shall not be deemed to be a "permanent establishment":

- a) the establishment that is used for the sole purpose of storing, displaying or delivering the goods or merchandise of the enterprise;
- b) such stocks of the goods or merchandise of the enterprise that are kept for the sole purpose of storage, display or delivery;
- c) such stocks of the goods or merchandise of the enterprise that are kept for the sole purpose of having them processed by another enterprise;
- d) a fixed place of business that is used for the sole purpose of purchasing goods or merchandise, or obtaining information for the enterprise;
- e) a fixed place of business that is used for the sole purpose of pursuing any other preparatory or additional activities;
- f) building construction or installation works performed by an enterprise of either of the States which are related to the transport of machines or equipment from that State to the other State;
- g) a fixed place of business that is used for the sole purpose of a combination of the activities mentioned in paragraphs a) to f), provided that the activity of such a fixed place of business arising from the above combination is a preparatory or auxiliary type of activity.

(5) Notwithstanding the provisions of subsections (1) and (2), if a person, other than an independent agent to whom subsection (6) shall apply, performs activities in the interest of an enterprise and has authorization in either of the States, which that person uses regularly for the purpose of concluding contracts on behalf of the enterprise, then such an enterprise shall be regarded as having a permanent establishment in that State in respect of all the activities that that person performs for the enterprise, unless the person's activity is confined to the activities mentioned in subsection (4), which, if they were performed through a fixed base, would not cause such a fixed base to qualify as permanent establishment in accordance with the provisions of the subsection mentioned.

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

(7) The sole fact that a company resident in either of the States controls a company, or is controlled by a company that is resident in the other State or pursues its activities therein (either through a permanent establishment, or otherwise) shall not, in itself, constitute either company a permanent establishment of the other.

Chapter III

TAX ON INCOMES

Section 6

Income from Immovable Property

- (1) Any income from immovable property that is obtained by a person resident in either of the States from immovable property situated in the other State (including the income of agricultural and forestry plants) shall be taxed in that other State.
- (2) The term "immovable property" shall be defined in accordance with the legal rules of the State in which the immovable property is situated. The term shall, in all cases, include property accessory to immovable property, live-stock, farm equipment and buildings of agricultural and forestry plants, and any rights to which the provisions of civil law concerning landed property apply, usufruct of immovable property, as well as any rights to variable or fixed payments for the exploitation of mineral deposits, resources, and other natural reserves, or the right of exploitation thereof; sea-going ships, inland ships and aircraft shall not qualify as immovable property.
- (3) The provisions of subsection (1) shall apply to income derived from the direct use, letting or use in any other form of immovable property.
- (4) The provisions of subsections (1) and (3) shall also apply to the income derived from immovable property of an enterprise, as well as to any income derived from immovable property used for the pursuit of liberal professions.

Section 7

Business Profits

- (1) The profits of an enterprise of either of the States may only be taxed in that State, unless the enterprise performs its activity in the other State through a permanent establishment situated in that State. If the enterprise performs its activities as aforesaid, the profits of the enterprise can be taxed in the other State, but only to the extent to which such profits are attributable to the permanent establishment situated therein.
- (2) Subject to the provisions of subsection (3), if an enterprise of either of the States carries out its activities in the other State through a permanent establishment situated therein, then in each of the States, those profits shall be attributed to this permanent establishment that could be made, if it were engaged in identical or similar activities under identical or similar conditions as an independent enterprise, and if it were completely independent in its transactions completed with the enterprise, which it is a permanent establishment of.
- (3) On establishing the profits of a permanent establishment, any costs incurred by reason of that permanent establishment, including any business management and general administrative costs, are deductible, regardless of whether they have been incurred in the State where the permanent establishment is situated, or elsewhere.
- (4) No profits shall be attributable to the permanent establishment by reason of the mere purchase of goods or merchandise for the enterprise by that permanent establishment.

(5) For the purposes of the above subsections, the profits attributable to a permanent establishment shall be defined year by year in the same manner, unless there is a well-founded and sufficient reason for the contrary.

(6) Where profits include income items which are dealt with separately in other Articles of this Convention, the provisions of such Articles are not affected by the provisions of this Article.

Section 8

Shipping and Air Transport

(1) Any profits derived from the operation in international traffic of sea-going ships, inland ships or aircraft shall only be taxed in the State, in which the actual business management of the enterprise is seated.

(2) If the actual business management of a maritime shipping enterprise, or an enterprise engaged in inland shipping is seated aboard a sea-going or inland ship, it shall qualify as situated in the State, in which the domestic port of such sea-going or inland ship is situated, or, in the absence of a domestic port, in the State, in which the operator of the sea-going or inland ship is resident.

(3) For the purposes of this Article, the profits derived from the operation in international traffic of sea-going ships, inland ships and aircraft shall include the profits which are derived from the renting out of unloaded sea-going ships, inland ships and aircraft operated in international traffic, if such renting out profits are concomitant with the profits defined in subsection (1).

(4) The provisions of subsection (1) shall also apply to the profits derived from participation in a pool, joint operation, or an international operating agency.

Section 9

Associated Enterprises

- (1) If
- a)* an enterprise of either of the States participates directly or indirectly in the business management, control or capital of an enterprise of the other State, or
 - b)* the same persons participate directly or indirectly in the business management, control or capital of an enterprise of either of the States, and an enterprise of the other State,

and in either case with regard to their commercial or financial relations, the two enterprises agree on conditions, or set conditions between one another which differ from the ones that independent enterprises would agree on, then the profits that either of the enterprises would have realized without these conditions, but has not realized by reason of these conditions, can be added to the profits of this enterprise, and can be taxed accordingly. There is, nevertheless,

agreement on that the sole fact in itself that associated enterprises have concluded agreements such as cost division agreements or general service agreements in respect of the division of business management and general administrative, technical and commercial costs, research and development costs, and other similar costs, or based thereon, does not yet constitute the condition defined in the previous sentence.

(2) If either of the States adds to the profits of any of its enterprises, and taxes them accordingly, the profits for which an enterprise of the other State has been taxed in that other State, and the profits so added thereto are profits that would have been made by the enterprise of the first-mentioned State, had the two enterprises agreed with each other on conditions that independent enterprises would have agreed on, then this other State shall appropriately adjust the amount of tax levied on such profits there. When determining the above adjustment, the other provisions of this Convention shall be taken into consideration, and the competent authorities of the States shall, if necessary, consult one another.

Section 10

Dividends

(1) Dividends paid by a company resident in either of the States to a person resident in the other State may be taxed in that other State.

(2) Notwithstanding the above, such dividends may also be taxed in the State in which the company paying the dividends is resident, according to the legal rules of that State, but, if the beneficiary is the recipient of the dividends, the tax so assessed shall not exceed

- a)* 5% of the gross amount of the dividends if the recipient of the dividends is a company (other than an association of individuals) which directly owns at least 25% of the capital of the company paying the dividends;
- b)* 15% of the gross amount of the dividends in all other cases.

(3) The competent authorities of the States shall, in joint agreement, regulate the practical application of subsection (2).

(4) The provisions of subsection (2) shall not affect the taxation of the company on the profits from which the dividends are paid.

(5) The term "dividends" used in this Article shall mean income derived from shares, bonus shares participation rights or mining shares, founder's shares or other rights providing profit-sharings, as income derived from well as income claims providing profit-sharings and derived from other corporate rights which fall under the same category of taxation as income from shares according to the legal rules of the State in which the company distributing the profits is resident.

(6) The provisions of subsections (1) and (2) shall not apply, if the recipient of the dividends resident in either of the States carries on business in the other State, in which the company paying the dividends is resident, through a permanent establishment situated therein, or pursues a liberal profession with a fixed base situated permanently therein, and the

interest for which the dividends are paid is effectively connected with such permanent establishment or fixed base. In this case the provisions of Article 7 or Article 14, as the case may be, shall apply.

(7) If a company seated in either of the States derives profits or income from the other State, that other State may not tax the dividends paid by the company, unless the dividends are paid to a person resident in the other State, or, if the interest for which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State; nor can the undistributed profits of the company be subjected to tax levied on undistributed profits, even if the dividends paid or the undistributed profits consist, wholly or partly, of profits or income derived in the other State.

Section 11

Interest

(1) Any interest derived from either of the States, and paid to a person resident in the other State shall be taxable only in that other State, if that person is the recipient of the interest.

(2) The competent authorities of the States shall, by mutual agreement, settle as to how the State in which the interest arises shall renounce taxation.

(3) The term "interest" used in this Article shall mean income from claims of any kind, whether or not secured by mortgage, but which do not provide entitlement to a share in the profits of the debtor, and in particular income from Government loans and bonds or debentures, including premiums and prizes attaching to such loans, bonds or debentures.

(4) The provisions of subsection (1) shall not apply, if the recipient of the interest resident in either of the States performs activities in the other State from which the interest is derived, through a permanent establishment situated therein, or pursues a liberal profession from a fixed base situated therein, and the claim for which the interest is paid is effectively connected with such permanent establishment or fixed base. In this case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

(5) If there are special relations between the payer and the recipient of the interest, or both of them and third persons, and as a result the interest paid exceeds, compared to the underlying claim, the amount on which the payer and the recipient of the interest would have agreed in the absence of such relations, then the provisions of this Article shall only apply to this latter amount. In this case, the extra amount shall be taxed in accordance with the legal rules of each State, taking into consideration the other provisions of this Convention.

Section 12

Royalties

(1) Royalties derived from either of the States paid to a person resident in the other State shall be taxable only in that other State if the person is the recipient of such royalties.

(2) The competent authorities of the States shall settle, by mutual agreement, as to how the State in which such royalties arise shall renounce taxation.

(3) The term "royalties" used in this Article means payments of any kind as consideration for the use of, or the right to use, any copyright of literary, art or scientific works, including motion picture films as well as films or audio tapes for radio or television broadcasting, or for the use of, or the right to use, any patent, trade mark, pattern or model, design, secret formulae or process, or for the disclosure of industrial, commercial or scientific experience.

(4) The provisions of subsection (1) shall not apply, if the recipient of the royalties resident in either of the States performs activities in the other State in which the royalties arise, through a permanent establishment situated therein, or pursues a liberal profession from a fixed base situated therein, and the right or pecuniary value in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In this case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

(5) If there are special relations between the payer and the recipient of the royalties, or between both and a third person, and, therefore, the amount of the royalties paid exceeds, compared with the use, right or information in respect of which such royalties are paid, the amount on which the payer and the recipient of the royalties would have agreed in the absence of such relations, then the provisions of this Article shall only apply to the last-mentioned amount. In this case, the extra amount shall be taxed in accordance with the legal rules of each State, taking into consideration any other provisions of this Convention.

Section 13

Gains from Alienation

(1) The gains of a person resident in either of the States from the alienation of immovable property defined in Article 6 and situated in the other State shall be taxable 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 either of the States has in the other State, or forming part of a fixed base which a person resident in either of the States has in the other State for the purpose pursuing a liberal profession, including gains made through the alienation of such a permanent establishment (on its own or together with the whole enterprise), or the alienation of such a fixed base shall be taxable in that other State.

(3) Gains from the alienation of sea-going ships, inland ships or aircraft operated in international traffic, or the alienation of movable property serving the operation of such sea-going ships, inland ships or aircraft shall be taxable only in the State in which the actual business management of the enterprise is resident. For the purposes of this subsection, the provisions of subsection (2), Article 8 shall apply.

(4) Gains from the alienation of any property not mentioned in subsections (1), (2) and (3) shall only be taxable in the State in which the person effecting the alienation is resident.

(5) The provisions of subsection (4) shall not affect the right of the States to tax, in accordance with their respective legal rules, any gains from the alienation of shares or beneficiary rights in a company, the capital of which is wholly or partly divided into shares,

and which company is resident in that State according to the legal rules of that State, if such gains are enjoyed by a natural person who is resident in the other State, and had been resident in the first-mentioned State during the period of the last five years preceding the alienation of the shares or beneficiary rights.

Section 14 **Liberal Profession**

(1) Any income derived by a person resident in either of the States in respect of a liberal profession or other independent activities shall be taxable only in that State, unless the person has a fixed base used on a regular basis for the performance of his activities, in the other State. If the person has such a fixed base, then the income may be taxed in the other State, but only to the extent to which the income is attributable to such a fixed base.

(2) The term "liberal profession" includes, in particular, any independent scientific, literary, art, education or teaching activities, as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Section 15 **Dependent Work**

(1) Subject to the provisions of Articles 16, 18, 19 and 20, any wages, salaries and other similar remuneration received by a person resident in either of the States in respect of dependent work shall be taxable only in that State, unless the activity is performed in the other State. If the activity is so performed, any remuneration received for the activity shall be taxable in that other State.

(2) Notwithstanding the provisions contained in subsection (1), any remuneration received by a person resident in either of the States in respect of dependent work exercised in the other State, shall be taxable only in the first-mentioned State, if

- a)* the beneficiary stays no more than a total period or periods of 183 days in the other State, in the fiscal year of that State; and
- b)* the remuneration is paid by or paid on behalf of an employer that is not resident in the other State; and
- c)* the remuneration is not borne by a permanent establishment or a fixed base of the employer situated in the other State.

(3) Notwithstanding the previous provisions of this Article, any remuneration received by a person resident in either of the States, for dependent work performed aboard sea-going ships aircraft operated in international traffic or aboard ships used for inland navigation may only be taxed in that State.

Section 16

Remuneration for Board of Directors Membership

Any remuneration or other similar payments for board of directors membership received by a person resident in either of the States in the capacity of being a member of the board of directors, or director ("bestuurder"), or commissioner ("commissaris") of a company seated in the other State, shall be taxable in that other State.

Section 17

Artists and Sportsmen

(1) Notwithstanding the provisions of Articles 14 and 15, any income received by entertainers, such as artists performing on stage, in films, on the radio or in television, musicians, as well as sportsmen, resident in either of the States, for their personal activity performed in such capacity in the other State shall be taxable in that other State.

(2) If any income derived from the activity of public entertainers or sportsmen performed in person in such capacity is not attributable to the artists or sportsmen themselves, but to another person, then, notwithstanding the provisions of Articles 7, 14 and 15, such income shall be taxable in the State in which the public entertainers or sportsmen performed their activity.

(3) Notwithstanding the provisions of subsections (1) and (2) of this Article, any income derived from the activities defined in subsection (1) shall be exempt from tax in the State in which such activities are performed, if the visit paid by the artists, musicians or sportsmen in either of the States is wholly or substantially supported from the public funds of the other State, the political units or local authorities of that other State, or if such activities are exercised under a cultural or sports agreement or arrangement between the States.

Section 18

Pensions

(1) Subject to the provisions of subsection (2), Section 19, pensions and any other similar remuneration paid to a person resident in either of the States in consideration of past employment shall be taxable only in that State.

(2) Nevertheless, if such remuneration is not regular and is paid in consideration of past employment in the other State, it shall be taxable in the other State.

(3) Pension paid in accordance with the provisions of the social insurance system of either of the States to a person resident in the other State shall be taxable in the first-mentioned State.

Section 19

Public Service

- (1)
 - a) Any non-pension type remuneration paid by either of the States, or a political unit, or local authority thereof to a natural person for service provided for that State, or a political unit or local authority thereof shall be taxable in that State.
 - b) Nevertheless, such remuneration shall be taxable only in the other State, if the service was performed in that State, and if the natural person is resident in that State, who:
 - 1. is a citizen of that State; or
 - 2. became a person resident in that State not solely for the purpose of the performance of such service.
- (2)
 - a) Pension paid by either of the States, or a political unit or a local authority thereof either directly, or from a fund established by them, to a natural person for service performed for that State, or the political unit or local authority thereof, shall be taxable in that State.
 - b) Nevertheless, such pension shall be taxable only in the other State, if the natural person is resident in that State, and is a citizen of that State.
- (3) The provisions of Articles 15, 16 and 18 shall apply to any remuneration or pension paid in consideration of services related to industrial or commercial activities performed by either of the States, or a political unit or a local authority thereof.

Section 20
University Teachers and Teachers

- (1) The amount paid to university teachers or teachers who are resident in either of the States, and stay in the other State for a maximum period of two years, for the purpose of teaching or performing scientific research at a university, institute of higher education, or some other educational or scientific research institute in that other State, for such teaching or research, shall be taxable only in the first-mentioned State.
- (2) This Article shall not apply to income from research, if such research is not undertaken in the public interest, but primarily by certain person or persons in private interest.

Section 21
Students

The amount received by students or business apprentices who were immediately before visiting either of the States resident in the other State, or still are, and who stay in the first-mentioned State for the sole purpose of studying or professional training, for the purpose of maintenance, studies or professional training, shall not be taxable in that State, provided that such payments are made from sources outside that State.

Section 22

Income Not Expressly Mentioned

(1) Items of income of a resident of either of the States, wherever arising, not mentioned in the previous Articles of this Convention, shall be taxable only in that State.

(2) The provisions of subsection (1) shall not apply to income other than income from immovable property defined in subsection (2), Article 6, if the beneficiary of such income resident in either of the States performs business activity in the other State through a permanent establishment situated therein, or pursues a liberal profession from a fixed base situated therein, and the right or property from which the income is derived is effectively connected with such a permanent establishment or fixed base. In this case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

Chapter IV

TAX ON PROPERTY

Section 23

Property

(1) Any immovable property mentioned in Article 6 owned by a person resident in either of the States, and situated in the other State, shall be taxable in that other State.

(2) Any movable property forming part of the business property of a permanent establishment that an enterprise of either of the States has in the other State, or any movable property forming part of a fixed base that a person resident in either of the States has in the other State for the purpose of pursuing a liberal profession shall be taxable in that other State.

(3) Any property consisting of sea-going ships, inland ships and aircraft operated in international traffic, and any movable property serving the operation of such sea-going ships, inland ships and aircraft shall be taxable only in the State in which the actual business management of the enterprise is seated. For the purposes of this subsection, subsection (2), Article 8 shall apply.

(4) Any other property item of a person resident in either of the States shall be taxable only in that State.

Chapter V

AVOIDANCE OF DOUBLE TAXATION

Section 24

Avoidance of Double Taxation

(1) The Netherlands may, when imposing taxes on persons resident there, include in the taxbase on which such taxes are imposed any income or property parts which are taxable in the Hungarian People's Republic, in accordance with the provisions of this Convention.

(2) Nevertheless, if a person resident in the Netherlands receives an income part or has a property part which is taxable in the Hungarian People's Republic, in accordance with Article 6, Article 7, subsection (6), Article 10, subsection 4, Article 11, subsection (4), Article 12, subsections (1) and (2), Article 13, Article 14, subsection (1), Article 15, Article 16, subsection (3), Article 18, Article 19, subsection (2), Article 22, and subsections (1) and (2), Article 23 of this Convention, and is included in the taxbase mentioned in subsection (1), then the Netherlands shall exempt such income or property part, by reducing its own tax. The above reduction shall be calculated in accordance with the provisions of the Dutch legal rules concerning the avoidance of double taxation. For such purposes, the above-mentioned income or property part shall qualify as included in the full amount of the income or property parts which are exempt from the Dutch tax in accordance with these provisions.

(3) In addition to the above, the Netherlands shall, in respect of the income part taxable in accordance with subsection (2), Article 10, subsection (5), Article 13, Article 17 and subsection (2), Article 18 of this Convention, allow a deduction to the extent to which such parts are included in the taxbase mentioned in subsection (1). The amount of such deduction shall be equal to the tax paid for such income part in the Hungarian People's Republic, but may not exceed the amount of reduction which would be allowed, if the income part so included were the only income part which is exempted from taxation in the Netherlands in accordance with the provisions of the Dutch legal rules on the avoidance of double taxation. For the purposes of this Article, the taxes mentioned in subsection (3) b), Article 2 and Article 4, with the exception of property taxes, shall qualify as income tax.

(4) In respect of the Hungarian People's Republic, double taxation shall be avoided as follows:

- a) If a person resident in the Hungarian People's Republic receives income or has property which, according to the provisions of this Convention, shall be taxable in the Netherlands, the Hungarian People's Republic shall, subject to the provisions of paragraphs b) and c), exempt such income or property from taxation.
- b) If a person resident in the Hungarian People's Republic receives income which, according to the provisions of Article 10, shall be taxable in the Netherlands, then the Hungarian People's Republic shall deduct that amount from the tax leviable on the person's income which corresponds to the tax paid in the Netherlands. The amount so deducted may, however, not exceed that part of the tax assessed prior to deduction which is payable on the income received from the Netherlands.
- c) If, according to any of the provisions of this Convention, any income received or any property owned by a person resident in the Hungarian People's Republic is exempted from taxation in the Hungarian People's Republic, the Hungarian People's Republic may, however, take into account the income or property exempted on assessing the tax in respect of the other income or property of that person.

Chapter VI

SPECIAL PROVISIONS

Section 25

Non-Discrimination

(1) The citizens of either of the States shall not be subjected in the other State to any taxes or related liabilities which are different or more onerous than the taxes and related liabilities to which the citizens of the other State are or may be subjected, under identical circumstances. Notwithstanding the provisions of Article 1, this provision shall also apply to persons who are not resident in either State.

(2) The permanent establishment of an enterprise of either of the States situated in the other State may not be taxed in that other State less favourably than the enterprises of the other State performing identical activities. This provision shall not be construed as obliging the State to provide such individual deductions, tax benefits or tax reductions on the grounds of personal status or family burdens for persons resident in the other State which are provided for persons resident in its own territory.

(3) Except for the case in which the provisions of subsection (1), Article 9, subsection (5), Article 11, or subsection (5), Article 12 apply, any interest, royalties and other costs paid by an enterprise of either of the States to a person resident in the other State shall be deductible when assessing the taxable profits of such enterprise under the same conditions, as if they had been paid to a person resident in the first-mentioned State. Similarly, the liabilities of an enterprise of either of the States towards persons resident in the other State shall be deductible when assessing the taxable property of such enterprise under the same conditions as if such liabilities had prevailed towards persons resident in the first-mentioned State.

(4) The enterprises of either of the States, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more persons resident in the other State shall not be subjected to any taxes or related liabilities in the first-mentioned State that are more burdensome than the taxation and related liabilities to which the other similar enterprises of the first-mentioned State are or may be subjected.

(5) The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Section 26

Mutual Agreement Procedure

(1) If, in the opinion of a person, the actions taken by either of the States, or both States, result or will result in such taxation practices in his respect that are not in compliance with the provisions of this Convention, then, regardless of the remedies provided by the internal laws of those States, the person may present his case to the competent authority of the State in which the person is resident, or if the case falls under subsection (1), Article 25, to the competent authority of the State which he is a citizen of. The case shall be presented within three years of the first notification concerning the action which results in taxation practices not in compliance with this Convention.

(2) If the competent authority finds the objection justified, and is not itself in the position to find a satisfactory solution, it shall endeavour to settle the case in agreement with the competent authority of the other State in such a way that the taxation practices not complying with the Convention be avoidable. The agreement so concluded shall apply, regardless of the deadlines that may be set by the internal laws of the States.

(3) The competent authorities of the States shall, by mutual agreement, endeavour to resolve any difficulties that may arise in connection with the interpretation or application of the Convention. They may also discuss how double taxation can be avoided in cases which are not dealt with in the Convention.

(4) The competent authorities of the States may contact one another directly, in the interest of reaching an agreement in accordance with the previous subsections.

Section 27

Exchange of Information

(1) The competent authorities of the States shall exchange the information necessary for the execution of the provisions of this Convention. The States shall keep any information so received secret in the same way as any information received on the basis of the internal legal rules of that State, and such information may be disclosed only to persons or authorities (including courts, administrative courts and administrative organs) that are concerned with the assessment and collection of the taxes covered by this Convention, the enforcement of such taxes, or the determination of appeals in respect of such taxes. The above-mentioned persons or authorities may use the information only for the above purposes. Any information so received shall be kept secret at the request of the State providing such information.

(2) The provisions of subsection (1) shall not, in any circumstances, be construed in such a way as if they imposed on either of the States the obligation:

- a)* to take administrative measures at variance with the laws or administrative practice of that or the other State;
- b)* to supply data which cannot be obtained under the legal rules, or in the normal course of the administration of that or the other State;
- c)* to supply information which would disclose any professional, business, industrial, commercial or employment secrets, or business procedures, or the disclosure of which would be contrary to public order (*ordre public*).

Section 28

Members of Diplomatic and Consular Missions

(1) Nothing in this Convention shall affect the fiscal privileges of members of diplomatic and consular missions, which they are entitled to under the general rules of international law, or on the basis of the provisions of separate agreements.

(2) In accordance with this Convention, a natural person who is a member of a diplomatic or consular mission of either of the States in the other State or in a third State, and is a citizen of the delegating State shall qualify as a person resident in the delegating State, if that person is subjected therein to the same liability in respect of income and property taxes as any other person resident in that State.

(3) This Convention shall not apply to international organizations, organs and officers thereof present in either of the States, and members of diplomatic and consular missions of a third State, if they are not subjected in that State to the same liability in respect of income or property tax as any other person resident in that State.

Section 29

Extension of Territorial Scope

(1) This Convention may be extended, wholly or with the required amendments, to Aruba or the Dutch Antilles or both, if the country concerned levies taxes essentially similar to the ones in respect of which this Convention applies. Such extension shall be effective as of the date, and shall be subjected to amendments and terms and conditions, including the terms of termination, as may be prescribed, and as may be agreed on through the exchange of diplomatic notes.

(2) In the absence of an agreement to the contrary, any extension of this Convention to any country to which it is extended under this Article shall not be terminated by the termination of this Convention.

Chapter VII

CLOSING PROVISIONS

Section 30

Coming into Force

(1) This Convention shall come into force on the thirtieth day following the date of the later of either written notifications given by the Governments to one another, saying that the constitutional rules required in the States concerned have been satisfied, and the provisions of this Convention shall apply as of the first of January of the calendar year following the year of receipt of the later of the notifications, and in respect of any subsequent fiscal years and periods.

(2) The Convention on the Avoidance of Double Taxation in respect of Direct Taxes signed on 15 November 1938 in the Hague together with the Minutes attached thereto shall cease to have effect on coming into force of this Convention. Notwithstanding the above, the provisions of the first-mentioned Convention shall continue to remain in force in respect of the fiscal years and periods which will have ended prior to the coming into force of the provisions of this Convention.

Section 31

Termination

This Convention shall remain in force until it is terminated by either of the States. The Convention may be terminated by either State, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year following the expiration of five years from the date of the coming into force of the convention. In this case, the Convention shall cease to have effect in respect of the fiscal years and periods beginning after the end of the calendar year in which the notice of termination is delivered."

MINUTES

Simultaneously with the signature of the Convention on the Avoidance on Double Taxation and the Prevention of Tax Evasion in the Area of Income and Property Taxes, concluded by the Government of the Hungarian People's Republic and the Government of the Kingdom of the Netherlands, on this day, the undersigned have agreed that the following provisions shall form an integral part of the Convention.

I. To Sections 2, 7 and 10

If either of the States wishes to levy tax on the profits distributed by a joint venture established as an association of individuals and operating with foreign participation, then the competent authorities shall consult one another in order to reach an agreement as to whether such tax may be levied in accordance with the provisions of the Convention.

II. To Articles 3, 6, 8, 13, 15 and 23

It has been established that the term "inland ships" shall mean any kind of vessel performing inland water transport.

III. To Section 5

A fixed business base shall also include a fixed base for industrial activities.

IV. To Section 7

a) In respect of the provisions of subsections (1) and (2), Article 7, if an enterprise of either of the States sells goods or merchandise, or performs business activities in the other State through a permanent establishment situated therein, then the profits of that permanent establishment shall not be established on the basis of the full amount received by the enterprise but only on the basis of the payment that is attributable to the actual activity of the permanent establishment in respect of such sales or business activities. In particular, in case of any contract concerning the supervision, performance, installation or building construction

of industrial, commercial or scientific equipment, or premises, or public works, if the enterprise has a permanent establishment, then the profits of such a permanent establishment shall not be established on the basis of the full amount of the contract but only on the basis of the part of the contract which has been actually realized by the permanent establishment in the State in which the permanent establishment is situated. The profits which are related to the part of the contract realized by the central office of the enterprise shall be taxable only in the State in which the enterprise is resident.

b) Any payment received as consideration for the use of, or the right to use, any industrial, commercial or scientific equipment shall be regarded as the profits of the enterprise to which the provisions of Article 7 or Article 14, as the case may be, apply.

V. To Sections 10, 11 and 12

If, an amount of tax exceeding the amount of tax that may be levied in accordance with Articles 10, 11 or 12, has been collected at source, then an application shall be submitted, within a five-year period following the end of the calendar year in which the tax has been collected, for the refund of the excess amount of tax, to the competent authority of the State which has collected such tax.

VI. To Section 16

a) It has been established that the director (Chief Executive Officer) ("bestuurder") or a commissioner ("commissaris") of a Dutch company shall include persons who are appointed as such by the general assembly of the shareholders or some other competent body of such a company, and who are commissioned to perform the general management of the company, or to oversee the company.

b) It has been established that in the case of the Hungarian People's Republic, the term "board of directors" ("igazgatótanács") also includes the other similar bodies of the company.

VII. To Section 24

It has been established that on calculating the reduction mentioned in subsection (2), Article 24, the property mentioned in subsection (1), Section 23 shall be taken into consideration in the value reduced by the debts secured by the mortgage encumbering that property, while the property mentioned in subsection (2), Article 23 shall be taken into consideration in the value reduced by the debts related to that permanent establishment or fixed base.