AGREEMENT OF 5TH OCTOBER, 2009

AGREEMENT BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE SULTANATE OF OMAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

Chapter I
Scope of the Agreement

Article 1
Persons Covered

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 imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

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

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

a) in the Netherlands:

(i) the income tax (inkomstenbelasting);

(ii) the wages tax (loonbelasting);

(iii) the company income tax (vennootschapsbelasting) including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mining Act (Mijnbouwwet);

(iv) the dividend tax (dividendbelasting);

(hereinafter referred to as "Netherlands tax");

b) in the case of the Sultanate of Oman:

(i) the company income tax imposed under Royal Decree No. 47/198 1 as amended; and

(ii) the profit tax on establishments imposed under Royal Decree No. 77/1989 as amended;

(hereinafter referred to as "Omani tax")

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

Chapter II
Definitions

Article 3
General Definitions

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

a) the terms "a Contracting State" and "the other Contracting State" mean the Kingdom of the Netherlands (the Netherlands) or the Sultanate of Oman, as the context requires;

b) the term "the Netherlands" means the part of the Kingdom of the Netherlands that is situated in Europe, including its territorial sea, and any area beyond the territorial sea within which the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights;

c) the term "Sultanate of Oman" means the territory of the Sultanate of Oman and the islands belonging thereto, including the territorial waters and any area outside the territorial waters over which the Sultanate of Oman may, in accordance with international law and the laws of the Sultanate of Oman, exercise sovereign rights with respect to the exploration and exploitation of the natural resources of the sea-bed and the sub-soil and the superjacent waters;

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

e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

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

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

h) the term "competent authority" means:

(i) in the case of the Netherlands, the Minister of Finance or his authorised representative;

(ii) in the case of the Sultanate of Oman, the Minister of National Economy and Supervisor of the Ministry of Finance or his authorised representative;

i) the term "national" means:

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

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

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

Article 4
Resident

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of registration or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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

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

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

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

d) if the status of the resident cannot be determined by reason of subparagraphs a) to c) in that sequence, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated. If the place of effective management cannot be determined, then the Competent Authorities shall settle the question by mutual agreement.

Article 5
Permanent Establishment

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

2. The term "permanent establishment" includes especially:

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop, and

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

3. A building site or a construction or assembly or installation project or supervisory activities in connection therewith constitutes a permanent establishment only if it lasts more than 9 (nine) months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

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

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

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

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

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

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

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status to whom paragraph 6 applies, is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or

b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he delivers goods or merchandise on behalf of the enterprise.

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

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

Chapter III
Taxation of Income

Article 6
Income From Immovable Property

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

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture (including the breeding and cultivation of fish) 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 shall also be considered as "immovable property'. Ships and aircraft shall not be regarded as immovable property.

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

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

Article 7
Business Profits

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

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

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

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

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

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

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

Article 8
Shipping and Air Transport

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. The provisions of paragraph 1 of this Article shall also apply to profits from the participation in a pool, a joint business or in an international operating agency.

3. For the purposes of this Article, the term "operation of ships or aircraft in international traffic" by an enterprise, includes:

a) the charter, lease or rental of ships or aircraft fully equipped, manned and supplied, and used in the operation international traffic;

b) the charter, lease or rental on a bare boat charter basis of ships or aircraft where such charter, lease or rental is incidental to the operation of ships or aircraft in international traffic;

c) the use, maintenance or rental of containers where such use, maintenance or rental is incidental to the operation of ships or aircraft in international traffic.

Article 9
Associated Enterprises

1. Where

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

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

2. Where a Contracting State includes, in accordance with the provisions of paragraph 1, in the profits of an enterprise of that State - and taxes accordingly -profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States may, if necessary, consult each other.

Article 10
Dividends

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

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

a) 0 (zero) per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 (ten) per cent of the capital of the company paying the dividends;

b) 10 (ten) per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, dividends paid by a company which is a resident of a Contracting State shall be taxable only in the other Contracting State if the beneficial owner is that other State, a political subdivision, local government, a pension fund, or the Central Bank of either Contracting State, the State General Reserve Fund of the Sultanate of Oman, the Omani Investment Fund, the Omani Development bank, and any other statutory body or institution wholly or mainly owned by the Government of the Sultanate of Oman as may be agreed from time to time between the competent authorities of the Contracting States.

5. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

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

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

8. With respect to dividends referred to in subparagraph a) of paragraph 2 which are paid by a company which is a resident of the Netherlands, if, according to the law in force in the Sultanate of Oman, taxation of such dividends in Oman will result in a tax of less than 10 (ten) per cent of the gross amount of the dividends, the Netherlands may levy a tax not exceeding 10 (ten) per cent of the gross amount of the dividends.

9. However, the provisions under paragraph 8 shall not apply if the dividends are paid by a company which is a resident of the Netherlands and the beneficial owner of the dividends is a company resident in the Sultanate of Oman and either:

a) the capital of the company receiving the dividends is exclusively beneficially owned by the Government of Oman or any political subdivision or local authority thereof; or

b) shares in the company receiving the dividends are regularly traded on the Stock Exchange of Oman; or

c) the company receiving the dividends is engaged in an active trade or business in Oman.

10. In the case a company does not fulfil one of the conditions laid down in paragraph 9, the provisions under paragraph 8 shall also not apply with respect to such company if it is determined by mutual agreement

between the competent authorities of the Contracting States, in conformity with Article 25 of the Agreement, that such company is not established or maintained in the Sultanate of Oman mainly for the purpose of ensuring the benefits of subparagraph a) of paragraph 2 and provided that the company receiving the dividends is a resident of the Sultanate of Oman and the beneficial owner of the dividends.

Article 11
Interest

1. Interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

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

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

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

Article 12
Royalties

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 8 (eight) per cent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including computer software, cinematograph films, or films or tapes or discs used 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, or for information concerning industrial, commercial or scientific experience.

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

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

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount of the royalties. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 13
Capital Gains

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

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

3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

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

Article 14
Independent Personal Services

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

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

Article 15
Income From Employment

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and

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

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

3. Notwithstanding the preceding paragraphs of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated by a resident of a Contracting State in international traffic may be taxed in that State.

Article 16
Directors' Fees

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

Article 17
Entertainers and Sportspersons

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

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

3. The provisions of paragraphs 1 and 2 shall not apply to income derived by a resident of a Contracting State as an entertainer or a sportsperson from activities exercised in the other Contracting State, if the visit to that other State is supported wholly or mainly by public funds of one or both of the Contracting States or political subdivisions or local authorities or statutory body thereof, or takes place under a cultural agreement between the Governments of the Contracting States. In such a case, the income shall be taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

Article 18
Pensions, Annuities and Social Security Payments

1. Subject to the provisions of paragraph 2 of Article 19, pensions, annuities and other similar remuneration, arising in a Contracting State and paid to a resident of the other Contracting State, may be taxed in the first-mentioned State.

2. Pensions paid and other payments made under the provisions of the social security legislation of a Contracting State to a resident of the other Contracting State, may be taxed in the first-mentioned State.

3. A pension, an annuity or other similar remuneration shall be deemed to arise in a Contracting State insofar as the contributions or payments associated with that pension or annuity or other similar remuneration, or the entitlements received from them qualified for relief from tax in that State. The transfer of a pension or an annuity or other similar remuneration from a pension fund or an insurance company in a Contracting State to a pension fund or an insurance company in any other State shall not restrict in any way the taxing rights of the firstmentioned State under this Article.

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

5. The provisions of this Article shall also apply in case a lump sum payment is paid in lieu of a pension, an annuity or other similar remuneration before the date of entitlement to the pension, the annuity or other similar remuneration.

Article 19
Government Service

1. *a)* Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority or a statutory body thereof to an individual in respect of services rendered to that State or subdivision or authority or body shall be taxable only in that State.

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

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. *a)* Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority or statutory body thereof to an individual in respect of services rendered to that State or subdivision or authority or body shall be taxable only in that State.

b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority or statutory body thereof.

Article 20
Professors and Researchers

1. An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State and who, at the invitation of any recognised university, college, or other similar educational institution or scientific research institution, visits that other Contracting State for a period not exceeding two years from the date of his arrival in that other State solely for the purpose of teaching or research or both at such

educational or research institution, shall be taxable only in the first-mentioned State on any remuneration derived from such teaching or research.

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

Article 21
Students and Apprentices

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

Article 22
Other Income

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

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

Chapter IV
Methods for the Elimination of Double Taxation

Article 23
Elimination of Double Taxation

1. In the Netherlands, double taxation shall be eliminated as follows:

a) The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed the items of income which, according to the provisions of this Agreement, may be taxed or shall be taxable only in the Sultanate of Oman.

b) However, where a resident of the Netherlands derives items of income which according to paragraphs 1, 3 and 4 of Article 6, paragraph 1 of Article 7, paragraph 6 of Article 10, paragraph 3 of Article 11, paragraph 4 of Article 12, paragraphs 1 and 2 of Article 13, Article 14, paragraphs 1 (subparagraph a) and 2 (subparagraph a) of Article 19 and paragraph 2 of Article 22 of this Agreement may be taxed in the Sultanate of Oman and are included in the basis referred to in paragraph 1, the Netherlands shall exempt such items of income by allowing a reduction of its tax. This reduction shall be computed in conformity with the provisions of the Netherlands law for the avoidance of double taxation. For that purpose the said items of income shall be deemed to be included in the amount of the items of income which are exempt from Netherlands tax under those provisions.

c) Further, the Netherlands shall allow a reduction from the Netherlands tax so computed for the items of income which according to paragraph 2 of Article 10, paragraph 2 of Article 12, paragraphs 1 and 3 of Article 15, Article 16, paragraphs 1

and 2 of Article 17 and paragraphs 1, 2 and 3 of Article 18 of this Agreement may be taxed in the Sultanate of Oman to the extent that these items are included in the basis referred to in paragraph 1. The amount of this reduction shall be equal to the tax paid in the Sultanate of Oman on these items of income, but shall, in case the provisions of the Netherlands law for the avoidance of double taxation provide so, not exceed the amount of the reduction which would be allowed if the items of income so included were the sole items of income which are exempt from Netherlands tax under the provisions of the Netherlands law for the avoidance of double taxation.

This paragraph shall not restrict allowance now or hereafter accorded by the provisions of the Netherlands law for the avoidance of double taxation, but only as far as the calculation of the amount of the reduction of Netherlands tax is concerned with respect to the aggregation of income from more than one country and the carry forward of the tax paid in the Sultanate of Oman on the said items of income to subsequent years.

d) Notwithstanding the provisions of paragraph b, the Netherlands shall allow a reduction from the Netherlands tax for the tax paid in the Sultanate of Oman on items of income which according to paragraph 1 of Article 7, paragraph 6 of Article 10, paragraph 3 of Article 11, paragraph 4 of Article 12, paragraph 1 of Article 14 and paragraph 2 of Article 22 of this Agreement may be taxed in the Sultanate of Oman to the extent that these items are included in the basis referred to in paragraph 1, insofar as the Netherlands under the provisions of the Netherlands law for the avoidance of double taxation allows a reduction from the Netherlands tax of the tax levied in another country on such items of income. For the computation of this reduction the provisions of paragraph 1, subparagraph c, of this Article shall apply accordingly.

2. In the Sultanate of Oman, double taxation shall be eliminated as follows: where a resident of the Sultanate of Oman derives income which, in accordance with the provisions of this Agreement, may be taxed in the Netherlands, the Sultanate of Oman shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in the Netherlands, whether directly or by deduction. Such deduction shall not, however, exceed that part of the income tax (as computed before the deduction is given) which is attributable to the income which may be taxed in the Netherlands.

Chapter V
Special Provisions

Article 24
Non-Discrimination

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

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

3. Except where the provisions of paragraph 1 of Article 9, paragraph 4 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

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

Article 25
Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

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

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in 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 necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by this Agreement insofar as the taxation thereunder is not contrary to the Agreement as well as to prevent fiscal evasion. The exchange of information is not restricted by Article 1.

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 covered by the Agreement. 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.

3. In no case shall the provisions of the 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 policy (ordre public).

4. If the 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 that other State 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. Without prejudice to procedures under its domestic law, in no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 27
Assistance in the Collection of Taxes

1. The Contracting States undertake to lend assistance to each other in the collection of taxes covered by this Agreement, together with interest, administrative penalties and fines of a non penal nature. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. Request for assistance by a Contracting State in the collection of these taxes shall include a certification by the competent authority of that State that, under the laws of that State, the said taxes have been finally determined. For the purposes of this Article, a tax is finally determined when a Contracting State has the right under its internal law to collect the tax and the taxpayer has no further right to restrain collection.

3. Requests referred to in paragraph 2 shall be supported by an official copy of the instrument permitting the execution, accompanied where appropriate, by an official copy of any final administrative or judicial decision.

4. The request of a Contracting State that has been accepted for collection by the other Contracting State shall be fulfilled by this other State as though such request were related to its own tax.

5. With regard to tax claims which are open to appeal, the competent authority of a Contracting State may, in order to safeguard its rights, request the competent authority of the other Contracting State to take the protective measures. The request of the Contracting State that has been accepted shall be fulfilled by this other State as though such request were related to its own tax.

6. Amounts collected by the competent authority of a Contracting State pursuant to this Article shall be forwarded to the competent authority of the other Contracting State. Except where the competent authorities of the Contracting States otherwise agree, the ordinary expenses incurred in providing tax collection assistance shall be borne by the requested State.

7. Nothing in this Article shall 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 carry out measures which would be contrary to public policy (ordre public)

c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection, available under its laws or administrative practice;

d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

8. Notwithstanding the provisions of the previous paragraphs, a revenue claim accepted by a Contracting State for purposes of the previous paragraphs shall not, in that State, be accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such and cannot be collected by imprisonment for debt of the debtor. In addition, a revenue claim accepted by a Contracting State for the

purposes of the previous paragraphs shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

9. The applicant State shall in any event remain responsible towards the requested State or the taxpayer for the pecuniary consequences of acts of recovery which were unfounded in respect of the reality of the tax claim concerned or of the validity of the instrument permitting enforcement in the applicant State.

Article 28
Members of Diplomatic Missions and Consular Posts

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

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

3. The Agreement shall not apply to international organisations, organs and officials thereof and members of a diplomatic mission or consular post of a third State, being present in a Contracting State, if they are not subjected therein to the same obligations in respect of taxes on income as are residents of that State.

Article 29
Protocol

The attached Protocol is an integral part of this Agreement.

Chapter VI
Final Provisions

Article 30
Entry Into Force

Each of the Contracting States shall notify the other Contracting State through diplomatic channels of the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the thirtieth day after the date of the later of these notifications and shall thereupon have effect as follows:

a) in respect of taxes withheld at source: for amounts paid or credited on or after the first day of January next following the date on which this Agreement enters into force, and

b) in respect of other taxes: for any fiscal year commencing on or after the first day of January next following the date on which this Agreement enters into force.

Article 31
Termination

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months

before the end of any calendar year after the expiration of a period of five years from the date of its entry into force. In such event the Agreement shall cease to have effect:

a) in respect of taxes withheld at source: for amount paid or credited on or after the first day of January in the calendar year immediately following that in which the notice of such termination is given, and

b) in respect of other taxes: for any fiscal year commencing on or after the first day of January in the calendar year immediately following that in which the notice of such termination is given.

PROTOCOL

At the signing of the Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, this day concluded between the Kingdom of the Netherlands and the Sultanate of Oman the undersigned have agreed that the following provisions shall form an integral part of the Agreement.

I. General

a) The benefits of the Agreement are not applicable to companies or other persons which are wholly or partly exempted from tax under the laws of either Contracting State relating to free zones. They are also not applicable to income from such companies or other persons derived by a resident of the other State, nor to shares, 'jouissance' rights or interests in such companies or other persons.

b) It is understood that in the case of the Sultanate of Oman, the term "tax" means Omani tax as the context requires, but shall, except for the purpose of Article 27 (Assistance in the collection of taxes), not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Agreement applies or which represents a civil penalty imposed relating to those taxes.

II. Ad Article 3, paragraph 2, and Article 25

In case

a) the interpretation of a term not defined in the Agreement; or

b) differences in characterisation of an element of income; or

c) differences in characterisation of a person that is fiscally transparent under the laws of either Contracting State

results in double taxation or double exemption, the competent authorities shall reach a solution to avoid the double taxation or double exemption.

III. Ad Article 4

a) It is understood that the term "resident of a Contracting State" also includes:

i) any statutory body of a Contracting State, and

ii) a pension fund that is recognised and controlled according to the domestic law, including regulations, of a Contracting State.

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

IV. Ad Article 4, paragraph 3

Where

a) the place of effective management of a person is situated in a Contracting State, and has been situated in the other State at any time in the preceding 3 (three) years; and

b) at any time during a period of 12 (twelve) months prior to shifting the place of effective management to the first-mentioned State, the assets of such person consisted principally of liquid assets,

paragraph 3 shall not apply, unless it is determined by mutual agreement between the competent authorities of the Contracting States that the main purpose or one of the most important purposes of the shifting of the place of effective management was for bona fide commercial reasons.

V. Ad Article 5, paragraph 5, subparagraph b

Profits derived by the head office from the supply of goods to the permanent establishment or from carrying out the part of the contract in the Contracting State in which the head office of the enterprise is situated shall be taxable only in that State. Such profits shall be determined on the basis of the arm's length principle.

VI. Ad Articles 5, 6, 7 and 13

It is understood that, for the purposes of this Agreement, the rights to the exploration, exploitation or extraction of natural resources granted by a Contracting State according to the laws of that State shall also be deemed to be a permanent establishment in that State, without prejudice to the laws of the Contracting States relating to the natural resources or the exploration, exploitation or extraction of those resources.

VII. Ad Article 7

In respect of paragraphs 1 and 2, where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of that portion of the income of the enterprise that is attributable to the actual activity of the permanent establishment in respect of such sales or business.

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

VIII. Ad Article 7, paragraph 3

It is understood that the provisions of this paragraph do not prevent the Contracting State in which the permanent establishment is situated from applying the provisions of its domestic law, including regulations, relating to deductions when determining the taxable income of the permanent establishment for its domestic tax purposes.

IX. Ad Articles 7 and 14

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

X. Ad Article 8

a) The International Air Transport Agreement between the Netherlands and Oman, signed in February 1991, as amended by the Protocol signed in December 1995, will remain in force. However, if this Agreement provides for a more beneficial tax treatment, it shall also be applicable to the extent that it is more favourable.

b) It is understood that for the purposes of this Article, the term "profits" includes:

i) gross receipts and revenues derived directly from the operation of ships or aircraft in international traffic, and

ii) interest that is incidental to the operation of ships or aircraft in international traffic.

XI. Ad Article 9

It is understood that the fact that associated enterprises have concluded arrangements, such as cost sharing arrangements or general services agreements, for or based on the allocation of executive, general administrative, technical and commercial expenses, research and development expenses and other similar expenses, is not in itself a condition as meant in paragraph 1 of Article 9. However, the burden of establishing that the above-mentioned arrangements conform to the arm's length principle shall be on the taxpayer.

XII. Ad Article 10

It is understood that in the Netherlands the term "founders' shares" means shares that are issued as remuneration for services rendered by founders during the constitution of a company and do not represent capital of the company.

XIII. Ad Articles 10 and 13

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

b) The provisions of paragraphs 1, 2 and 7 of Article 10 and paragraph 4 of Article 13 of this Agreement shall not prevent the Netherlands from applying its domestic law in case a so-called preserving tax assessment ('conserverende aanslag') has been issued to an individual insofar it concerns a substantial interest, according to Netherlands tax legislation, in a company which is resident in the Netherlands. The aforementioned shall only apply insofar the assessment or a part of the assessment is still outstanding.

XIV. Ad Article 16

It is understood that:

a) where a company is a resident of the Netherlands, the term "member of the board of directors" includes both a "bestuurder" and a "commissaris". The terms "bestuurder" and "commissaris" mean respectively persons who are charged with the general management of the company and persons who are charged with the supervision thereof;

b) where a company is a resident of Oman, the term 'board of directors' also includes a similar body performing similar functions in a company.

XV. Ad Article 20

It is understood that in paragraph 1, the term "recognised", in the case of the Sultanate of Oman refers to the approval given by the Sultanate of Oman in which the university, college, or other similar educational institution or scientific research institution is situated.

XVI. Ad Article 24

It is understood that the provisions of Article 24 will not be fully implemented by the Sultanate of Oman until the Sultanate of Oman harmonises the tax rates applicable to enterprises which are carrying on activities in the Sultanate of Oman.

XVII. Ad Article 25

In case the Sultanate of Oman introduces any form of dispute resolution mechanism with any country in a tax agreement, the Contracting States shall enter into negotiations to reach an agreement on an Article concerning dispute resolution.

XVIII. Ad Article 26

It is understood that, in the case of the Sultanate of Oman, the supply of information is subject to its domestic laws.