

AGREEMENT OF 21ST NOVEMBER 1986

CONVENTION BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON PROPERTY

Article 1

Persons to Whom the Convention Shall Apply

1. This Convention shall apply to residents of one or both of the States.
2. For the purposes of the Convention, the term 'resident of a State' means any person who, under the laws of that State, is liable to tax therein by reason of his residence or place of management.
3. The term 'resident of both States' means a person who is a resident of each of the States during the same period of time.
4. Where by reason of the provisions of paragraph 3 an individual is a resident of both States, his status shall be determined in accordance with the following rules:
 - a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in each of the States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interest);
 - b) if the State in which he has his centre of vital interest cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
 - c) if he has an habitual abode in each of the States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
 - d) if each of the States regards him as its national or if neither State regards him as its national, the competent authorities of the States shall settle the question by mutual agreement in accordance with the provisions of Article 20.
5. Where by reason of the provisions of paragraph 3 a person other than an individual is a resident of both States, it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 2

Taxes Covered by the Convention

1. This Convention shall apply to taxes on income and on property either of a national or of a local character imposed in conformity with the laws of each of the States, irrespective of the manner in which they are levied:
 - a) in the case of the Kingdom of the Netherlands:
 - de inkomstenbelasting (income tax),
 - de loonbelasting (wages tax),
 - de vennootschapsbelasting (company tax),
 - de dividendbelasting (dividend tax),

- de vermogensbelasting (capital tax);
- b) in the case of the Union of Soviet Socialist Republics:
 - the income tax on foreign legal persons,
 - the income tax on population,
 - the agricultural tax,
 - the tax on the owners of buildings,
 - the ground tax,
 - the tax of the owners of means of transport.

2. The Convention shall apply also to any taxes of a character substantially similar to that of the taxes specified in paragraph 1 which are imposed in addition to, or in place of the existing taxes after the date of signature of the Convention.

Article 3
Some General Definitions

1. For the purposes of this Convention the terms mentioned below shall have the following meaning:

- a) 'a State' means, as the context requires, the Kingdom of the Netherlands (the Netherlands) or the Union of Soviet Socialist Republics (the USSR);
- b) 'person' means:
 - 1) in the case of the Netherlands, an individual or a company, comprising any body corporate or any entity which in the Netherlands is treated as a body corporate for tax purposes;
 - 2) in the case of the USSR, an individual or a legal person or other organization created under the law of the USSR or any Union Republic, which in the USSR is treated as a legal person for tax purposes;
- c) 'international traffic' means any transportation of load or passengers by any means of transport between places in different States except when the transportation takes place only between places in one State;
- d) 'competent authority' means:
 - 1) in the case of the Netherlands, the Minister of Finance or his authorized representative;
 - 2) in the case of the USSR, the Ministry of Finance of the USSR or its authorized representative.

2. As regards the application of the Convention by a State any term not defined in the Convention shall, unless the context otherwise requires, have the meaning which it has under the laws, in the first instance the tax laws, of that State.

Article 4

Permanent Establishment

1. For the purposes of this Convention, the term 'permanent establishment' means a bureau, an office or any other fixed place of business through which a resident of a State carries on activities in the other State.

2. Activities connected with a building site or construction or installation project shall be deemed not to be carried on through a permanent establishment if its duration does not exceed 12 months. Where its duration exceeds 12 months, the competent authority of the State in the territory of which such site or project exists may, upon request of the person carrying on such activities, consider these not to be carried on through a permanent establishment.

3. Notwithstanding the provisions of paragraphs 1 and 2, the following types of activities of a resident of a State shall be deemed not to be carried on through a permanent establishment in the other State:

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to that person;
- b) the sale, after an exhibition or a fair, of goods or merchandise displayed belonging to that person;
- c) the maintenance of a stock of goods or merchandise belonging to that person solely for the purpose of storage, display or delivery;
- d) the maintenance of a stock of goods or merchandise belonging to that person solely for the purpose of processing by another person;
- e) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, of collecting or disseminating information or of marketing of a preparatory or auxiliary character, for that person;
- f) the performance of planning, development and scientific research activities (including joint activities), engineering, testing, technical services, or supervisory or consultancy activities;
- g) the maintenance of a fixed place of business solely for the purpose of carrying on, for that person, any other activity of a preparatory or auxiliary character;
- h) the maintenance of a fixed place of business for the purpose of carrying on several of the activities mentioned in sub-paragraphs a) to g), provided that the overall activity is of a preparatory or auxiliary character for that person.

4. Notwithstanding the provisions of paragraphs 1 and 2, the following types of activities to a resident of a State shall also be deemed not to be carried on through a permanent establishment in the other State: the maintenance of a fixed place of business solely for the purpose of the facilitation of the conclusion or the mere signing of contracts concerning loans, the delivery of goods or merchandise or technical services, whether or not these activities are activities of a preparatory or auxiliary character or main activities for that person.

5. Notwithstanding the provisions of paragraph 1, where a resident of a State carries on activities in the other State through an agent, that resident shall be deemed to have a permanent establishment in that other State in respect of any activities which the agent undertakes for that resident, when the agent complies with each of the following conditions:

- a) he has an authority to conclude contracts in the other State in the name of that resident;
- b) he habitually exercises that authority;
- c) he is not an agent of an independent status to whom paragraph 6 applies;

d) his activities are not limited to those mentioned in paragraphs 3 and 4.

6. A resident of a State shall not be deemed to have a permanent establishment in the other 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 the latter persons are acting in the ordinary course of their business.

7. The fact that a resident of a State controls or is controlled by a resident of the other State, or carries on business in that other State, shall not of itself constitute either resident a permanent establishment of the other.

Article 5

Profits

1. Profits, including income from activities other than employment, derived by a resident of a State shall be taxable only in that State unless he carries on business in the other State through a permanent establishment situated therein.

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

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

4. No profits shall be attributed to a permanent establishment by reason of:

a) the mere purchase by that permanent establishment of goods or merchandise for the resident of which it is a permanent establishment, or

b) the activities mentioned in paragraph 4 of Article 4.

5. In the case of profits from survey, supply, installation or construction activities only so much of them is attributable to a permanent establishment as results from the actual performance of these activities through that permanent establishment. Accordingly, profits from deliveries of goods, whether or not in connection with these activities, to that permanent establishment by the head office, another permanent establishment or a third person shall not be attributed to that permanent establishment.

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

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

Article 6

Profits from International Traffic

1. Profits from international traffic derived by a resident of a State shall be taxable only in the State in which the place of effective management of that resident is situated.

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

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

Article 7

Dividends

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

2. However, such dividends may also be taxed in the State of which the person paying the dividends is a resident and according to the laws of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

3. The competent authority of the State of which the person paying the dividends is a resident, shall settle the mode of application of paragraph 2.

4. The provisions of paragraph 2 shall not affect the taxation of the person paying the dividends in respect of the profits out of which the dividends are paid.

5. The term 'dividends' as used in this Article means income from shares and income from rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the person distributing the profits is a resident.

6. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of a State, carries on business or performs activities other than employment in the other State of which the person paying the dividends is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 5 shall apply.

Article 8

Interest

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

2. The term 'interest' as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage but not carrying a right to participate in the debtor's profits, as well as any other income which is subjected to the same taxation treatment as interest by the laws of the State of which the person paying the interest is a resident.

3. The provisions of paragraph 1 shall not apply if the recipient of the interest, being a resident of a State, carries on business or performs activities other than employment in the other State in which the interest arises, through a permanent establishment 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 5 shall apply.

4. Where the amount of the interest paid exceeds the amount which would have been agreed upon between independent parties, the excess part of the payments shall remain taxable according to the laws of each State, due regard being had to the other provisions of this Convention.

Article 9

Payment for Copyrights and Licences

1. Payments for copyrights and licenses arising in a State and paid to a resident of the other State shall be taxable only in that other State.
2. The term 'payments for copyrights and licenses' as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films or tapes for broadcasting, television and sound reproduction, any patent, trade mark or service mark, trade name, design, model or sample, project, computer programme, secret formula, process, or any other invention or innovation or for the use of, or the right to use, industrial, commercial, or scientific equipment, or form information concerning industrial, commercial or scientific experience (know-how).
3. The provisions of paragraph 1 shall not apply if the recipient of the payments for copyrights and licenses, being a resident of a State, carries on business or performs activities other than employment in the other State in which the payments for copyrights and licenses arise, through a permanent establishment situated therein, and the right or property in respect of which those payments are paid is effectively connected with such permanent establishment. In such case the provisions of Article 5 shall apply.
4. Where the amount of the payments for copyrights and licenses exceeds the amount which would have been agreed upon between independent parties, the excess part of the payments shall remain taxable according to the laws of each State, due regard being had to the other provisions of this Convention.

Article 10

Income from Immovable Property

1. Income derived by a resident of a State from the direct use, letting, or use in any other form of immovable property situated in the other State may be taxed in that other State.
2. The term 'immovable property' shall have the meaning which is attached to it under the law of the State in which the property in question is situated. In the case of the Netherlands the term shall include usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

Article 11

Income From the Alienation of Property

1. Income derived by a resident of a State from the alienation of immovable property referred to in Article 10 and situated in the other State may be taxed in that other State.
2. Income from the alienation of movable property forming part of the property of a permanent establishment which a resident of a State has in the other State, including such income from the alienation of all the properties of such a permanent establishment, may be taxed in that other State.
3. Income derived by a person from the alienation of means of transport operated in international traffic or movable property pertaining to the operation of such means of transport, shall be taxable only in the State in which the place of effective management of that person is situated. For the purposes of this paragraph the provisions of paragraph 2 of Article 6 shall apply.
4. Income from the alienation of any property other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the State of which the alienator is a resident.

Article 12

Income From Employment

1. Subject to the provisions of Articles 13 and 14, salaries, wages and other similar remuneration derived by a resident of a State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in the other State.

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

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in a calendar year, 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 provisions of paragraphs 1 and 2, remuneration derived by a resident of a State in respect of an employment exercised in the other State shall be taxable only in the first-mentioned State if the employment is exercised in connection with a building site or construction or installation project and the activities connected with such site or project are deemed not to be carried on through a permanent establishment according to the provisions of paragraph 2 of article 4.

4. Notwithstanding the provisions of paragraphs 1 and 2, remuneration derived by a resident of a State in respect of an employment exercised on means of transport operated in international traffic, shall be taxable only in that State.

5. Notwithstanding the preceding provisions of this Article, in the case of the Netherlands directors' fees or other remuneration derived by a resident of a State in his capacity as a member of the board of directors, a 'bestuurder' or a 'commissaris' of a company which is a resident of the other State may be taxed in that other State in accordance with its tax laws.

Article 13

Government Officials

1. Remuneration, including pensions, paid by, or out of funds created by, a State or a regional or local authority thereof to an individual in respect of services rendered to that State or authority in the discharge of functions of a governmental nature may be taxed in that State.

2. Services rendered in an organization or enterprise carrying on commercial activities, such as a Netherlands commercial organization or a USSR foreign trade organization, shall not be considered as rendered in the discharge of functions of a governmental nature.

Article 14

Professors, Teachers and Researchers

1. Payments which a professor, teacher or researcher who is a resident of a State and who is present in the other State for the purpose of teaching or scientific research for a period not exceeding two years in a university or any other establishment for teaching or scientific research in that other State, receives for such teaching or research, shall be taxable only in the firstmentioned State.

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

Article 15

Students and Trainees

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

Article 16

Other Income

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

Article 17

Property

1. Immovable property referred to in Article 10, owned by a resident of a State and situated in the other State, may be taxed in that other State.

2. Movable property forming part of the property of a permanent establishment which a resident of a State has in the other State, may be taxed in that other State.

3. Means of transport owned by a person and operated in international traffic and movable property pertaining to the operation of such means of transport, shall be taxable only in the State in which the place of effective management of that person is situated. For the purposes of this paragraph the provisions of paragraph 2 of Article 6 shall apply.

4. All other elements of property of a resident of a State shall be taxable only in that State.

Article 18

Elimination of Double Taxation

1. The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed the items of income or property which, according to the provisions of this Convention, may be taxed in the USSR. However, where a resident of the Netherlands derives items of income or owns property which according to the provisions of this Convention may be taxed in the USSR and are included in that basis, the Netherlands shall exempt such items by allowing a reduction of its tax. This reduction shall be computed in conformity with the provisions of Netherlands law for the avoidance of double taxation. For that purpose the said items of income or property shall be deemed to be included in the total amount of the items of income or property which are exempt from Netherlands tax under those provisions.

2. The USSR, when imposing tax on its residents, shall avoid double taxation in conformity with the provisions of its law.

Article 19

Non-Discrimination

1. Nationals of a State shall not be subjected in the other State to any taxation treatment which is other or more burdensome than the taxation treatment to which nationals of that other State in the same circumstances are or may be subjected.
2. Residents or permanent establishments of residents of a State shall not be subjected in the other State to any taxation treatment which is other or more burdensome than the taxation treatment to which residents or permanent establishments of residents of third States carrying on the same activities, are or may be subjected.
3. The provisions of this Article shall not be construed as obliging a State to grant tax reliefs to nationals, residents or permanent establishments of residents of the other State which are granted by the first mentioned State to nationals, residents or permanent establishments of residents of third States by virtue of agreements with these third States.
4. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind.

Article 20

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the State of which he is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other State, with a view to the avoidance of taxation which is not in accordance with the Convention. When an agreement is reached, the competent authority of the State concerned shall refund any overpayment or grant the necessary tax reliefs.
3. The competent authorities of the States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also complying with existing procedures consult together for the elimination of double taxation in cases not provided for in the Convention.

Article 21

Exchange of Information

The competent authorities of the States shall notify each other of any substantial changes which have been made in their respective taxation laws.

Article 22

Territorial Scope

1. In the case of the Netherlands this Convention shall apply only to the territory of the Kingdom of the Netherlands that is situated in Europe.
2. For the purposes of this Convention references to a State shall be considered as references to both the territory of that State and the continental shelf adjacent to the outer limits of the territorial waters (territorial sea) of that State with respect to which that State exercises sovereign rights in accordance with international law and

its own legislation for the purposes of the exploration of the continental shelf and exploitation of its natural resources.

Article 23

Application of the Convention

Where this Convention provides for a tax exemption in a State conditionally under a certain length of time, that State shall only levy tax after the length of time has elapsed unless it was known beforehand that the period would be surpassed.

Article 24

Entry Into Force of the Convention

1. The Contracting Parties shall notify each other through diplomatic channels of the completion of the formalities necessary for the entry into force of this Convention.
2. The Convention shall enter into force on the thirtieth day after the exchange of notifications referred to in paragraph 1 and its provisions shall have effect in respect of taxes relating to tax periods beginning on or after the first day of January in the calendar year following the year in which the Convention enters into force.

Article 25

Termination of the Convention

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