

## AGREEMENT OF 18<sup>TH</sup> JUNE, 1991

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

### Chapter I Scope of the Convention

#### Article 1 Personal Scope

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

#### Article 2 Taxes Covered

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

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

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

*a)* in Sweden:

- the State income tax (den statliga inkomstskatten), including the sailors' tax (sjomansskatten) and the coupon tax (kupongskatten),
- the tax on public entertainers (bevillningsavgiften for vissa offentliga forestallningar),
- the real estate tax (den statliga fastighetsskatten),
- the communal income tax (den kommunala inkomstskatten),
- the State capital tax (den statliga formogenhetsskatten),

hereinafter referred to as "Swedish tax");

*b)* in the Netherlands:

- de inkomstenbelasting (Income tax),
- de loonbelasting (wages tax),
- de vennootschapsbelasting (company tax) including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mijnwet 1810 (the Mining Act of 1810) with respect to concessions issued from 1967, or pursuant to the Mijnwet Continentaal Plat 1965 (the Netherlands Continental Shelf Mining Act of 1965),
- de dividendbelasting (dividend tax),

- de vermogensbelasting (capital tax)
- (hereinafter referred to as “Netherlands tax”).

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

## **Chapter II**

### **Definitions**

#### **Article 3**

##### **General Definitions**

1. For the purposes of this Convention, unless the context otherwise requires:
  - a) the term “Sweden” means the Kingdom of Sweden and, when used in a geographical sense, includes the national territory, the territorial sea of Sweden as well as other maritime areas over which Sweden in accordance with international law exercises sovereign rights or jurisdiction;
  - b) the term “the Netherlands” means the part of the Kingdom of the Netherlands that is situated in Europe including the part of the sea-bed and its subsoil under the North Sea, to the extent that this area in accordance with international law has been or may hereafter be designated under Netherlands laws as an area within which the Netherlands may exercise sovereign rights with respect to the exploration and exploitation of the natural resources of the sea-bed or its subsoil;
  - c) the terms “a Contracting State” and “the other Contracting State” mean Sweden or the Netherlands, as the context requires; the term “the Contracting States” means Sweden and the Netherlands;
  - d) the term “person” includes an individual, a company and any body of persons;
  - e) the term “company” means any body corporate or any entity which 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 which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
  - h) the term “national” means:
    1. any individual possessing the nationality of a Contracting State;
    2. any legal person, partnership and association deriving its status as such from the laws in force in a Contracting State;
  - i) the term “competent authority” means:

1. in Sweden, the Minister of Finance, his authorized representative or the authority which is designated as a competent authority for the purposes of this Convention;
2. in the Netherlands, the Minister of Finance or his duly authorized representative.

2. As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

#### **Article 4 Resident**

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, provided, however, that this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

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

- a) he shall be deemed to be a resident 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 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 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 of the State of which he is a national;
- d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

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

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

2. The term “permanent establishment” includes especially:

- a) a place of management;
- b) a branch;
- c) an office;

- d)* a factory;
- e)* a workshop; and
- f)* a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than 12 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 sub-paragraphs (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 on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph (4) which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

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

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

### **Chapter III**

#### **Taxation of Income**

#### **Article 6**

##### **Income From Immovable Property**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, buildings, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph (1) shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs (1) and (3) shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

## **Article 7**

### **Business Profits**

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph (3), where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including 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 the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
5. 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.
6. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

## **Article 8**

### **Shipping and Air Transport**

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated. If that State according to its legislation cannot tax the whole of the income, the income shall be taxable only in the Contracting State of which the enterprise is a residence.
2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is not such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. With respect to profits derived by the air transport consortium Scandinavian Airlines System (SAS) the provisions of paragraph (1) shall apply only to such part of the profits as corresponds to the participation held in that consortium by AB Aerotransport (ABA), the Swedish partner of Scandinavian Airlines System.

4. For the purposes of this Article, profits derived from the operation in international traffic of ships and aircraft include profits from the rental on a bareboat basis of ships and aircraft operated in international traffic if such rental profits are incidental to the profits described in paragraph (1).

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

## **Article 9 Associated Enterprises**

1. Where:

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

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly. It is understood, however, that the fact that associated enterprises have concluded arrangements, such as costsharing 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 the preceding sentence.

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

## **Article 10 Dividends**

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

2. 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 recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 per cent of the gross amount of the dividends. However, if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends the dividends should be exempt from tax in the Contracting State of which the company paying the dividends is a resident.

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

3. The term “dividends” are used in this Article means income from shares, “jouissance” shares or “jouissance” rights, mining shares, founders’ shares or other rights participating in profits, as well as income from debt-claims participating in profits and income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs (1) and (2) 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.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by 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.

## **Article 11**

### **Interest**

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if such resident is the beneficial owner of the interest.

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, 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 or fixed base. 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 last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

## **Article 12**

### **Royalties**

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if such resident is the beneficial owner of the royalties.

2. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films

and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

3. The provisions of paragraph (1) 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.

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 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. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

### **Article 13 Capital Gains**

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

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

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated. If that State according to its legislation cannot tax the whole of the gains, the gains shall be taxable only in the Contracting State of which the alienator is a resident.

With respect to gains derived by the air transport consortium Scandinavian Airlines System, the provisions of this paragraph shall apply only to such portion of the gains as corresponds to the participation held in that consortium by AB Aerotransport, the Swedish partner of Scandinavian Airlines System.

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.

5. The provisions of paragraph (4) shall not affect the right of each of the Contracting States to levy according to its own law a tax on gains from the alienation of shares in a company, the capital of which is wholly or partly divided into shares and which under the laws of that State is a resident of that State, derived by an individual who is a resident of the other State and has been a resident of the first-mentioned State in the course of the last 5 years preceding the alienation of the shares. The provisions of this paragraph shall also apply to gains from the alienation of other rights in such company which, for the purpose of capital gains taxation, are subject to the same treatment as gains from the alienation of shares by the laws of the first-mentioned State.

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

1. Income derived by an individual who is 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 thereof 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**

### **Dependent Personal Services**

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

2. 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 within any period of 12 months; and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

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

## **Article 16**

### **Directors' Fees**

Directors' fees and other payments derived by a resident of a Contracting 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 Contracting State may be taxed in that other State.

## **Article 17**

### **Entertainers and Sportsmen**

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 sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

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

## **Article 18**

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

1. Subject to the provisions of paragraph (2) of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment and any annuity shall be taxable only in that State.
2. However, where such remuneration is not of a periodical nature and it is paid in consideration of past employment exercised in the other Contracting State, or where instead of the right to annuities a lump sum is paid, this remuneration or this lump sum may be taxed in the Contracting State in which it arises.
3. Any pension and other payment paid out under the provisions of a social security system of a Contracting State to a resident of the other Contracting State may be taxed in the first-mentioned State.
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 the payments in return for adequate and full consideration in money or money’s worth.

## **Article 19**

### **Government Service**

1.
  - a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority may be taxed in that State.
  - b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who:
    - (i) is a national of that State; or
    - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2.
  - a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority may be taxed in that State.
  - b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

## **Article 20**

### **Professors and Teachers**

1. Payments which a professor or teacher who is a resident of a Contracting State and who, at the invitation of a university, college, school or other approved educational institution, is present in the other Contracting State for the purpose of teaching or scientific research for a maximum period of two years, receives 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 undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

## **Article 21**

### **Students**

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 Convention shall be taxable only in that State.

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

## **Chapter IV**

### **Taxation of Capital**

## **Article 23**

### **Capital**

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated. If that State according to its legislation cannot tax the whole of the capital, the capital shall be taxable only in the Contracting State of which the enterprise is a resident. For the purposes of this paragraph the provisions of paragraph (2) of Article 8 shall apply.

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

## **Chapter V**

### **Elimination of Double Taxation**

## **Article 24**

### **Elimination of Double Taxation**

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

- a) Where a resident of Sweden derives income which under the laws of the Netherlands and in accordance with the provisions of this Convention may be taxed in the Netherlands, Sweden shall allow -- subject to the provisions of the law of Sweden concerning credit for foreign tax (as it may be amended from time to time without changing the general principle hereof) -- as a deduction from the tax on such income, an amount equal to the Netherlands tax paid in respect of such income.
  - b) Where a resident of Sweden owns capital which, under the laws of the Netherlands and in accordance with the provisions of this Convention, may be taxed in the Netherlands, Sweden shall allow as a deduction from the tax on such capital an amount equal to the capital tax paid in the Netherlands in respect of such capital. Such deduction shall not, however, exceed that part of the Swedish capital tax as computed before the deduction is given, which is appropriate to the capital which may be taxed in the Netherlands.
  - c) Notwithstanding the provisions of sub-paragraph (a) of this paragraph, where a resident of Sweden derives income, which in accordance with the provisions of paragraph (3) of Article 18 or Article 19 may be taxed in the Netherlands, Sweden shall exempt such income from tax.
  - d) Notwithstanding the provisions of sub-paragraph (a) of this paragraph, dividends paid by a company which is a resident of the Netherlands to a company which is a resident of Sweden shall be exempt from Swedish tax to the extent that the dividends would have been exempt under Swedish law if both companies had been Swedish companies. This exemption shall not apply unless
    - (i) the profits out of which the dividends are paid have, in the Netherlands or elsewhere, been subjected to a tax corresponding to at least 15 per cent of the net profits calculated in accordance with Swedish law, or
    - (ii) these dividends represent income or capital gains that would have been exempt from Swedish tax if derived directly by the company resident in Sweden, or
    - (iii) these dividends represent capital gains from the alienation of shares in a company in so far as the assets of that company, if alienated, would yield a capital gain which, if received directly by the Swedish company, would have been exempt from Swedish tax, or
    - (iv) these dividends represent capital gains from the alienation of shares in a company which is a resident of the Netherlands, in so far as the assets of this company do not directly or indirectly consist of a permanent establishment or immovable property in a third State, or of shares in a company which is a resident of a third State and in so far as the profits withheld by this company do not represent income or capital gains derived from such assets.
- However, in the case where dividends – which would have been exempt under Swedish law if both companies had been Swedish companies – do not qualify for the exemption from Swedish tax, Sweden shall – in addition to the deduction from tax as mentioned in sub-paragraph (a) – allow as a deduction from the tax on such dividends an amount equal to 10 per cent of the gross amount of such dividends.
- e) Where a resident of Sweden derives income which shall be exempt from Swedish tax in accordance with sub-paragraph (c) of this paragraph or which shall be taxable only in the Netherlands according to paragraph (1) or Article 8, Sweden may, when determining the graduated rate of Swedish tax, take into account the income which shall be exempt from Swedish tax or which shall be taxable only in the Netherlands.

2. The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed the items of income or capital which, according to the provisions of this Convention, may be taxed in Sweden.

3. However, where a resident of the Netherlands derives items of income or owns items of capital which according to Article 6, Article 7, paragraph (4) of Article 10, paragraph (3) of Article 11, paragraph (3) of Article 12, paragraphs (1) and (2) of Article 13, Article 14, paragraph (1) of Article 15, paragraph (3) of Article 18, paragraphs (1) (sub-paragraph a) and (2) (sub-paragraph a) of Article 19 and paragraphs (1) and (2) of Article 23 of this Convention may be taxed in Sweden and are included in the basis referred to in paragraph (2), the Netherlands shall exempt such items of income or capital by allowing a reduction of its tax. This reduction shall be computed in conformity with the provisions of Netherlands law for the avoidance of double taxation. For that purpose the said items of income or capital shall be deemed to be included in the total amount of the items of income or capital which are exempt from Netherlands tax under those provisions.

4. Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for the items of income which according to paragraph (2) of Article 10, paragraph (5) of Article 13, Article 16, Article 17 and paragraph (2) of Article 18 of this Convention may be taxed in Sweden to the extent that these items are included in the basis referred to in paragraph (2). The amount of this deduction shall be equal to the tax paid in Sweden on these items of income, but shall not exceed the amount of the reduction which would be allowed if the items of income so included were the sole items of income which are exempt from Netherlands tax under the provisions of Netherlands law for the avoidance of double taxation.

## **Chapter VI**

### **Offshore Activities**

#### **Article 25**

##### **Offshore Activities**

1. The provisions of this Article shall apply notwithstanding any other provisions of this Convention. However, this Article shall not apply where offshore activities of a person constitute for that person a permanent establishment under the provisions of Article 5 or a fixed base under the provisions of Article 14.

2. In this Article the term “offshore activities” means activities which are carried on offshore in connection with the exploration or exploitation of the sea-bed and its subsoil and their natural resources, situated in one of the States.

3. An enterprise of a Contracting State which carries on offshore activities in the other Contracting State shall, subject to paragraph (4) of this Article, be deemed to be carrying on, in respect of those activities, business in that other State through a permanent establishment situated therein, unless the offshore activities in question are carried on in the other State for a period or periods not exceeding in the aggregate 30 days in any period of 12 months. For the purpose of this paragraph:

- a) where an enterprise carrying on offshore activities in the other Contracting State is associated with another enterprise and that other enterprise continues, as part of the same project, the same offshore activities that are or were being carried on by the first-mentioned enterprise, and the afore-mentioned activities carried on by both enterprises – when added together – exceed a period of 30 days, then each enterprise shall be deemed to be carrying on its activities for a period exceeding 30 days in a 12 months period;
- b) an enterprise shall be regarded as associated with another enterprise if one holds directly or indirectly at least one third of the capital of the other enterprise or if a person holds directly or indirectly at least one third of the capital of both enterprises.

4. However, for the purpose of paragraph (3) of this Article the term “offshore activities” shall be deemed not to include:

- a) one or any combination of the activities mentioned in paragraph (4) of Article 5;

- b) towing or anchor handling by ships primarily designed for that purpose and any other activities performed by such ships;
- c) the transport of supplies or personnel by ships or aircraft in international traffic.

5. A resident of a Contracting State who carries on offshore activities in the other State, which consist of professional services or other activities of an independent character, shall be deemed to be performing those activities from a fixed base in the other State if the offshore activities in question last for a continuous period of 30 days or more.

6. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment connected with offshore activities carried on through a permanent establishment in the other Contracting State may, to the extent that the employment is exercised offshore in that other State, be taxed in that other State.

7. Where documentary evidence is produced that tax has been paid in Sweden on the items of income may be taxed in Sweden according to Article 7 and Article 14 in connection with respectively paragraph (3) and paragraph (5) of this Article and paragraph (6) of this Article, the Netherlands shall allow a reduction of its tax, which shall be computed in conformity with the rules laid down in paragraph (3) of Article 24.

## **Chapter VII**

### **Special Provisions**

#### **Article 26**

##### **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 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 State.

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 (4) of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

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

5. Contributions paid by, or on behalf of, an individual who is a resident of a Contracting State and who is not a national of that State, to a pension plan that is recognized for tax purposes in the other Contracting State will be treated in the same way for tax purposes in the first-mentioned State as a contribution paid to a pension plan that is recognized for tax purposes in that first-mentioned State, provided that

- a) such individual was contributing to such pension plan before he became a resident of the first-mentioned State; and
- b) the competent authority of the first-mentioned State agrees that the pension plan corresponds to a pension plan recognized for tax purposes by that State.

The competent authorities of the Contracting State may by common agreement prescribe conditional rules concerning the application of this provision.

For the purpose of this paragraph, "pension plan" includes a pension plan created under a public social security system.

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

## **Article 27**

### **Mutual Agreement Procedure**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph (1) of Article 26, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. The competent authorities of the Contracting State may by mutual agreement settle the mode of application of the limitations referred to in Articles 10, 11 and 12.

## **Article 28**

### **Exchange of Information**

1. The competent authorities of the Contracting State shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting State concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in 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 Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph (1) be construed so as to impose on a Contracting State the obligation:

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

**Article 29**  
**Assistance in Recovery**

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

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

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

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

4. The obligation to provide assistance in the recovery of tax claims concerning a deceased person or his estate is limited to the value of the estate or the property acquired by each beneficiary of the estate, according to whether the claim is to be recovered from the estate or from the beneficiaries thereof.

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

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

6. The request for administrative assistance in the recovery of a tax claim shall be accompanied by:

- a) a declaration that the tax claim concerns a tax covered by the Convention and that the conditions of paragraph (3) are met.
- b) an official copy of the instrument permitting enforcement in the applicant State;
- c) any other document required for recovery;
- d) where appropriate, a certified copy confirming any related decision emanating from an administrative body or a public court.

7. The applicant State shall indicate the amounts of the tax claim to be recovered in both the currency of the applicant State and the currency of the requested State. The rate of exchange to be used for the purpose of the preceding sentence is the last selling price settled on the most representative exchange market or markets of the applicant State. Each amount recovered by the requested State shall be transferred to the applicant State in the currency of the requested State. The transfer shall be carried out within a period of a month from the date of the recovery.

8. At the request of the applicant State, the requested State shall, with a view to the recovery of an amount of tax, take measures of conservancy even if the claim is contested or is not yet the subject of an instrument permitting enforcement, in so far as such is permitted by the laws and administrative practice of the requested State.

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

10. Questions concerning any period beyond which a tax claim cannot be enforced shall be governed by the law of the applicant State. The request for assistance in the recovery shall give particulars concerning that period.

11. Acts of recovery carried out by the requested State in pursuance of a request for assistance, which, according to the laws of that State, would have the effect of suspending or interrupting the period mentioned in paragraph (10), shall also have this effect under the laws of the applicant State. The requested State shall inform the applicant State about such acts.

12. The requested State may allow deferral of payment or payment by installments, if its laws or administrative practice permit it to do so in similar circumstances; but it shall first inform the applicant State.

13. The competent authorities of the Contracting States shall by common agreement prescribe rules concerning minimum amounts of tax claims subject to a request for assistance.

14. The Contracting States shall reciprocally waive any restitution of costs resulting from the respective assistance and support which they lend each other in applying this Convention. The applicant State shall in any event remain responsible towards the requested State for the pecuniary consequences of acts of recovery which have been found unjustified in respect of the reality of the tax claim concerned or of the validity of the instrument permitting enforcement in the applicant State.

### **Article 30**

#### **Diplomatic Agents and Consular Officers**

1. Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

2. For the purposes of the Convention an individual, who is a member of a diplomatic or consular mission 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 submitted therein to the same obligations in respect of taxes on income and on capital as are residents of that State.

3. The Convention shall not apply to international organisations, organs and officials thereof and members of a diplomatic or consular mission 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 or on capital as are residents of that State.

### **Article 31**

#### **Territorial Extension**

1. This Convention may be extended, either in its entirety or with any necessary modifications, to either or both of the countries of Aruba or the Netherlands Antilles, if the country concerned imposes taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed in notes to be exchanged through diplomatic channels.

2. Unless otherwise agreed the termination of the Convention shall not also terminate any extension of the Convention to any country to which it has been extended under this Article.

## **Chapter VIII**

### **Final Provisions**

#### **Article 32**

##### **Entry Into Force**

1. The Convention shall enter into force on the thirtieth day after the latter of the dates on which the respective Governments have notified each other in writing that the formalities constitutionally required in their respective States have been complied with, and its provisions shall have effect for the taxable years and periods beginning on or after the first day of January in the calendar year next following that in which the Convention has entered into force.

2. The Convention between the Kingdom of the Netherlands and the Kingdom of Sweden for the avoidance of double taxation and the establishment of rules for reciprocal administrative assistance with respect to taxes on income and on capital, with Protocol, signed at The Hague on 12 March 1968, shall terminate upon the entry into force of this Convention. However, the provisions of the 1968 Convention shall continue in effect until the provisions of this Convention, in accordance with the provisions of paragraph (1) of this Article, shall have effect.

#### **Article 33**

##### **Termination**

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving written 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 Convention shall cease to have effect for the taxable years and periods beginning on or after the first day of January in the calendar year next following that in which the Convention has been terminated.