

1995 Income Tax Convention and Final Protocol (English Translation)

Signed date: May 16, 1995

In force date: December 15, 1995

Effective date: January 1, 1996. See Article 28.

Status: In Force

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

[TRANSLATION]

The Kingdom of the Netherlands and the Government of the Republic of Tunisia,
Desiring that both States conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

Chapter I. Scope of the Convention

Article 1 Personal Scope of the Convention

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

Article 2 Taxes Covered in the Convention

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

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 Convention shall apply are, in particular:

a) in the case of the Netherlands:

- (i) taxation on income;
- (ii) taxation on wages;

(iii) corporate tax, including the Government's share in net profits obtained through the exploitation of natural resources by virtue of the Mine Law of 1810 with regard to concessions made since 1967, or by virtue of the Netherlands Mine Law continental shelf 1965;

(iv) taxation on dividends;

(hereafter named: "Netherlands taxation");

b) in the case of Tunisia:

(i) l'impôt sur le revenu des personnes physiques (the taxation on income of natural persons);

(ii) l'impôt sur les sociétés (corporate tax);

(hereafter named: "Tunisia taxation").

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

Chapter II. Definitions

Article 3 General Definitions

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

a) the term "Netherlands" means that portion of the Kingdom of the Netherlands situated in Europe, and the territories that are situated outside of the territorial waters of the Netherlands, in accordance with international law, that may exercise sovereign rights with regard to the use and exploitation of these territories and the natural resources therein;

b) the term "Tunisia" means the territory of the Republic of Tunisia and the areas outside of the territorial waters of Tunisia, in accordance with international law, that may exercise sovereign rights with regard to the use and exploitation of these territories and the natural resources therein;

c) the terms "a Contracting State" and "the other Contracting State" mean the Netherlands or Tunisia, as the context requires; the term "both Contracting States" means the Netherlands and Tunisia;

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

e) the term "company" means any corporate body 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 out by a resident of a Contracting State and an enterprise carried out by a resident of the other Contracting State;
- g) the term "international traffic" means all transport by means of ship or aircraft operated by an enterprise whose place of effective service is situated in a Contracting State, except when the ship or aircraft is used exclusively between sites located in the other Contracting State.
- h) the term "nationals" means:
 - (i) all individuals possessing the nationality of a Contracting State;
 - (ii) all legal persons, partnerships and associations deriving their status as such from the law in force in a Contracting State;
- i) the term "competent authority" means:
 - (i) in the Netherlands: the Minister of Finance or his authorized representative;
 - (ii) in Tunisia: the Minister of Finance or his authorized representative.

2. As regards the application of the Convention by a Contracting State, any term not otherwise defined shall have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the Convention, unless the context requires otherwise or the competent authorities come to a mutual interpretation on the basis of article 24 of this Convention.

Article 4 Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. This term does not include individuals who reside in the State and is only subject to taxes on income received from natural sources located in the State.

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

- a) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (center of vital interests);
- b) If the Contracting State in which he has his center of vital interests cannot be determined, or if he does not have a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has a habitual abode;
- c) If he has a habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State in which he is a national;
- d) If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

Article 5 Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried out.

2. The term "permanent establishment" shall especially include:

- a) a place where a service is provided;
 - b) a branch;
 - c) an office;
 - d) a factory;
 - e) a workshop;
 - f) a mine, oil or gas well, a quarry or other place of extraction of natural resources;
3. A construction site or assembly site is considered a permanent establishment if the activity at the site continues past six months. 4. Notwithstanding the prior provisions of the article, the term permanent establishment shall not be deemed 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 for collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of pursuing other activities that are of an auxiliary or preparatory nature;
- 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 7 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. Notwithstanding the previous provisions of this article, an insurance enterprise of one of the Contracting States, except in cases of reinsurance, is deemed to have a permanent establishment in the other State if it receives premiums or insures risk on the territory of the other State by means of an independent agent under the provisions of paragraph 7.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries out business in the 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.

8. 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 out 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 that 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, 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, leasing, 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 out business as previously stated, 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 out 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 that are incurred for the purposes of the permanent establishment - including

executive and general administrative expenses - 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 that 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 service of the enterprise is situated.

2. If the place of effective service of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home port of the ship is situated, or if there is no such home port, in the Contracting State in 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 9

1. Where

a) an enterprise of a Contracting State participates directly or indirectly in the service, control or capital of an enterprise of the other Contracting State, or
b) the same persons participate directly or indirectly in the service, 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 that 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 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 States shall, if necessary, consult each other.

Article 10 Dividends

1. Dividends paid by a company that 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 recipient is the beneficial owner of the dividends, the tax so charged shall not exceed:

a) 0 percent of the gross amount of the dividends if the beneficial owner is a company that holds directly at least 10 percent of the capital of the company paying the dividends;
b) 20 percent 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.

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

3. The provisions of paragraphs 1 and 2, subsection a, shall apply on the condition that the relationship between the company paying the dividend and the beneficial recipient of the dividend is not primarily established or maintained in order to benefit from the lower percentage as stipulated in paragraph 2, subsection a.

4. 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 in which the company making the distribution is a resident.

5. 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 out business in the other Contracting State in 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.

6. Where a company that 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 may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 10 percent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising from a Contracting State and paid to beneficial owner of the interest who is a resident of the other State is only taxable in the other State if the interest:

- a) was paid on the basis of obligations or a debt claim, or any other such claim by the authorities of the Contracting State or by a political subject or a local public corporation; or
- b) was paid on the basis of loans or other such claims made by the authorities of the other Contracting State, a political subject thereof, a local public corporation thereof, the Central Bank of the other State or by a corporation (including financial institutions) that are governed by the State or by a political subdivision or a local authority thereof.

4. The term "interest" as used in this article means income from debt claims of every kind, whether or not secured by mortgage, with the exception of income from bonds that share in a portion of the debtor's profits, and in particular income from government securities and income from bonds or debentures, including premiums and prizes attached to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this article.

5. The provisions of paragraphs 1, 2 and 3 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 to 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.

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

7. 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 that 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 latter amount. In such cases, the excess part of the payments shall remain taxable according to the laws of each Contracting State, having given due regard 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 in that other State.

2. The taxation of royalties arising in a Contracting State, in situations where the beneficial owner is entitled to royalties, may not exceed 11 percent of the gross amount of said royalties, in accordance with the laws of the State.
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 cinematography films, 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 (with the exception of payments for the lease of ships and aircraft used in international transport), and for information concerning industrial, commercial or scientific experience, as well as for economic research or for technical services given in the State where the payments arise.
4. The provisions or paragraph 1 shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise a permanent establishment, or performs independent work in the other State from a fixed base, with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of article 7 and article 14 shall apply.
5. Royalties are deemed to arise from a Contracting State if they are paid by the State, by a political subdivision, by a local authority, or by a resident of the State. However, if the person paying the royalties, whether he is a resident of a Contracting State or not, has a permanent establishment or a fixed base in a Contracting State for which a contract was made for which royalties were paid, and these royalties originate from the permanent establishment or fixed base, these royalties are considered to arise from the State where the permanent establishment or fixed base is located.
6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this article shall apply only to the latter amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, with due regard 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 or 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 from 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 is situated; the place of effective management, in such instances, is determined in accordance with the provisions of article 8, paragraph 2.
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 in which the alienator is a resident.
5. The provisions of paragraph 4 do not infringe upon the right of each of the Contracting States to raise taxes, in accordance with the laws of said States, on gains from the alienation of shares or profits that constitute a significant portion of the capital of a company that is a resident of a Contracting State, and in accordance with its own laws are received by a natural person who is a resident of the other Contracting State and who in the course of the past three years, beginning with the year that the shares or profits were alienated, has been a resident of the first mentioned State.

Article 14 Independent Personal Work

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent nature shall only be taxable in the State. These gains may also be taxed in the other Contracting State:
 - a) if the resident has a fixed base available to him in the other Contracting State for the purpose of performing his activities; in such cases, the income may be taxed in the other State, but only so much of it as is attributable to that fixed base; or

b) if he remains in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned; in such cases, only that portion of the income attributable to activities performed in the other State is taxable in the other State.

2. The term "professional services" especially includes 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 to 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 to 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 the fiscal 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 or a fixed base that the employer has in the other State.

3. Notwithstanding the preceding provisions of this article, the remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed only in the State.

Article 16 Directors' Fees and Remuneration of Top-Level Management

Bonuses, attendance money and other similar payments 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 the other State.

Article 17 Artists and Athletes

1. Notwithstanding the provisions of articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theater, movie, radio or television artist, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect to personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete 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 athlete are exercised.

Article 18 Pensions

1. Subject to the provisions of article 19, paragraph 2, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration that are not of a regular nature and are paid to a resident of a Contracting State for employment performed in the other Contracting State, is taxable in that other State.

3. Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid in accordance with the Social Security laws of a Contracting State are taxable only in that State.

Article 19 Governmental Functions

1.

a) Salaries other than pensions paid by a Contracting State, or a political subdivision, or a local authority thereof to an individual in respect to services rendered to that State or subdivision or authority shall be taxable only in that State.

b) However, such salaries 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) 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 to services rendered to that State or subdivision or authority shall be taxable only in that State.

- b) However, such pensions shall only be taxable in the other Contracting State if the individual is a resident or, and a national of, that State.
3. The provisions of articles 15, 16 and 18 shall apply to salaries 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 Students and Apprentices

A student or business apprentice who is or was immediately before his visit to 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 is exempt from taxation on:

- a) payments received for the purpose of his maintenance, education or training, provided that such payments arise from sources outside that State, and
- b) remuneration received for employment performed in support of his maintenance and for the purpose of his education or training, and which does not exceed 4000 Netherlands Guilders or equivalent thereof in Tunisian dinars in any calendar year for a period of time not to exceed five years from the date of his first arrival in the State.

Article 21 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 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 cases, the provisions of article 7 and article 14, as the case may be, shall apply.

Chapter IV. Avoidance of Double Taxation

Article 22 Avoidance of Double Taxation

Double taxation is avoided in the following manner:

1. The Netherlands is permitted to raise taxes on its residents on the basis of items of income which, in accordance with the provisions of this Convention, may be taxed in Tunisia.
2. Where a resident of the Netherlands derives items of income which, in accordance with article 6, article 7, article 10, paragraph 5, article 11, paragraph 5, article 12, paragraph 4, article 13, paragraphs 1 and 2, article 14, article 15, paragraph 1, article 18, paragraph 3, article 19, paragraph 1, subsection a, and paragraph 2, subsection a, and article 21, paragraph 2 of this Convention may be taxed in Tunisia and are included in the basis defined in paragraph 1, the Netherlands exempts these items by permitting a deduction from tax in the Netherlands. This deduction is calculated in accordance with the provisions of the law of the Netherlands, in keeping with the principle of the exemption. For this purpose, the said items include the total amount of the items of income that are exempt from the provisions for taxation in the Netherlands.
3. The Netherlands grants, moreover, a deduction on the Netherlands tax thus charged on the items of income which, in accordance with article 10, paragraph 2, article 11, paragraph 2, article 12, paragraph 2, article 16 and article 17 of this Convention may be charged in Tunisia, in as far as these items include the basis defined in paragraph 1.

The amount of this deduction is equal to the tax paid on items of income in Tunisia, but shall not exceed that part of the tax, as computed before the deduction is given, which are exempted according to the provisions in the law of the Netherlands for the avoidance of double taxation.

4. In the determination of taxation owed in the Netherlands on dividends, interest and royalties, these categories of income are subject to the amount of taxes paid in Tunisia within the percentage ranges established in this Convention, and notwithstanding the exemption or deduction of taxes permitted Tunisia in accordance with its national law.

In the application of the preceding provisions of this paragraph in regards to dividends, these are, in the case of taxes raised in the Netherlands, subject to taxation in Tunisia according to the percentage rate listed in article 10, paragraph 2, subsection b, and notwithstanding the percentage of ownership in the capital of the company paying the dividend.

The provisions of this paragraph are applicable for a period of 15 years from the date of entry into force of this Convention. This period shall be deemed extended for a period of 10 years, barring explicit termination by the authorities of the Contracting State, and then 6 months prior to the end of the intended period.

5. Where in accordance with the provisions of this Convention a resident of Tunisia receives income that is taxable in the Netherlands, Tunisia shall grant, in accordance with the provisions of its national law regarding taxation of the income of residents, a deduction from the tax on the income of that resident in an amount equal to the income tax paid in the Netherlands. This deduction, however, shall not exceed that part of the income tax as computed before the deduction is given, which is attributable to the income that may be taxed in the Netherlands.

In the application of this paragraph, the taxation defined in article 2, paragraph 3, subsection a, and paragraph 4, is deemed taxation on income.

6. Where a resident of a Contracting State receives gains in accordance with the provisions of article 13, paragraph 5, or income in accordance with the provisions of article 18, paragraph 2, which may be taxed in the other Contracting State, the other State shall allow as a deduction from the tax of said gains or income an amount equal to the tax paid in the first mentioned State.

Chapter V. Special Provisions

Article 23 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 that an enterprise of a Contracting State has in the other Contracting State shall not be less favorably 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, accommodations 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 7 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 first mentioned State are or may be subjected.

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

Article 24 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 in which he is a resident or, if his case falls under paragraph 1 of article 23, to that of the Contracting State in 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 endeavor, 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 endeavor 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 as defined in the preceding paragraphs.

Article 25 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 Convention and especially as they pertain to fraud and the avoidance of taxation.

Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes that are the subject of the Convention.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States the obligation:

a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;

b) to supply information that 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 that 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.

Article 26 Diplomatic and Consular Officials

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

2. In the application of this Convention, a natural person who is a diplomatic or consular representative of one Contracting State in the other Contracting State is deemed a resident of the State that sent him and is subject to the same regulations regarding taxation as residents of that State.

3. The Convention shall not apply to international organizations, their organs or officials, nor to diplomatic or consular representatives from a third State if he is situated on the territory of a Contracting State and he is not subject to the same requirements regarding taxation on income as the resident of that State.

Chapter VI. Final Provisions

Article 27 Entry Into Force

1. This Convention shall be ratified and the instruments of ratification shall be exchanged via diplomatic means.

2. This Convention shall enter into force on the thirtieth day after the date of exchange of the instruments of ratification and is applicable:

(i) with regard to the taxes levied at the source: on income paid or payable as of January 1 of the calendar year immediately following the year of entry into force; and

(ii) with regard to the other taxes: on income from tax years and tax periods beginning on January 1 of the calendar year immediately following the year of entry into force.

Article 28 Termination

This Convention shall remain in force for an indefinite period of time, but each of the Contracting States may give written notice of termination to the other Contracting State, through diplomatic channels, prior to the thirtieth of June of any calendar year after the fifth year following the exchange of the instruments of ratification, and in such event the Convention is applicable to:

a) with regard to the taxes levied at the source: on income paid or payable as of January 1 of the calendar year immediately following the year of entry into force, and thereafter; and

b) with regard to the other taxes: on income from tax years and tax periods beginning on January 1 of the calendar year immediately following the year of entry into force, and thereafter.

In witness thereof the undersigned, having been thus empowered, have signed this Convention.

Done in triplicate at The Hague on May 16, 1995, in the Dutch, French and Arabic languages. In case of divergence of interpretation, the French text shall prevail.

FOR THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS:

W.A.F.G. Vermeed

FOR THE GOVERNMENT OF THE REPUBLIC OF TUNISIA:

Mohamed Ghannouchi

PROTOCOL

In the signature of this Convention between the Kingdom of the Netherlands and the Republic of Tunisia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, the signatories are in agreement that the following provisions form an integral part of the Convention.

With regard to Article 4

1. With regard to article 4, a natural person who resides aboard a ship without having an actual residence in a Contracting State is deemed to be a resident of the Contracting State where the ship has its homeport.

With regard to Article 7

2. It is understood that in the cases where survey, construction or assembly work have a permanent establishment, only the gains from these activities may be attributable to the permanent establishment. Consequently, profits obtained in the delivery of merchandise that is necessary for the performance of the previously stated activities and which is intended for the building supervisor and is delivered directly by the main office of the enterprise are not attributable to the permanent establishment.

3. With regard to article 7, paragraph 3, as it pertains to the profits of a permanent establishment and the deduction of allowed expenses - including executive and general administrative expenses - incurred for the benefit of the permanent establishment, whether in the State where the permanent establishment is headquartered or elsewhere.

No deduction is allowed for amounts (with exception of actual expenses) which are paid by the permanent establishment to the main office of the enterprise or to one of its offices in the form of royalties, compensation or other such payments for the use of patents or other rights, or as commissions for certain services, or for management services, except in cases of banking enterprises, as interest on amounts loaned to the permanent establishment.

The calculation of the profits for a permanent establishment is no longer withheld with amounts (with the exception of actual expenses) which are attributable to the permanent establishment of the main office of the enterprise or to any of its other offices as royalties, compensation or other such payments for the use of patents or other rights, or as commissions for certain services, or for management services, except in cases of enterprises involved in the banking industry, as interest on amounts loaned to the main office or to its other offices.

4. In as much as it is 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. Profit from shares in a partnership or corporation in a Contracting State shall not be taxed if a similar corporation does not have a permanent establishment in that State as prescribed in article 5 of this Convention.

With regard to Article 9

6. The conditions that associated enterprises have made, such as cost sharing agreements or general service agreements for, or based on, the calculation of expenses associated with management, general control of the enterprise, technical and business expenses, expenses for research and development and other such expenses constitute, of themselves, no condition as stated in article 9, paragraph 1.

With regard to Articles 11 and 12

7. Interest as stated in article 11, paragraph 2, is subject to a taxation rate of 7.5 percent in as far as the interest received by a resident of Tunisia in the Netherlands is not subject to deduction at the source and in as far as the Netherlands has not amended its taxation law regarding this point.

8. A financial institution in the sense of article 11, paragraph 3, subsection b, in the Netherlands pertains to the Netherlands Finance Corporation for Developing Countries (Nederlandse Financieringsmaatschappij voor Ontwikkelingslanden N.V.) and the Netherlands Investment Bank for Developing Countries (Nederlandse Investeringsbank voor Ontwikkelingslanden N.V.)

9. Royalties as stated in article 12, paragraph 2, are subject to taxation at a percentage rate of 7.5 percent in as far as the royalties received by a resident of Tunisia in the Netherlands are not subject to deduction at the source and in as far as the Netherlands has not amended its taxation law regarding this point.

With regard to Article 16

10. It is understood that a company in the Netherlands means persons so named by the general assembly of shareholders or by any other competent organ of that company and is taxed with the general management of the company differently depending on whether it is director or supervisory director.

With regard to Articles 18 and 19

11. It is understood that the provisions of article 18, paragraph 3, and article 19, paragraph 1, subsection a, and paragraph 2, subsection a, do not preclude the Netherlands to apply the provisions of article 22, paragraphs 1 and 2, of this Convention.

With regard to Article 22

12. It is understood that the provisions of article 22, paragraph 4, are applicable only if the debtor and the beneficial recipient of the dividends, interest and royalties are residents of Tunisia in the Netherlands, in accordance with the provisions of article 1 of this Convention.

13. The competent authorities of the Contracting States are in mutual agreement on the mode of application of this Convention, especially as it pertains to the formalities that residents of a Contracting State must conform to in order to receive a reduction or exemption of taxation in the other Contracting State, as provided for in this Convention.

14. In the application of articles 10, 11 and 12, the competent authority of the Contracting State that levied the tax must attempt to make restitution within a period of three years from the end of the calendar year in which the tax was levied.

In witness thereof the signatories, having been thus empowered by their individual governments, have signed this Protocol.

Done in triplicate at The Hague on May 16, 1995 in the Dutch, French and Arabic languages. In case of divergence of interpretation, the French text shall prevail.

FOR THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS:

W.A.F.G. Vermeed

FOR THE GOVERNMENT OF THE REPUBLIC OF TUNISIA:

Mohamed Ghannouchi