

# AGREEMENT OF 6<sup>TH</sup> OCTOBER, 2010

## Netherlands

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

### Chapter I Scope of the Convention

#### Article 1 Persons Covered

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

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

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

*a)* 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 Mijnbouwwet (Mining Act);
- de dividendbelasting (dividend tax);

(hereinafter referred to as "Netherlands tax");

*b)* in Panama:

- The impuesto sobre la renta provided in the Código Fiscal, Libro IV, Título I, and its related decrees and regulations

(hereinafter referred to as "Panamanian tax").

4. The Convention shall apply also to any identical or substantially similar taxes that 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 significant changes that have been made in their taxation laws.

## Chapter II Definitions

### Article 3 General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:
  - a) the terms “a Contracting State” and “the other Contracting State” mean the Kingdom of the Netherlands (the Netherlands) or Panama, as the context requires;
  - b) the term “the Netherlands” means the part of the Kingdom of the Netherlands that is situated in Europe, including its territorial sea, and any area beyond the territorial sea within which the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights;
  - c) the term “Panama” means the Republic of Panama and, when used in a geographical sense, means the territory of the Republic of Panama, including inland waters, its airspace, the territorial sea and any area outside the territorial sea upon which, in accordance with International Law and on application of its domestic legislation, the Republic of Panama exercises, or may exercise in the future, jurisdiction or sovereign rights with respect to the seabed, its subsoil and superjacent waters, and their natural resources;
  - d) the term “person” includes an individual, a company and any other body of persons;
  - e) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - f) the term “enterprise” applies to the carrying on of any business;
  - g) 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;
  - h) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
  - i) the term “competent authority” means:
    - (i) in the Netherlands: the Minister of Finance or his authorised representative;
    - (ii) in Panama: the Ministerio de Economía y Finanzas or its authorised representative;
  - j) the term “national” means any individual possessing the nationality of a Contracting State and any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;
  - k) the term “business” includes the performance of professional services and of other activities of an independent character;
  - l) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Contracting State requesting information.
2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of

that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

#### **Article 4 Resident**

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

2. A person, other than an individual, which has its place of incorporation or its place of management in a Contracting State, shall be deemed to be liable to tax in that State provided that income derived by that person is treated under the tax laws of that State as the income of that person and not as the income of its beneficiaries, members or participants.

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

- a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident only of the Contracting 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 Contracting State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- d) if the residence status of an individual cannot be determined in accordance with the provisions of subparagraphs a), b) and c) above, then, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

#### **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;
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
- g) an agricultural, pastoral or forestry property.

**3.** Likewise the term “permanent establishment” encompasses:

- a) a building site, a construction, assembly or installation project, or supervisory activities in connection therewith, constitutes a permanent establishment but only where such site, project or activities continue for a period or periods exceeding in the aggregate of more than 183 days within any twelve-month period;
- b) the rendering of services in a Contracting State, including consulting services, by an enterprise through employees or other personnel engaged by the enterprise, but only where these employees or personnel are present in that Contracting State for the performance of the same or connected project, during a period or periods aggregating more than 90 days in any twelve month period;
- c) the use of a structure, installations, drilling rig, ship or other like substantial equipment: for the exploration for, or exploitation of, natural resources; or in activities connected with that exploration or exploitation for a period or periods exceeding 90 days in any twelve month period.

**4.** Notwithstanding the preceding provisions of this Article, where an enterprise of a Contracting State carries on activities in the other Contracting State in connection with the exploration or exploitation of the seabed or any area below or above the seabed and their natural resources situated in that other State for a period of at least in the aggregate 30 days in any twelve month period, it shall be deemed to carry on such activities through a permanent establishment that the enterprise has in the other State, unless the activities are limited to those mentioned in paragraph 6. Activities in connection with the exploration or exploitation of the seabed or any area below or above the seabed and their natural resources shall be deemed not to include:

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

**5.** For the purposes of determining the duration of activities under paragraph 3 and 4, the period during which activities are carried on in a Contracting State by an enterprise associated with another enterprise shall be aggregated with the period during which activities are carried on by the enterprise with which it is associated if the first-mentioned activities are connected with the activities carried on in that State by the last-mentioned enterprise, provided that any period during which two or more associated enterprises are carrying on concurrent activities is counted only once. An enterprise shall be deemed to be associated with another enterprise if one is controlled directly or indirectly by the other, or if both are controlled directly or indirectly by a third person or persons.

**6.** Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

7. Notwithstanding the provisions of paragraphs 1, 2, 3 and 4, where a person, other than an agent of an independent status to whom paragraph 8 applies, is acting in a Contracting State on behalf of an enterprise of the other Contracting State 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 the first mentioned State with respect to any activities that said person undertakes for the enterprise if said person:

- a) has, and habitually exercises, in that Contracting State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 6 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- b) has no such powers, but habitually maintains in the first mentioned State a warehouse for goods or merchandise which is regularly used to deliver goods or merchandise in the name of the enterprise, if the goods or merchandise are sold in the Contracting State where the warehouse is located.

8. 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. Notwithstanding the above, when such agent performs all or almost all of his activities in the name of said enterprise, and the enterprise and the agent are united in their commercial or financial relationships by imposed or accepted conditions that differ from the conditions that would be established by independent parties, it will not be considered as an independent agent with regards to this paragraph.

9. 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, 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 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. Whereby the ownership of shares, participations or other rights in an enterprise or any other legal person attributes directly or indirectly to a resident of a Contracting State right to the use of immovable property situated in the other Contracting State that said entity or legal person possesses therein, the income derived by the owner of the shares, participations or rights as a result of the direct use, letting, or use in any other form of said property, may be taxed in the Contracting State in which the immovable property is situated, to the same extent to which the owner of such rights would be taxed if he were a resident of that other State.

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

## **Article 7**

### **Business Profits**

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

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

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

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

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

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

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

## **Article 8**

### **Shipping and Air Transport**

1. The provisions of this Convention shall not affect the application of the Convention between the Kingdom of the Netherlands and the Republic of Panama for the Avoidance of Double Taxation with respect to enterprises operating ships or aircraft in international traffic, signed at the Hague on the 28th of April 1997.

2. The provisions of this Convention shall not apply with regards to the taxes, tolls, duties or similar payments that might be applicable upon crossing the Panama Canal.

## **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 cost sharing arrangements or general services agreements, for or based on the allocation of executive, general administrative, technical and commercial expenses, research and development expenses and other similar expenses, is not in itself a condition as meant in 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 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 may 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 which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

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

3. Notwithstanding the provisions of paragraph 2, the Contracting State of which the company paying the dividends is a resident shall not levy a tax on dividends paid by that company, if the beneficial owner of the dividends is:

- a) a company, the capital of which is wholly or partly divided into shares and which is a resident of the other Contracting State and holds directly at least 15 per cent of the capital of the company paying the dividends, provided that:
  - (i) the shares of the company receiving the dividends are regularly traded on a recognised stock exchange; or
  - (ii) at least 50 per cent of the shares of the company receiving the dividends is owned directly or indirectly by one or more individuals who are residents of

either Contracting State or by one or more companies the shares of which are regularly traded on a recognised stock exchange, but only if the last-mentioned companies:

- (aa)* are residents of either Contracting State; or
    - (bb)* would be entitled to benefits which are similar to or more favourable than the benefits provided by this paragraph pursuant to a comprehensive arrangement for the avoidance of double taxation between their state of residence and the Contracting State from which the benefits of this paragraph are claimed or pursuant to a multilateral agreement to which their state of residence and the Contracting State from which the benefits of this paragraph are claimed, are a party; or
  - (iii)** the company receiving the dividends is engaged in the active conduct of a trade or business in the Contracting State of which it is a resident (other than the activities of making or managing investments for the resident's own account, unless these activities are banking or insurance carried on by a bank or an insurance company).
- b)* a Contracting State, or a political subdivision or local authority thereof;
- c)* a company, the capital of which is wholly or partly divided into shares, and which is a resident of the other Contracting State and holds directly at least 15 per cent of the capital of the company paying the dividends, provided that this company is a headquarters company for a multinational corporate group which provides a substantial portion of the overall supervision and administration of the group and which has, and exercises, independent discretionary authority to carry out these functions. A person shall be considered a headquarters company for this purpose only if:
- (i)** the corporate group consists of corporations resident in, and engaged in an active business in, at least five countries or five groupings of countries and the business activities carried on in each of the five countries (or five groupings of countries) generate at least 10 per cent of the gross income of the group; and
  - (ii)** no more than 50 per cent of its gross income is derived from the Contracting State other than the Contracting State of which the headquarters company is a resident; or
- d)* a pension fund that is recognised and controlled according to the statutory provisions of a Contracting State.

**4.** Where a company fails to qualify for benefits under paragraph 3, it may however qualify if the competent authority of the Contracting State which has to grant the benefits determines that the establishment, acquisition or maintenance of the company does not have as its main purpose or one of its main purposes to secure the benefits of paragraph 3.

Such determination shall be based on all facts and circumstances including:

- a)* the nature and volume of the activities of the company in its country of residence in relation to the nature and volume of the dividends;
- b)* both the historical and the current ownership of the company; and
- c)* the business reasons for the company residing in its country of residence.

The competent authority of the Contracting State which has to grant the benefits shall consult with the competent authority of the other Contracting State before denying the benefits under this paragraph.

5. For the purposes of paragraph 3, the term “recognised stock exchange” means:
- a) any of the stock exchanges in the member states of the European Union (EU);
  - b) the NASDAQ System and any stock exchange in the United States of America which is registered with the U.S. Securities and Exchange Commission as a national securities exchange under the U.S. Securities Exchange Act of 1934, the Mexican Stock Exchange (Bolsa Mexicana de Valores) and the Toronto Stock Exchange;
  - c) the Panama Stock Exchange; and
  - d) any other stock exchange agreed upon by the competent authorities of the Contracting States, provided that the purchase or sale of shares on the stock exchange is not implicitly or explicitly restricted to a limited group of investors.

6. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraphs 2, 3 and 4.

7. The provisions of paragraphs 2, 3 and 4 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

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

9. The provisions of paragraphs 1, 2, 3, 4 and 11 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, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

10. 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 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.

11. Notwithstanding the provisions of paragraphs 1, 2 and 10, dividends and distributions in regard of profit sharing certificates paid by a company which under the laws of a Contracting State is a resident of that State, to an individual who is a resident of the other Contracting State and who upon ceasing to be a resident of the first-mentioned State is taxed on the capital appreciation of shares, profits sharing certificates, call options and usufruct on shares and profit sharing certificates in and debt claims on a company for the period of residence of that individual for the period of residency of the first-mentioned State, may also be taxed in that State in accordance with the laws of that State, but only for a period of ten years after emigration of the individual.

## **Article 11**

### **Interest**

1. Interest arising in a Contracting State and beneficially owned by 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 beneficial owner of the interest is a resident of the other Contracting State, the

tax so charged shall not exceed 5 percent of the gross amount. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, 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

- a) the beneficial owner of the interest is a Contracting State, the Central Bank of a Contracting State, any of its political subdivisions or local entities;
- b) the interest is paid in relation with the sale on credit of merchandise or equipment to an enterprise of a Contracting State;
- c) the interest is paid to other entities or bodies (including financial institutions) as a result of financing provided by such institutions or bodies in connection with agreements concluded between the Governments of the Contracting States; or
- d) the beneficial owner of the interest is a pension fund that is recognised and controlled according to the statutory provisions of a Contracting State.

4. The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and in particular, income from government securities and income from bonds or debentures, including premiums or prizes attaching to such securities, bonds or debentures, as well as guarantee fees and commissions connected therewith. Penalty charges for a late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 and 2 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, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner of the interest 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 of the interest 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 whose beneficial owner is a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including software, cinematograph films, or films or tapes and other means of image or sound reproduction, any patent, trade mark, drawings, designs or models, plans, secret formulas or processes, or for the use of, or the right to use, industrial,

commercial, or scientific equipment or for information concerning industrial commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, 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 shall apply.

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

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. 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, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

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

4. Gains derived by a an individual resident of a Contracting State from the alienation of shares or comparable interests in a company resident of the other Contracting State who has held more than 10 percent of the vote, value or capital stock in such company during the 12-month period prior to such alienation, may be taxed in that other State.

5. Gains derived by a resident of a Contracting State, other than an individual, from the alienation of shares or comparable interests in a company resident of the other Contracting State which has held more than 10 percent of the vote, value or capital stock in such company for a period not exceeding 24 months prior to such alienation may be taxed in that other State.

6. Gains derived by a resident of a Contracting State from the alienation of shares, other than shares which are traded on a recognised stock exchange, or other comparable interests deriving more than 90 per cent of their value directly or indirectly from immovable property situated in the other Contracting State, other than immovable property in which that company or the holders of those interests carry on their business, may be taxed in that other Contracting State. However, such gains shall be taxable only in the first-mentioned State where:

- a) the resident owned less than 10 per cent of the shares or other comparable interests prior to the first alienation;

- b) the gain is derived in the course of a corporate reorganisation, amalgamation, division or similar transaction; or
- c) the resident is a pension fund that is recognised and controlled according to the statutory provisions of a Contracting State, provided that the gain is not derived from the carrying on of a business, directly or indirectly, by that pension fund.

7. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4, 5 and 6 shall be taxable only in the Contracting State of which the alienator is a resident.

#### **Article 14**

##### **Income From Employment**

1. Subject to the provisions of Articles 15, 17 and 18, 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 shall be taxed in that other State.

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

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

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

#### **Article 15**

##### **Directors' Fees**

1. Directors' fee 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 that other State.

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

#### **Article 16**

##### **Entertainers and Sportspersons**

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a

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

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

3. The provisions of paragraphs 1 and 2 shall not apply to income derived by a resident of a Contracting State from activities exercised in the other Contracting State, if the visit to that other State is supported at least by 75 percent by public funds of one or both of the Contracting States or political subdivisions or local authorities thereof, or takes place under a cultural agreement between the Governments of the Contracting States. In such case, the income shall be taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

## **Article 17**

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

1. Pensions, annuities and other similar remuneration, arising in a Contracting State and paid to a resident of the other Contracting State, may be taxed in the first-mentioned State. The preceding sentence shall also apply to pensions paid and other payments made under the provisions of the social security legislation of a Contracting State.

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

3. The provisions of this Article shall also apply in case a lump sum payment is made in lieu of a pension, an annuity or other similar remuneration before the date on which the pension, the annuity or other similar remuneration commences.

4. A pension, an annuity or other similar remuneration shall be deemed to be derived from a Contracting State if and insofar as the contributions or payments associated with the pension, annuity or similar remuneration, or the entitlements received from it qualified for tax relief in that State. The transfer of a pension from a pension fund or an insurance company in a Contracting State to a pension fund or an insurance company in another State shall not restrict in any way the taxing rights of the first-mentioned State under this Article.

## **Article 18**

### **Government Service**

1. a) Salaries, wages and other similar remuneration 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 political subdivision or local authority shall be taxable only in that State.

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

(i) is a national of that State; or

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

2. The provisions of articles 14, 15, 16 and 17 shall apply to salaries, wages, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

## **Article 19**

### **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 20**

### **Other Income**

1. Items of income beneficially owned by 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 and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

3. Where, by reason of a special relationship between the persons who have carried on activities from which income referred to in paragraph 1 are derived, the payment for such activities exceeds the amount which would have been agreed upon by independent persons, the provisions of paragraph 1 shall apply only to the last mentioned amount. In such case, the excess part of the payment shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of the Convention.

4. Notwithstanding the provisions of paragraphs 1 and 2, items of income derived by a resident of a Contracting State not dealt with in the foregoing articles of this Convention and arising in the other Contracting State may also be taxed in that other State.

## **Chapter IV**

### **Methods for Elimination of Double Taxation**

## **Article 21**

### **Elimination of Double Taxation**

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

- a) The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed the items of income which, according to the provisions of this Convention, may be taxed in Panama.
- b) However, where a resident of the Netherlands derives items of income which according to paragraphs 1, 3, 4 and 5 of Article 6, paragraph 1 of Article 7, paragraph 9 of Article 10, paragraph 5 of Article 11, paragraph 4 of Article 12, paragraphs 1 and 2 of Article 13, paragraph 1 and 3 of Article 14, paragraph 1 of Article 17, paragraph 1 (subparagraph a) of Article 18 and paragraph 2 of Article 20 of this Convention may be taxed in Panama and are included in the basis referred to in subparagraph a), the Netherlands shall exempt such items of income by allowing a reduction of its tax. This reduction shall be computed in conformity with the

provisions of the Netherlands law for the avoidance of double taxation. For that purpose the said items of income shall be deemed to be included in the amount of the items of income which are exempt from Netherlands tax under those provisions.

- c) Further, the Netherlands shall allow a reduction from the Netherlands tax so computed for the items of income which according to paragraphs 2 and 11 of Article 10, paragraph 4, 5, 6 and 7 of Article 13, paragraph 1 of Article 15, paragraphs 1 and 2 of Article 16, paragraph 3 of Article 17 and paragraph 4 of Article 20 of this Convention may be taxed in Panama to the extent that these items are included in the basis referred to in paragraph 1. The amount of this reduction shall be equal to the tax paid in Panama on these items of income, but shall, in case the provisions of the Netherlands law for the avoidance of double taxation provide so, not exceed the amount of the reduction which would be allowed if the items of income so included were the sole items of income for which the Netherlands gives a reduction under the provisions of the Netherlands law for the avoidance of double taxation.

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

- d) Notwithstanding the provisions of subparagraph b), the Netherlands shall allow a reduction from the Netherlands tax for the tax paid in Panama on items of income which according to paragraph 1 of Article 7, paragraph 9 of Article 10, paragraph 5 of Article 11, paragraph 4 of Article 12 and paragraph 2 of Article 20 of this Convention may be taxed in Panama to the extent that these items are included in the basis referred to in subparagraph a), insofar as the Netherlands under the provisions of the Netherlands law for the avoidance of double taxation allows a reduction from the Netherlands tax of the tax levied in another country on such items of income. For the computation of this reduction the provisions of subparagraph c) of this Article shall apply accordingly.

**2. In Panama, double taxation shall be eliminated as follows:**

- a) Where a resident of Panama derives income which, in accordance with the provisions of this Convention, may be taxed in the Netherlands, Panama will exempt such income from taxes.
- b) Where in accordance with any provision of the Convention income derived by a resident of Panama is exempt from tax in Panama, Panama may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income.

**Article 22  
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.** Stateless persons who are residents of a Contracting State shall not be subjected in either 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 the State concerned in the same circumstances, in particular with respect to residence, are or may be subjected.

3. 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.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, paragraph 6 of Article 12, or paragraph 3 of article 20 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.

5. 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.

6. Contributions paid by, or on behalf of, an individual who exercises employment or self-employment a Contracting State to a pension plan that is recognised for tax purposes in the other Contracting State shall be treated in the same way for tax purposes in the first-mentioned State as a contribution paid to a pension scheme that is recognised for tax purposes in that first-mentioned State, provided that

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

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

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

### **Article 23 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 22, 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 the statute of limitations or any other time limit 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, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. The competent authorities may also agree on other forms of resolution when a mutual agreement cannot be reached.

## **Article 24**

### **Exchange of Information**

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

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

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institutions, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

## **Article 25**

### **Members of Diplomatic Missions and Consular Posts**

1. Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of International Law or under the provisions of special agreements.

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

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

## **Article 26**

### **Territorial Extension**

1. This Convention may be extended, either in its entirety or with any necessary modifications, to parts of the Kingdom of the Netherlands which are not situated in Europe, if the parts concerned impose taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and shall be 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.
3. This Article shall not prevent Panama from, alternatively, entering into a Convention with respect to parts of the Kingdom of the Netherlands (such as Aruba, Curacao, Sint Maarten, Saba, Bonaire, and Sint Eustatius) other than the Netherlands.

## **Article 27**

### **Measures to Counter Improper Use of the Convention**

Nothing in this Convention shall prejudice the right of each Contracting Party to apply any of its domestic laws and measures for preventing, discouraging, avoiding or counteracting the effect of any transaction, arrangement or practice which has the purpose or effect of improperly conferring a tax benefit to any person. The Contracting States shall designate by mutual agreement the domestic laws and measures concerned.

## **Chapter VI**

### **Final Provisions**

## **Article 28**

### **Entry Into Force**

1. The Contracting States shall notify each other in writing of the completion of the internal procedures required in each Contracting State for the entry into force of this Convention.
2. The Convention shall enter into force on the first day of the second month after the date of receipt of the later of the notifications referred to in paragraph 1, and its provisions shall have effect:
  - a) with respect to withholding taxes, on income derived on or after January 1st of the calendar year following the year in which this Convention enters into force;
  - b) with respect to income taxes and other taxes (other than withholding taxes), for any tax year beginning on or after January 1st of the calendar year following the year in which this Convention enters into force;
  - c) with respect to the exchange of information
    - (i) on criminal tax matters on the date of entry into force, but in respect of taxable periods beginning on or after the 1st of January of the year before the entry into force of the Convention;
    - (ii) on other tax matters on the date of entry into force in respect of taxable periods beginning on or after the 1st of January after the entry into force of the Convention.

**Article 29**  
**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 beginning on or 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 taxable years and periods beginning after the end of the calendar year in which the notice of termination has been given.