



INDIA- NETHERLANDS

DOUBLE TAXATION AVOIDANCE AGREEMENT

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PREFACE

Double Tax Avoidance Agreement ("DTAA") is a tax treaty signed between two or more countries to help taxpayers avoid paying double taxes on the same income. A DTAA becomes applicable in cases where an individual is a resident of one nation, but earns income in another. DTAA's can either be comprehensive, encapsulating all income sources or limited to certain areas. India presently has DTAA with 120+ countries.

The government of India and the government of the Kingdom of the Netherlands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains had signed a DTAA on 21 January, 1989. Thereafter an amending protocol came into effect from 30 August, 1999. A synthesised text complementing the DTAA and inclusive of the provisions related to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI") has also been agreed upon.

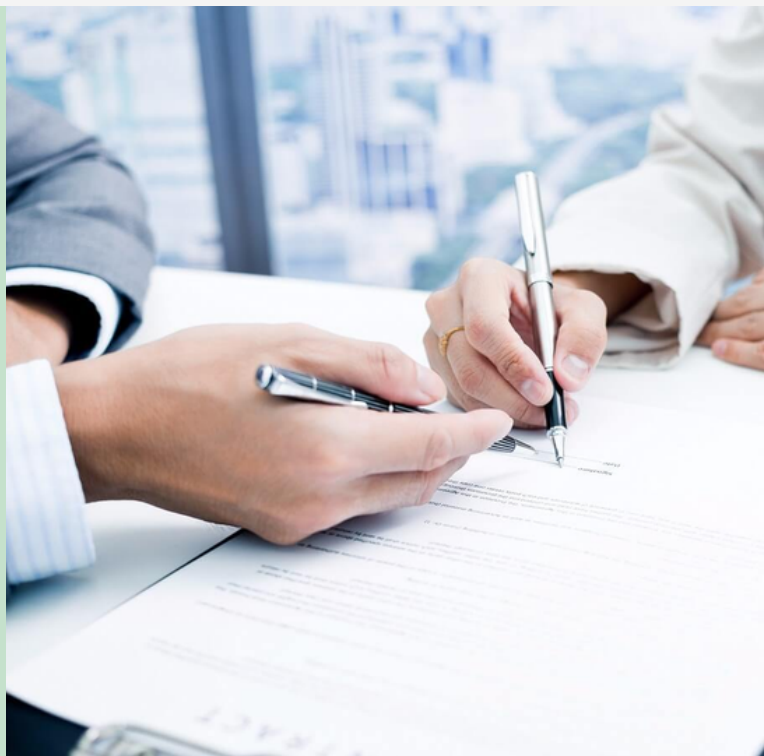
As per India's agreement for avoidance of double taxation and prevention of fiscal evasion with Netherlands, investments by Dutch firms get exemption from capital gains when shares in Indian companies are sold, subject to certain riders. The treaty specifies that sale of unlisted shares of an Indian company are taxable in India only under very limited circumstances, which includes instances when the shares derive value from possession of real estate in India other than what is used for business.



So as to broaden the scope of taxation, the MLI provisions in the DTAA had been included vide amendments in 2012, 2017 and 2019. The DTAA additionally allows taxation of capital gains in India when 10% or more of an Indian firms' shares are sold to an Indian resident, but this comes with a big exception i.e. such capital gains may be taxed in Netherlands if the sale is part of a corporate restructuring. The tax provisions are similar for both the treaty partner states.

KEY HIGHLIGHTS

The DTAA provides significant relief to investors looking for avenues of cross-border investment i.e. Indian investors looking to invest in Netherlands and vice-versa. Aside from tax relief, there are several other benefits that the India- Netherlands DTAA offers to the concerned businesses. Highlights of the tax treaty are as follows:



01

TAXES COVERED

The DTAA applies to taxes on income and on capital imposed on behalf of one of the States or of its political sub-divisions or local authorities, irrespective of the manner in which they are levied. Specifically, it covers the following in Netherlands-

- income tax;
- wages tax;
- company tax;
- dividend tax;
- capital tax.

While in India, it specifically covers the following-

- the income-tax including any surcharge thereon,
- the surtax,
- the wealth-tax,

02

WITHHOLDING TAX RATES

A withholding tax rates of 10% has been agreed to for dividends, interests, royalty and fees for technical services. An exemption to interests earned by government institutions has also been granted.

03

FISCAL DOMICILE

- All persons (including individuals and companies) can derive benefits under the DTAA if by the reason of his domicile, residence or place of management, he is a resident of any of the contracting states.
- The residency of a company is derived based on its place of effective management.
- If an individual is a resident of both contracting states, then his residential status shall be determined by his permanent home or where his personal and economic relations are closer or the habitual abode or where he is a national.

04

CAPITAL GAINS

- Immovable property-

Taxable in jurisdiction where immovable property is situated

- Movable property of permanent establishment ("PE")-

Capital gains on sale of movable property, forming part of business property of Netherland resident's PE or fixed based PE in India may be taxable in India.

- Shares forming part of substantial interest in capital stock of company-

Gains derived by a resident of one of the states from the alienation of unlisted shares forming part of a substantial interest in the capital stock of a company which is a resident of the other state, the value of which shares is derived principally from immovable property situated in that other state other than property in which the business of the company was carried on, may be taxed in that other state. A substantial interest exists when the resident owns 25% or more of the shares of the capital stock of a company.

- Any asset (other than specified above)-

Capital gains earned by resident on any other asset shall be taxable only in the contracting state of such resident.

05

MUTUAL AGREEMENT PROCEDURE

Where a person considers that the actions of one or both of the contracting states result or will result for him in taxation not 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 the contracting state which he is a resident.

06

EXCHANGE OF INFORMATION

The DTAA provides that information in relation to all types of taxes shall be exchanged between the states as is considered to be relevant for the purpose of tax matters.

INDIA-NETHERLANDS DTAA

(COMPREHENSIVE AGREEMENT)

The original text of the DTAA as signed between India and Netherlands can be referred to below:

NETHERLANDS

AGREEMENT FOR AVOIDANCE OF DOUBLE TAXATION AND PREVENTION OF FISCAL EVASION WITH NETHERLANDS

Whereas the annexed convention between the Government of the Republic of India and the Kingdom of the Netherlands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital has come into force on the 21st day of January, 1989, after the notification by both the Contracting States to each other of the completion of the procedures required under their laws for bringing into force of the said Convention; in accordance with paragraph 1 of the Article 29 of the said Convention;

Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964) and section 44A of the Wealth-tax Act, 1957 (27 of 1957), the Central Government hereby directs that all the provisions of the said Convention shall be given effect to in Union of India.

NOTIFICATION :No. GSR 382(E), dated 27-3-1989, as amended by Notification No. S.O. 693(E), dated 30-8-1999.

ANNEXURE

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

The Government of the Republic of India and the Government of the Kingdom of Netherlands.

Desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital :

Have agreed as follows :

CHAPTER I

SCOPE OF THE CONVENTION

ARTICLE 1

PERSONAL SCOPE

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

ARTICLE 2

TAXES COVERED

1. This Convention shall apply to taxes on income and on capital imposed on behalf of one of the States or of its political sub-divisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, 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 Mining Act of 1810 (Mijnwet 1810) with respect to concessions issued from 1967, or pursuant to the Netherlands Continental Shelf Mining Act of 1965 (Mijnwet Continental Plat, 1965),
- de dividendenbelasting (dividend tax),
- de vermogensbelasting (capital tax),

(hereinafter referred to as "Netherlands tax").

(b) in India :

- the income-tax including any surcharge thereon,
- the surtax,
- the wealth-tax,

(hereinafter referred to as "Indian tax").

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

CHAPTER II

DEFINITIONS

ARTICLE 3

GENERAL DEFINITIONS

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

(a) the term "State" means the Netherlands or India, as the context requires, the term "States" means the Netherlands and India;

(b) the term "the Netherlands" means the part of the Kingdom of the Netherlands that is situated in Europe and the part of the sea-bed and the sub-soil under the North Sea, to the extent that that area, in accordance with international law has been or may hereafter be designated under Netherlands laws as an area within which the Netherlands may exercise certain rights with respect to the exploration and exploitation of the natural resources of the sea-bed or its sub-soil;

(c) the term "India" means the territory of India and includes the territorial sea and the air space above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law;

(d) the term "tax" means Indian tax or Netherlands tax as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes;

(e) the term "person" includes an individual, a company, any other body of persons and any other entity which is treated as a taxable unit, under the taxation laws in force in the respective States;

(f) the term "company" means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective States;

(g) the terms "enterprise of one of the States" and "enterprise of the other State" mean respectively an enterprise carried on by a resident of one of the States an enterprise carried on by a resident of the other States;

(h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in one of the States, except when the ship or aircraft is operated solely between places in the other States;

(i) the term "nationals" means :

1. all individuals possessing the nationality of one of the States;
2. all legal persons, partnerships and associations deriving their status as such from the laws in force in one of the States;

(j) the term "competent authority" means :

1. in the Netherlands, the Minister of Finance or his authorised representative;
 2. in India the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representatives.
2. As regards the application of the Convention by one of the States any term not defined herein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

ARTICLE 4

RESIDENT

1. For the purposes of this Convention, the term "resident of one of the States" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

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

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

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

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

(d) if he is a national of both States or of neither of them, the competent authorities of the 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 States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

ARTICLE 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of the 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 ;
- (g) a warehouse in relation to a person providing storage facilities for others ;
- (h) a premises used as a sales outlet ;
- (i) an installation or structure used for the exploration of natural resources provided that the activities continue for more than 183 days.

3. A building site or construction, installation or assembly project constitutes a permanent establishment only where such site or project continues for a period of more than six months.

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

- (a) the use of facilities solely for the purpose of storage or display 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 or display ;
- (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 fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise ;
- (e) the maintenance of fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for other activities which had preparatory or auxiliary character, for the enterprise ;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting in one of the States, on behalf of an enterprise of the other State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned State, if—

- (a) he has and habitually exercises in that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise ; or
- (b) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise ;

6. An enterprise of one of the States shall not be deemed to have a permanent establishment in the other State merely because it carries on business in that other State through a broker, a general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph if it is shown that the transaction between the agent and the enterprise were not made under arm's length conditions.

7. The fact that a company which is a resident of one of the States controls or is controlled by a company which is a resident of the other 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 or the other.

CHAPTER III
TAXATION OF INCOME

ARTICLE 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of one of the States from immovable property (including income from agriculture or forestry) situated in the other 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 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. 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 one of the States shall be taxable only in that State unless the enterprise carries on business in the other 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 one of the States carries on business in the other State through a permanent establishment situated therein, there shall in each State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate 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 permanent establishment. In any case where the correct amount of profits attributable to a permanent establishment is incapable of determination or the determination thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on the basis of an apportionment of the total profits of the enterprise to its various parts, provided, however, that the result shall be in accordance with the principles contained in this Article.
3. (a) 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, in accordance with the provisions of and subject to the limitations of the taxation laws of that State. Provided that where the law of the State in which the permanent establishment is situated imposes a restriction on the amount of the executive and general administrative expenses which may be allowed, and that restriction is relaxed or overridden by any Convention between that State and a third State which enters into force after the date of entry into force of this Convention, the competent authority of that State shall notify the competent authority of the other State of the terms of the corresponding paragraph in the Convention with that third State immediately after the entry into force of that Convention and, if the competent

authority of the other State or requests, the provisions of this sub-paragraph shall be amended by protocol to reflect such terms.

(b) However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise, or any of its other offices.

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

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

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

ARTICLE 8

AIR TRANSPORT

1. Profits from the operation of aircraft in international traffic shall be taxable only in the State in which the place of effective management of the enterprise is situated.

2. For the purposes of this Article:

(a) profits from the operation in international traffic of aircraft include profits derived from the rental on a bareboat basis of aircraft if operated in international traffic if such rental profits are incidental to the profits described in paragraph 1;

(b) interest on funds connected with the operation of aircraft in international traffic shall be regarded as profits derived from the operation of such aircraft and the provisions of Article 11 shall not apply in relation to such interest.

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 8A

SHIPPING

1. Profits from the operation of ships in international traffic shall be taxable only in the State in which the place of effective management of the enterprise is situated.

2. However, if the operation of a ship in the other State is more than casual, such profits may also be taxed in that other State and according to the laws of that State, but only so much of them as is derived from that other State and provided that the profits are in respect of any one or more of the first ten fiscal years for which the Convention has effect.

For the purposes of this paragraph :

(a) profits derived from the other State means profits from the carriage of passengers or freight embarked in that other State ;

(b) the amount of such profits shall not exceed 5 per cent of the sums receivable in respect of such carriage ;
(c) the rate of tax chargeable on such profits shall be 50 per cent of the rate of tax on those profits which would have been chargeable in the absence of this Convention.

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

4. For the purposes of this Article :

(a) interest on funds connected with the operation of ships in international traffic shall be regarded as profits from the operation of such ships and the provisions of Article 11 shall not apply in relation to such interest; and

(b) profits from the operation of ships include:

(i) profits derived from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) in connection with the transport of goods or merchandise in international traffic ;

(ii) profits from the rental on a full or bareboat basis of ships if operated in international traffic :

Provided that such profits are incidental to the profits described in paragraph 1.

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

ARTICLE 9

ASSOCIATED ENTERPRISES

1. Where—

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

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

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

2. Where one of the 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 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 States shall if necessary consult each other.

ARTICLE 10

DIVIDENDS

1. Dividends paid by a company which is a resident of one of the States to a resident of the other 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 10 per cent of the gross amount of the dividends.]

3. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraph 2.

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

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

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

7. Where a company which is a resident of one of the States derives profits or income from the other 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 one of the States and paid to a resident of the other State may be taxed in that other State.

1[2. However, such interest may also be taxed in the Contracting State in which it arises and according to laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of gross amount of the interest.]

3. Notwithstanding the provisions of paragraph 2 :

(a) the Government of one of the States shall be exempt from tax in the other State in respect of interest derived directly or indirectly by that Government from that other State ;

(b) interest arising in one of the States and paid in respect of a loan guaranteed or insured by the Government of the other State shall be exempted from tax in the first-mentioned State.

4. For the purposes of paragraph 3, the term "Government" means :

(a) in the case of the Netherlands, the Government of the Kingdom of the Netherlands and shall include :

- the local authorities ;

- the Netherlands Bank (Central Bank) ;

- such institutions, the capital of which is wholly owned by the Government of the Kingdom of the Netherlands or the local authorities ;

- the Netherlands Financierings Maatschappij voor Ontwikkelings landen N.V. (Netherlands finance company for developing countries) and the Netherlands Investerings bank voor Ontwikkelingslanden N.V. (Netherlands investment

Bank for developing countries) ;

- all other institutions as may be agreed from time to time between the competent authorities of the States ;

(b) in the case of India, the Government of India and shall include :

- a political sub-division ;

- a local authority ;

- the Reserve Bank of India (Central Bank) ;

- the Export-Import Bank of India ;

- such institutions, the capital of which is wholly owned by the Government of India or a political sub-division or a local authority;

- all other institutions as may be agreed from time to time between the competent authorities of the States.

5. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraph 2.

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

7. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of one of the States, carries on business in the other State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 14, as the case may be, shall apply.

8. Interest shall be deemed to arise in one of the States when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of one of the States or not, has in one of the States 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.

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

1.Substituted by Notification No. SO 693(E), dated 30-8-1999, w.r.e.f. 1-4-1997.

1[ARTICLE 12

ROYALTIES AND FEES FOR TECHNICAL SERVICES

1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.]

2[2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, or fees for technical services, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or the fees for technical

services.]

3. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraph 2.

1[4. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.]

5. For purposes of this Article, "fees for technical services" means payments of any kind to any person in consideration for the rendering of any technical or consultancy services (including through the provision of services of technical or other personnel) if such services :

(a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 4 of this Article is received; or

(b) make available technical knowledge, experience, skill, know-how or processes, or consist of the development and transfer of a technical plan or technical design.

2[6. Notwithstanding paragraph 5, "fees for technical services" does not include amounts paid :

(a) for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property;

(b) for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships or aircraft in international traffic;

(c) for teaching in or by educational institutions;

(d) for services for the personal use of the individual or individuals, making the payment; or

(e) to an employee of the person making the payments or to any individual or partnership for professional services as defined in Article 14 (Independent Personal Services) of this Convention.]

7. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of one of the States, carries on business in the other State, in which the royalties or fees for technical services arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the royalties or fees for technical services are 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.

8. Royalties or fees for technical services shall be deemed to arise in one of the States when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, whether he is a resident of one of the States or not, has in one of the States a permanent establishment or a fixed base in connection with which the contract under which the royalties or fees for technical services are paid was concluded, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

9. 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 royalties or fees for technical services, having regard to the royalties fees for technical services 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 payment shall remain taxable, according to the laws of each State, due regard being had to the other provisions of this Convention.]

1.Substituted by Notification No. SO 693(E), dated 30-8-1999, w.r.e.f. 1-4-1991.

2.Substituted, by Notification No. SO 693(E), dated 30-8-1999, w.r.e.f. 1-4-1991, w.r.e.f. 1-4-1997.

1.Substituted by Notification No. SO 693(E), dated 30-8-1999, w.r.e.f. 1-4-1998.

2.Substituted, by Notification No. SO 693(E), dated 30-8-1999, w.r.e.f. 1-4-1998, w.r.e.f. 1-4-1995.

ARTICLE 13

CAPITAL GAINS

1. Gains derived by a resident of one of the States from the alienation of immovable property referred to in Article 6 and situated in the other 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 one of the States has in the other State or of movable property pertaining to a fixed base available to a resident of one of the States in the other State for the purpose of performing independent personal services, including such gains from the alienation of such permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the State in which the place of effective management of the enterprise is situated. For the purposes of this paragraph, the provisions of paragraph 3 of Article 8A shall apply.
4. Gains derived by a resident of one of the States from the alienation of shares (other than shares quoted on an approved stock exchange) forming part of a substantial interest in the capital stock of a company which is a resident of the other State, the value of which shares is derived principally from immovable property situated in that other State other than property in which the business of the company was carried on, may be taxed in that other State. A substantial interest exists when the resident owns 25 per cent or more of the shares of the capital stock of a company.
5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the State of which the alienator is a resident.

However, gains from the alienation of shares issued by a company resident in the other State which shares form part of at least a 10 per cent interest in the capital stock of that company, may be taxed in that other State if the alienation takes place to a resident of that other State. However, such gains shall remain taxable only in the State of which the alienator is a resident if such gains are realised in the course of a corporate organisation, reorganization, amalgamation, division or similar transaction, and the buyer or the seller owns at least 10 per cent of the capital of the other.

6. The provisions of paragraph 3 shall not affect the right of each of the States to levy according to its own law at tax on gains from the alienation of shares or 'jouissance' rights in a company, the capital of which is wholly or partly divided into shares and which under the laws of that State is a resident of that State, derived by an individual who is a resident of the other State and has been a resident of the first-mentioned State in the course of the last five years preceding the alienation of the shares or 'jouissance' rights.

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of one of the States in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other State:

(a) if he has a fixed base regularly available to him in the other State for the purpose of performing his activities ; in that

- case, only so much of the income as is attributable to that fixed base may be taxed in that other State ; or
- (b) if his stay in the other State is for a period or periods amounting to or exceeding in the aggregate 183 days in the fiscal year concerned ; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.
2. The term 'professional services' includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of one of the States in respect of an employment shall be taxable only in that State unless the employment is exercised in the other State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of one of the States in respect of an employment exercised in the other State shall be taxable only in the first-mentioned State if :
- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in 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 or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of one of the States in respect of an employment exercised aboard a ship or aircraft operated in international traffic, shall be taxable only in that State.

ARTICLE 16

DIRECTORS' FEES

Directors' fees or other remuneration derived by a resident of one of the States in his capacity as a member of the board of directors, a 'bestuurder' or a 'commissaris' of a company which is a resident of the other State may be taxed in that other State.

ARTICLE 17

ARTISTES AND ATHLETES

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of one of the States as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other State, may be taxed in that other State.
2. Where income in respect of 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 State in which the activities of the entertainer or athlete are exercised.
3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by an entertainer or an athlete who is a resident of one of the States from his personal activities as such exercised in the other State, shall be taxable only in the first-mentioned State, if the activities in the other State are supported wholly or substantially from the public funds of the first-mentioned State including any of its political sub-divisions or local authorities, and such activities are exercised

under the terms of a bilateral cultural agreement between the two States.

ARTICLE 18

PENSIONS AND ANNUITIES

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of one of the States in consideration of past employment as well as any annuity paid to such a resident, shall be taxable only in that State.
2. However, where such remuneration is not of a periodical nature and it is paid in consideration of past employment in the other State, it may be taxed in that other State.
3. Any pension paid out under the provisions of a social security system of one of the States to a resident of the other State may be taxed in the first-mentioned State.
4. The term 'annuity' means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE 19

GOVERNMENT SERVICE

1. (a) Remuneration, other than a pension, paid by one of the States or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority may be taxed in that State.
(b) However, such remuneration shall be taxable only in the other State if the services are rendered in that State and the individual is a resident of that State who :
 1. is a national of that State; or
 2. 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, one of the States or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority may be taxed in that State.
(b) However, such pension shall be taxable only in the other State if the individual is a resident of, and a national of that State.
3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by one of the States or a political sub-division or a local authority thereof.

ARTICLE 20

PROFESSORS, TEACHERS AND RESEARCH SCHOLARS

1. A professor or teacher who is or was a resident of one of the States immediately before visiting the other State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that other State shall be taxable only in the first-mentioned State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other State.
2. This Article shall not apply to income from research if such research is undertaken primarily for the private benefit of a specific person or persons.
3. For the purposes of paragraph 1, 'approved institution' means an institution which has been approved in this regard by the competent authority of the State concerned.

ARTICLE 21

STUDENTS AND APPRENTICES

1. Student or business apprentice who is or was a resident of one of the State immediately before visiting the other State and who is present in that other State solely for the purpose of his education or training, shall be exempt from tax in that other State on :

(a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training ; and

(b) remuneration from employment in that other State, in an amount not exceeding 5000 guilders or its equivalent in Indian currency during any fiscal year, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaking, but in no event shall any individual have the benefits of this Article, for more than five consecutive years from the date of his first arrival in that other State.

CHAPTER IV

TAXATION ON CAPITAL

ARTICLE 22

CAPITAL

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

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

3. Capital represented by ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in State in which the place of effective management of the enterprise is situated. For the purposes of this paragraph, the provisions of paragraph 3 of Article 8A shall apply.

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

CHAPTER V

ELIMINATION OF DOUBLE TAXATION

ARTICLE 23

ELIMINATION OF DOUBLE TAXATION

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

2. However, where a resident of the Netherlands derives items of income or owns items of capital which, according to Article 6, Article 7, paragraph 6 of Article 10, paragraph 7 of Article 11, paragraph 7 of Article 12, paragraphs 1, 2, 4 and 5 of Article 13, Article 14, paragraph 1 of Article 15, Article 16, paragraph 3 of Article 18, Article 19 and paragraphs 1 and 2 of Article 22 of this Convention may be taxed in India and are included in the basis referred to in paragraph 1, the Netherlands shall exempt such items of income or capital by allowing a reduction in its tax. These reductions shall be computed in conformity with the provisions of Netherlands law for the avoidance of double taxation. For that purpose the

said items of income or capital shall be deemed to be included in the total amount of items of income or capital which are exempted from Netherlands tax under those provisions.

3. Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for items of income which, according to paragraph 2 of Article 8A, paragraph 2 of Article 10, paragraph 2 of Article 11, paragraph 2 of Article 12, Article 17 and paragraph 2 of Article 18 of this Convention may be taxed in India to the extent that these items are included in the basis referred to in paragraph 1. The amount of this deduction shall be equal to the tax paid in India on these items of income, but shall not exceed the amount of the reduction which would be allowed if the items of income so included were the sole items of income which are exempted from Netherlands tax under the provisions of Netherlands tax for the avoidance of double taxation.

Where, by reason of special relief given under the provisions of Indian law for the purpose of encouraging investment in India, the Indian tax actually levied on interest arising in India is lower than the tax India may levy according to subparagraphs (a) and (b) of paragraph 2 of Article 11, then the amount of the tax paid in India on such interest shall be deemed to have been paid at the rates of tax mentioned in the said provisions. However, if the general tax rates under the Indian law applicable to the aforementioned interest are reduced below those mentioned in the foregoing sentence, these lower rates shall apply for the purposes of that sentence. The provisions of the two foregoing sentences shall apply only for a period of ten years after the date on which the Convention became effective. This period may be extended by mutual agreement between the competent authorities.

4. In India, double taxation shall be eliminated as follows:

Where a resident of India derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the Netherlands, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in the Netherlands, whether directly or by deduction; and as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in the Netherlands. Such deduction in either case shall not, however, exceed that part of the income-tax or capital tax (as computed before the deduction is given) which is attributable, as the case may be, to the income or the capital which may be taxed in the Netherlands. Further, where such resident is a company by which sur tax is payable in India, the deduction in respect of income-tax paid in the Netherlands shall be allowed in the first instance from income-tax payable by the company in India and as to the balance, if any, from sur tax payable by it in India:

Provided that income which in accordance with the provisions of this Convention is not to be subjected to tax may be taken into account in calculating the rate of tax to be imposed.

For the purposes of this paragraph in determining the taxes on income paid to the Netherlands, the investment premiums and bonuses and disinvestment payments as meant in the Netherlands Investment Account Law ('Wet investeringsrekening') shall not be taken into account. For the purposes of this paragraph, the taxes referred to in paragraphs 3(a) and 4 of Article 2, other than the capital tax, shall be considered as taxes on income.

5. Where a resident of one of the States derives gains which may be taxed in the other State in accordance with paragraph 6 of Article 13, that other State shall allow a deduction from its tax on such gains to an amount equal to the tax levied in the first-mentioned State on the said gains.

CHAPTER VI

SPECIAL PROVISIONS

ARTICLE 24

NON-DISCRIMINATION

1. Nationals of one of the States shall not be subjected in the other State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. These provisions shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the States.
2. Except where the provisions of paragraph 3 of Article 7 apply, the taxation on a permanent establishment which an enterprise of one of the States has in the other 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.
3. The provisions of paragraph 2 shall not be construed as obliging one of the States to grant to residents of the other 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 9 of Article 11, or paragraph 9 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of one of the States to a resident of the other State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of one of the States to a resident of the other State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.
5. Enterprises of one of the States, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other 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.

ARTICLE 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the 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 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 States.
3. The competent authorities of the States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.
4. The competent authorities of the States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the two States.

ARTICLE 26

EXCHANGE OF INFORMATION

1. The competent authorities of the States shall exchange such information as is necessary for carrying out the provisions of the Convention or of the domestic laws of the States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention, in particular for the prevention of fraud or evasion of such taxes. Any information received by one of the States 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 courts or bodies) involved in the assessment or collection of, the enforcement in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions.

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

(a) to carry out administrative measures at variance with the laws and administrative practices of that or of the other 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 State;

(c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

ARTICLE 27

DIPLOMATIC AGENTS AND CONSULAR OFFICERS

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

2. For the purposes of the Convention an individual who is a member of a diplomatic or consular mission of one of the States in the other 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 or on capital as are residents of that State.

3. International organisations, organs and officials thereof and members of a diplomatic or consular mission of a third State, being present in one of the States, are not entitled, in the other State, to the reductions or exemptions from tax provided for in Articles 10, 11 and 12 in respect of the items of income dealt with in these Articles and arising in that other State, if such items of income are not subject to a tax on income in the first-mentioned State.

ARTICLE 28

TERRITORIAL EXTENSION

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

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

CHAPTER VII

FINAL PROVISIONS

ARTICLE 29

ENTRY INTO FORCE

1. Each of the States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Convention. This Convention shall enter into force on the thirtieth day after the latter of the dates on which the respective Governments have notified each other in writing that the formalities constitutionally required in their respective States have been complied with, and its provisions shall have effect:

(a) in the Netherlands for taxable years and periods beginning on or after the first day of January next following the calendar year in which the latter of the notifications is given ;

(b) in India in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the latter of the notifications is given.

2. Notwithstanding the provisions of paragraph 1, the provisions of Article 8 shall have effect:

(a) in the Netherlands for taxable years and periods beginning on or after the first day of January, 1987 ;

(b) in India in respect of income arising in any fiscal year beginning on or after the first day of April, 1987.

ARTICLE 30

TERMINATION

This Convention shall remain in force until terminated by one of the Contracting Parties. Either party may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the expiration of a period of five years from the date of its entry into force. In such event, the Convention shall cease to have effect:

(a) in the Netherlands for taxable years and periods beginning on or after the first day of January next following the calendar year in which the notice of termination has been given ;

(b) in India in respect of income arising in any fiscal year beginning on or after the 1st day of April next following the calendar year in which the notice of termination has been given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Convention.

DONE at New Delhi this thirtieth day of July, 1988, in duplicate, in the Hindi, Netherlands and English languages, the three texts being equally authentic. In case of divergence between the Hindi and Netherlands texts, the English text shall be the operative one.

PROTOCOL

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

I.Ad Article 7

1. In respect of paragraphs 1 and 2 of Article 7, where an enterprise of one of the States sells goods or merchandise or carries on business in the other State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of the remuneration which is attributable to the actual activity of the permanent establishment for such sales or business. Especially, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the State where the permanent establishment is situated. The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the State of which the enterprise is a resident.
2. It is understood that with respect to paragraph 2 of Article 7, no profits shall be attributed to a permanent establishment by reason of the facilitation of the conclusion of foreign trade or loan agreements or mere signing thereof.
3. Where the law of the State in which a permanent establishment is situated imposes in accordance with the provisions of sub-paragraph (a) of paragraph 3 of Article 7 a restriction on the amount of the executive and general administrative expenses which may be allowed as a deduction in determining the profits of such permanent establishment, it is understood that in determining the profits of such permanent establishment the deduction in respect of such executive and general administrative expenses in no case shall be less than what is allowable under the Indian Income-tax Act as on the date of signature of this Convention.

II.Ad Article 8A

It is understood that in case the percentage as is specified in section 44B of the Indian Income-tax Act as on the date of signature of this Convention for the purpose of determining the amount of shipping profits is reduced by any change in the Indian law, the percentage as is mentioned in sub-paragraph (b) of paragraph 2 of Article 8A will be reduced in the same proportion.

III.Ad Article 9

It is understood that the fact that associated enterprises have concluded arrangements, such as cost-sharing arrangements or general services agreements, for or based on the allocation of executive, general administrative, technical and commercial expenses, research and development expenses and other similar expenses, is not in itself a condition as meant in paragraph 1 of Article 9.

IV.Ad Articles 10, 11 and 12

1. Where tax has been levied at source in excess of the amount of tax chargeable under the provisions of Article 10, 11 or 12, applications for the refund of the excess amount of tax have to be lodged with the competent authority of the State having levied the tax, within a period of three years after the expiration of the calendar year in which the tax has been levied.
2. If after the signature of this convention under any Convention or Agreement between India and a third State which is a member of the OECD India should limit its taxation at source on dividends, interests, royalties, fees for technical services or payments for the use of equipment to a rate lower or a scope more restricted than the rate or scope provided for in this

Convention on the said items of income, then as from the date on which the relevant Indian Convention or Agreement enters into force the same rate or scope as provided for in that Convention or Agreement on the said items of income shall also apply under this Convention.

V.Ad Article 12

It is understood that in case India applies a levy, not being a levy covered by Article 2, such as the Research and Development Cess, on payments meant in Article 12, and if after the signature of this Convention under any Convention or Agreement between India and a third State which is a member of the OECD India should give relief from such levy, directly, by reducing the rate or the scope of the levy, either in full or in part, or, indirectly, by reducing the rate or the scope of the Indian tax allowed under the Convention or Agreement in question on payments as meant in article 12 of this Convention with the levy, either in full or in part, then, as from the date on which the relevant Indian Convention or Agreement enters into force, such relief as provided for in that Convention or agreement shall also apply under this Convention.

VI.Ad Article 16

It is understood that 'bestuurder' or 'commissaris' of a Netherlands company means persons, who are nominated as such by the general meeting of shareholders or by any other competent body of such company and are charged with the general management of the company and the supervision thereof, respectively.

VII.Ad Article 23

It is understood that for the computation of the reduction mentioned in paragraph 2 of Article 23, the items of capital referred to in paragraph 1 of Article 22 shall be taken into account for the value thereof reduced by the value of the debts secured by mortgage on the capital and the items of capital referred to in paragraph 2 of Article 22 shall be taken into account for the value thereof reduced by the value of the debts pertaining to the permanent establishment or fixed base.

IN WITNESS whereof the undersigned, duly authorised thereto, have signed this Protocol.

DONE at New Delhi this thirtieth day of July, 1988, in duplicate, in the Hindi, Netherlands and English languages, the three texts being equally authentic. In case of divergence between the Netherlands and Hindi texts, the English text shall be the operative one.

WHEREAS the Convention between the Republic of India and the Kingdom of the Netherlands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital came into force on January 21, 1989, after the notification by both the Contracting State to each other of the completion of the procedures required under their laws for bringing into force the said Convention;

AND WHEREAS the Central Government, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964) and section 44A of the Wealth-tax Act, 1957 (27 of 1957), had directed that all the provisions of the said Convention annexed to the notification of the Government of India in the Ministry of Finance (Department of Revenue) (Foreign Tax Division) Number G.S.R. 382(E), dated March 27, 1989, shall be given effect to in the Union of India ;

AND WHEREAS article IV of the protocol dated July 30, 1988, to the aforesaid Convention provides that if after the signature of the aforesaid Convention under any Convention or Agreement between India and a third State which is a member of the Organisation for Economic Co-operation and Development, India, should limit its taxation at source on dividends, interest, royalties, fees for technical services or payments for the use of equipment to a rate lower or a scope more restricted than the rate or scope provided for in this Convention on the said items of income, then, as from the date on which the relevant Indian Convention or Agreement enters into force the same rate or scope as provided for in that

Convention or Agreement on the said items of income shall also apply under this Convention;

AND WHEREAS in the Convention between India and Germany which entered into force on October 26, 1996, the Convention between India and Sweden which entered into force on December 25, 1997, the Convention between India and the Swiss Confederation which entered into force on October 19, 1994, and the Convention between India and the United States of America which entered into force on December 18, 1990, which states are members of the Organisation for Economic Co-operation and Development, the Government of India, has limited the taxation at source on dividends, interest, royalties, fees for technical services and payments for the use of equipment to a rate lower or a scope more restricted than that provided in the Convention between India and the Netherlands on the said items of income;

NOW, THEREFORE, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that the following modifications shall be made in the Convention notified by the said notification which are necessary for implementing the aforesaid Convention between India and the Netherlands, namely:

I. With effect from April 1, 1997, for the existing paragraph 2 of article 10 relating to dividends, the following paragraph shall be read :

"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 10 per cent of the gross amount of the dividends."

II. With effect from April 1, 1997, for the existing paragraph 2 of article 11 relating to interest, the following paragraph shall be read :

"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 per cent of the gross amount of the interest."

III. With effect from April 1, 1997, for the existing article 12 relating to royalty, fees for technical services and payments for the use of equipment the following article shall be read :

"Article 12 : Royalties and Fees for Technical Services -1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for technical services 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 or fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed :

(a) in the case of royalties referred to in sub-paragraph (a) of paragraph 4 and fees for technical services as defined in this article (other than services described in sub-paragraph (b) of this paragraph):

(i) during the first five taxable years for which this Convention has effect,—

(A) 15 per cent of the gross amount of the royalties or fees for technical services as defined in this article, where the payer of the royalties or fees is the Government of that Contracting State, a political sub-division or a public sector company ; and

(B) 20 per cent of the gross amount of the royalties or fees for technical services in all other cases ; and

(ii) during the subsequent years, 15 per cent of the gross amount of royalties or fees for technical services ; and

(b) in the case of royalties referred to in sub-paragraph (b) of paragraph 4 and fees for technical services as defined in this article that are ancillary and subsidiary to the enjoyment of the property for which payment is received under paragraph 4(b) of this article, 10 per cent of the gross amount of the royalties or fees for technical services.

3. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraph 2.

4. The term "royalties" as used in this article means:

(a) 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 motion picture films and works on film or video-tape for use in connection with television, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience ; and

(b) payments of any kind received as consideration for the use of, or the right to use industrial, commercial or scientific equipment, other than payments derived by an enterprise described in paragraph 1 of articles 8 and 8A (shipping and air transport) from activities described in paragraph 2(a) of article 8 or paragraph 4(b) of article 8A.

5. For purposes of this article, "fees for technical services" means payments of any kind to any person in consideration for the rendering of any technical or consultancy services (including through the provision of services of technical or other personnel) if such services :

(a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 4 of this article is received ; or

(b) make available technical knowledge, experience, skill, know-how or processes or consist of the development and transfer of a technical plan or technical design.

6. Notwithstanding paragraph 5, "fees for technical services" does not include amounts paid:

(a) for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property other than a sale described in paragraph 4(a) ;

(b) for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships or aircraft in international traffic ;

(c) for teaching in or by educational institutions;

(d) for services for the personal use of the individual or individuals making the payment ; or

(e) to an employee of the person making the payments or to any individual or partnership for professional services as defined in article 14 (independent personal services) of this Convention.

7. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of one of the States, carries on business in the other State, in which the royalties or fees for technical services arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the royalties or fees for technical services are 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.

8. Royalties or fees for technical services shall be deemed to arise in one of the States when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, whether he is a resident of one of the States or not, has in one of the States a permanent establishment or a fixed base in connection with which the contract under which the royalties or fees for technical services are paid was concluded, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

9. 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 royalties or fees for technical services, having regard to the royalties or fees for technical services 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 payment shall remain taxable according to the laws of each State, due regard

being had to the other provisions of this Convention."

IV. With effect from April 1, 1995, for paragraph 6 of article 12 relating to royalties and fees for technical services referred to in paragraph III above, the following paragraph shall be read:

"6. Notwithstanding paragraph 5, 'fees for technical services' does not include amounts paid :

- (a) for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property ;
- (b) for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships or aircraft in international traffic;
- (c) for teaching in or by educational institutions;
- (d) for services for the personal use of the individual or individuals, making the payment ; or
- (e) to an employee of the person making the payments or to any individual or partnership for professional services as defined in article 14 (independent personal services) of this Convention."

V. With effect from April 1, 1997, for paragraph 2 of article 12, relating to royalties and fees for technical services referred to in paragraph III above the following paragraph shall be read :

"2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, or fees for technical services, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or the fees for technical services."

VI. With effect from April 1, 1998, for paragraph 4 of article 12 relating to royalties and fees for technical services referred to in paragraph III above the following paragraph shall be read :

"4. The term 'royalties' as used in this article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trademark, design or model, plan, secret formula or process, for information concerning industrial, commercial or scientific experience."

VII. The memorandum of understanding and the confirmation of understanding, dated September 12, 1989, with reference to paragraph 4 of article 12 of the Indo-USA Double Taxation Avoidance Convention (DTAC), will apply mutatis mutandis for the purpose of paragraphs III, IV, V and VI above.



INDIA-NETHERLANDS

(SYNTHESISED TEXT)

The original text of the synthesised text consists of provisions of the MLI agreement as signed between India and Netherlands can be referred to below:

NETHERLANDS

SYNTHESISED TEXT OF THE MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING (MLI) AND THE CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE KINGDOM OF NETHERLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

This document was prepared by the competent authority of India in consultation with the competent authority of the Netherlands and it represents their shared understanding of the modifications made to the Convention by the MLI.

This document presents the synthesised text for the application of the Convention between the Government of the Republic of India and the Kingdom of Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on capital signed on 30th July, 1988 and amended by the Amending Protocol signed on 10th May, 2012 (the "Convention"), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the India and Netherlands on 7th June, 2017 (the "MLI").

The document was prepared on the basis of the MLI position of the India submitted to the Depository upon ratification on 25th June, 2019 and of the MLI position of the Netherlands submitted to the Depository upon ratification on 29th March, 2019. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on this Convention.

The authentic legal texts of the Convention and the MLI take precedence and remain the legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Convention are included in boxes throughout the text of this document in the context of the relevant provisions of the Convention. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the Convention.

Changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Convention (such as "Covered Tax Agreement" and "Convention", "Contracting Jurisdictions" and "Contracting States"), to ease the comprehension of the provisions of the MLI. The changes in terminology are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI. Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Convention: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

In all cases, references made to the provisions of the Convention or to the Convention must be understood as referring to the Convention as modified by the provisions of the MLI, provided such provisions of the MLI have taken effect.

References:

The authentic legal text of the MLI (in English) can be found on the MLI Depository (OECD) webpage at the following link:

<http://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf>

The authentic legal texts of the Convention (in English) can be found in India at the following link:

<https://www.incometaxindia.gov.in/Pages/international-taxation/dtaa.aspx>

The MLI position of the India submitted to the Depository upon ratification on 25th June, 2019 and of the MLI position of the Netherlands submitted to the Depository upon ratification on 29th March, 2019 can be found on the MLI Depository (OECD) webpage.

Entry into Effect of the MLI Provisions:

The provisions of the MLI applicable to the Convention do not take effect on the same dates as the original provisions of the Convention. Each of provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by the India and the Netherlands in their MLI positions.

Dates of the deposit of instruments of ratification: 25th June, 2019 for India and 29th March, 2019 for the Netherlands.

Entry into force of the MLI: 1st October, 2019 for the India and 1st July, 2019 for the Netherlands.

Unless it is stated otherwise elsewhere in this document, the provisions of the MLI have effect with respect to the Convention:

• In India:

◆ With respect to taxes withheld at source on amounts paid or credited to nonresidents, where the event giving rise to such taxes occurs on or after 1 April 2020;

◆ With respect to all other taxes levied by India, for taxes levied with respect to taxable periods beginning on or after 1 April 2020.

• In Netherlands:

◆ With respect to taxes withheld at source on amounts paid or credited to non residents, where the event giving rise to such taxes occurs on or after 1 January 2020;

◆ With respect to all other taxes levied by the Netherlands, for taxes levied with respect to taxable periods beginning on or after 1 April 2020.

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

The Government of the Republic of India and the Government of the Kingdom of Netherlands. Desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital:

The following paragraph 1 of Article 6 of the MLI is included in the preamble of this Convention:

ARTICLE 6 OF THE MLI- PURPOSE OF A COVERED TAX AGREEMENT

Intending to eliminate double taxation with respect to the taxes covered by this 1[Convention] without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this [Convention] for the indirect benefit of residents of third jurisdictions),

Have agreed as follows :

CHAPTER I
SCOPE OF THE CONVENTION

ARTICLE 1
PERSONAL SCOPE

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

ARTICLE 2
TAXES COVERED

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

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, 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 Mining Act of 1810 (Mijnwet 1810) with respect to concessions issued from 1967, or pursuant to the Netherlands Continental Shelf Mining Act of 1965 (Mijnwet Continental Plat, 1965),
 - de dividendenbelasting (dividend tax),
 - de vermogensbelasting (capital tax),
- (hereinafter referred to as "Netherlands tax").

(b) in India :

- the income-tax including any surcharge thereon,
- the surtax,
- the wealth-tax,

(hereinafter referred to as "Indian tax").

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

CHAPTER II
DEFINITIONS

ARTICLE 3
GENERAL DEFINITIONS

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

(a) the term "State" means the Netherlands or India, as the context requires, the term "States" means the Netherlands and India;

(b) the term "the Netherlands" means the part of the Kingdom of the Netherlands that is situated in Europe and the part of the sea-bed and the sub-soil under the North Sea, to the extent that that area, in accordance with international law has been or may hereafter be designated under Netherlands laws as an area within which the Netherlands may exercise certain rights with respect to the exploration and exploitation of the natural resources of the sea-bed or its sub-soil;

(c) the term "India" means the territory of India and includes the territorial sea and the air space above it, as well as any other maritime zone in which India has sovereign rights, other rights and jurisdiction, according to the Indian law and in accordance with international law;

(d) the term "tax" means Indian tax or Netherlands tax as the context requires, but shall not include any amount which is payable in respect of any default or omission in relation to the taxes to which this Convention applies or which represents a penalty imposed relating to those taxes;

(e) the term "person" includes an individual, a company, any other body of persons and any other entity which is treated as a taxable unit, under the taxation laws in force in the respective States;

(f) the term "company" means any body corporate or any entity which is treated as a company or body corporate under the taxation laws in force in the respective States;

(g) the terms "enterprise of one of the States" and "enterprise of the other State" mean respectively an enterprise carried on by a resident of one of the States an enterprise carried on by a resident of the other States;

(h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in one of the States, except when the ship or aircraft is operated solely between places in the other States;

(i) the term "nationals" means :

1. all individuals possessing the nationality of one of the States;
2. all legal persons, partnerships and associations deriving their status as such from the laws in force in one of the States;

(j) the term "competent authority" means :

1. in the Netherlands, the Minister of Finance or his authorised representative;
2. in India the Central Government in the Ministry of Finance (Department of Revenue) or their authorised representatives.

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

ARTICLE 4

RESIDENT

1. For the purposes of this Convention, the term "resident of one of the States" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

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

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

(b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home

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

(d) if he is a national of both States or of neither of them, the competent authorities of the States shall settle the question by mutual agreement.

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

The following paragraph 1 of Article 4 of the MLI replaces paragraph 3 of Article 4 of this Convention:

ARTICLE 4 OF THE MLI - DUAL RESIDENT ENTITIES

Where by reason of the provisions of [the Convention] a person other than an individual is a resident of more than one [Contracting State], the competent authorities of the [Contracting State] shall endeavour to determine by mutual agreement the [Contracting State] of which such person shall be deemed to be a resident for the purposes of [the Convention], having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by [the Convention] except to the extent and in such manner as may be agreed upon by the competent authorities of the [Contracting States].

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 the 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 ;

(g) a warehouse in relation to a person providing storage facilities for others ;

(h) a premises used as a sales outlet ;

(i) an installation or structure used for the exploration of natural resources provided that the activities continue for more than 183 days.

3. [MODIFIED by paragraph 1 of Article 14 of the MLI] [A building site or construction, installation or assembly project constitutes a permanent establishment only where such site or project continues for a period of more than six months.]

The following paragraph 1 of Article 14 of the MLI applies and supersedes paragraph 3 of Article 5 of this Convention:

ARTICLE 14 OF THE MLI - SPLITTING-UP OF CONTRACTS

For the sole purpose of determining whether the period (or periods) referred to [in paragraph 3 of Article 5 of the Convention] has been exceeded:

(a) where an enterprise of a [Contracting State] carries on activities in the other [Contracting State] at a place that constitutes a building site [or] construction [, project, or] installation [or assembly] project on during one or more periods of time that, in the aggregate, exceed 30 days without exceeding period or periods referred to in [paragraph 3 of Article 5 of the Convention; and

(b) where connected activities are carried on in that other [Contracting State] at the same building site [, or] construction [,or] installation [or assembly] project during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,

these different periods of time shall be added to the aggregate period of time during which the first-mentioned enterprise has carried on activities at that building site [, or] construction [, or] installation [or assembly] project.

4. [MODIFIED by paragraph 2 of Article 13 of the MLI] [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 or display 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 of display ;

(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 fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise ;

(e) the maintenance of fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for other activities which had preparatory or auxiliary character, for the enterprise ;

(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.]

The following paragraph 2 of Article 13 of the MLI applies with respect to the paragraph 4 of Article 5 of this Convention:

ARTICLE 13 OF THE MLI - ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH THE SPECIFIC ACTIVITY EXEMPTIONS

Notwithstanding [Article 5 of the Convention], the term "permanent establishment" shall be deemed not to include:

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

(ii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage of display ;

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

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

(v) the maintenance of fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for other activities which had preparatory or auxiliary character, for the enterprise ;

(b) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in subparagraph a);

(c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and

b),

provided that such activity or, in the case of subparagraph c), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

The following paragraph 4 of Article 13 of the MLI applies to paragraph 4 of Article 5 of the Convention as modified by paragraph 2 of Article 13 of the MLI:

[Paragraph 4 of Article 5 of the Convention, as modified by paragraph 2 of Article 13 of the MLI] shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same [Contracting State] and:

(a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of [Article 5 of the Convention]; or

(b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character, provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting in one of the States, on behalf of an enterprise of the other State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned State, if—

(a) he has and habitually exercises in that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise ; or

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

6. An enterprise of one of the States shall not be deemed to have a permanent establishment in the other State merely because it carries on business in that other State through a broker, a general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph if it is shown that the transaction between the agent and the enterprise were not made under arm's length conditions.

7. The fact that a company which is a resident of one of the States controls or is controlled by a company which is a resident of the other 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 or the other.

The following paragraph 1 of Article 15 of the MLI applies to this Convention:

ARTICLE 15 OF THE MLI - DEFINITION OF A PERSON CLOSELY RELATED TO AN ENTERPRISE

For the purposes of the provisions of [Article 5 of the Convention as modified by paragraph 4 of Article 13 and paragraph 1 of Article 14 of the MLI], a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly

more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.

CHAPTER III
TAXATION OF INCOME

ARTICLE 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of one of the States from immovable property (including income from agriculture or forestry) situated in the other 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 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. 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 one of the States shall be taxable only in that State unless the enterprise carries on business in the other 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 one of the States carries on business in the other State through a permanent establishment situated therein, there shall in each State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate 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 permanent establishment. In any case where the correct amount of profits attributable to a permanent establishment is incapable of determination or the determination thereof presents exceptional difficulties, the profits attributable to the permanent establishment may be estimated on the basis of an apportionment of the total profits of the enterprise to its various parts, provided, however, that the result shall be in accordance with the principles contained in this Article.
3. (a) 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, in accordance with the provisions of and subject to the limitations of the taxation laws of that State. Provided that where the law of the State in which the permanent establishment is situated imposes a restriction on the amount of the executive and general administrative expenses which may be allowed, and that restriction is relaxed or overridden by any Convention between

that State and a third State which enters into force after the date of entry into force of this Convention, the competent authority of that State shall notify the competent authority of the other State of the terms of the corresponding paragraph in the Convention with that third State immediately after the entry into force of that Convention and, if the competent authority of the other State or requests, the provisions of this sub-paragraph shall be amended by protocol to reflect such terms.

(b) However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise, or any of its other offices.

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

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

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

ARTICLE 8

AIR TRANSPORT

1. Profits from the operation of aircraft in international traffic shall be taxable only in the State in which the place of effective management of the enterprise is situated.

2. For the purposes of this Article:

(a) profits from the operation in international traffic of aircraft include profits derived from the rental on a bareboat basis of aircraft if operated in international traffic if such rental profits are incidental to the profits described in paragraph 1;

(b) interest on funds connected with the operation of aircraft in international traffic shall be regarded as profits derived from the operation of such aircraft and the provisions of Article 11 shall not apply in relation to such interest.

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 8A

SHIPPING

1. Profits from the operation of ships in international traffic shall be taxable only in the State in which the place of effective management of the enterprise is situated.

2. However, if the operation of a ship in the other State is more than casual, such profits may also be taxed in that other State and according to the laws of that State, but only so much of them as is derived from that other State and provided that the profits are in respect of any one or more of the first ten fiscal years for which the Convention has effect. For the

purposes of this paragraph :

(a) profits derived from the other State means profits from the carriage of passengers or freight embarked in that other State ;

(b) the amount of such profits shall not exceed 5 per cent of the sums receivable in respect of such carriage ;

(c) the rate of tax chargeable on such profits shall be 50 per cent of the rate of tax on those profits which would have been chargeable in the absence of this Convention.

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

4. For the purposes of this Article :

(a) interest on funds connected with the operation of ships in international traffic shall be regarded as profits from the operation of such ships and the provisions of Article 11 shall not apply in relation to such interest; and

(b) profits from the operation of ships include:

(i) profits derived from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) in connection with the transport of goods or merchandise in international traffic ;

(ii) profits from the rental on a full or bareboat basis of ships if operated in international traffic:

Provided that such profits are incidental to the profits described in paragraph 1.

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

ARTICLE 9

ASSOCIATED ENTERPRISES

1. Where—

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

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

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

2. Where one of the 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 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 States shall if necessary consult each other.

ARTICLE 10

DIVIDENDS

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

1[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 10 per cent of the gross amount of the dividends.]

3. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraph 2.

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

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

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

7. Where a company which is a resident of one of the States derives profits or income from the other 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 one of the States and paid to a resident of the other State may be taxed in that other State.

1[2. However, such interest may also be taxed in the Contracting State in which it arises and according to laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of gross amount of the interest.]

3. Notwithstanding the provisions of paragraph 2 :

(a) the Government of one of the States shall be exempt from tax in the other State in respect of interest derived directly or indirectly by that Government from that other State ;

(b) interest arising in one of the States and paid in respect of a loan guaranteed or insured by the Government of the other State shall be exempted from tax in the first-mentioned State.

4. For the purposes of paragraph 3, the term "Government" means :

(a) in the case of the Netherlands, the Government of the Kingdom of the Netherlands and shall include :

- the local authorities ;

- the Netherlands Bank (Central Bank) ;

- such institutions, the capital of which is wholly owned by the Government of the Kingdom of the Netherlands or the

local authorities ;

- the Netherlands Financierings Maatschappij voor Ontwikkelings landen N.V. (Netherlands finance company for developing countries) and the Netherlands Investerings bank voor Ontwikkelingslanden N.V. (Netherlands investment Bank for developing countries) ;

- all other institutions as may be agreed from time to time between the competent authorities of the States ;

(b) in the case of India, the Government of India and shall include :

- a political sub-division ;

- a local authority ;

- the Reserve Bank of India (Central Bank) ;

- the Export-Import Bank of India ;

- such institutions, the capital of which is wholly owned by the Government of India or a political sub-division or a local authority;

- all other institutions as may be agreed from time to time between the competent authorities of the States.

5. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraph 2.

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

7. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of one of the States, carries on business in the other State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 14, as the case may be, shall apply.

8. Interest shall be deemed to arise in one of the States when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of one of the States or not, has in one of the States 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.

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

1[ARTICLE 12

ROYALTIES AND FEES FOR TECHNICAL SERVICES

1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.]

2[2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise

and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, or fees for technical services, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or the fees for technical services.]

3. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraph 2.

1[4. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.]

5. For purposes of this Article, "fees for technical services" means payments of any kind to any person in consideration for the rendering of any technical or consultancy services (including through the provision of services of technical or other personnel) if such services :

(a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 4 of this Article is received; or

(b) make available technical knowledge, experience, skill, know-how or processes, or consist of the development and transfer of a technical plan or technical design.

2[6. Notwithstanding paragraph 5, "fees for technical services" does not include amounts paid :

(a) for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property;

(b) for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships or aircraft in international traffic; (c) for teaching in or by educational institutions;

(e) for services for the personal use of the individual or individuals, making the payment; or

(d) to an employee of the person making the payments or to any individual or partnership for professional services as defined in Article 14 (Independent Personal Services) of this Convention.]

7. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of one of the States, carries on business in the other State, in which the royalties or fees for technical services arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the royalties or fees for technical services are 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.

8. Royalties or fees for technical services shall be deemed to arise in one of the States when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, whether he is a resident of one of the States or not, has in one of the States a permanent establishment or a fixed base in connection with which the contract under which the royalties or fees for technical services are paid was concluded, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

9. 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 royalties or fees for technical services, having regard to the royalties fees for technical services 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 payment shall remain taxable, according to the laws of each State, due regard being had to the other provisions of this Convention.]

ARTICLE 13
CAPITAL GAINS

1. Gains derived by a resident of one of the States from the alienation of immovable property referred to in Article 6 and situated in the other 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 one of the States has in the other State or of movable property pertaining to a fixed base available to a resident of one of the States in the other State for the purpose of performing independent personal services, including such gains from the alienation of such permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the State in which the place of effective management of the enterprise is situated. For the purposes of this paragraph, the provisions of paragraph 3 of Article 8A shall apply.
4. **[MODIFIED by paragraph 1 of Article 9 of the MLI]** [Gains derived by a resident of one of the States from the alienation of shares (other than shares quoted on an approved stock exchange) forming part of a substantial interest in the capital stock of a company which is a resident of the other State, the value of which shares is derived principally from immovable property situated in that other State other than property in which the business of the company was carried on, may be taxed in that other State. A substantial interest exists when the resident owns 25 per cent or more of the shares of the capital stock of a company.]

The following paragraph 1 of Article 9 of the MLI applies with respect to paragraph 4 of Article 13 of this Convention :

**ARTICLE 9 OF THE MLI - CAPITAL GAINS FROM ALIENATION OF SHARES OR INTERESTS OF ENTITIES DERIVING THEIR
VALUE PRINCIPALLY FROM IMMOVABLE PROPERTY**

[Paragraph 4 of Article 13 of the Convention]:

- (a) shall apply if the relevant value threshold is met at any time during the 365 days preceding the alienation; and
- (b) shall apply to shares or comparable interests, such as interests in a partnership or trust (to the extent that such shares or interests are not already covered) in addition to any shares or rights already covered by the provisions [of the Convention].

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

However, gains from the alienation of shares issued by a company resident in the other State which shares form part of at least a 10 per cent interest in the capital stock of that company, may be taxed in that other State if the alienation takes place to a resident of that other State. However, such gains shall remain taxable only in the State of which the alienator is a resident if such gains are realised in the course of a corporate organisation, reorganization, amalgamation, division or similar transaction, and the buyer or the seller owns at least 10 per cent of the capital of the other.

6. The provisions of paragraph 3 shall not affect the right of each of the States to levy according to its own law at tax on gains from the alienation of shares or 'jouissance' rights in a company, the capital of which is wholly or partly divided into shares and which under the laws of that State is a resident of that State, derived by an individual who is a resident of the other State and has been a resident of the first-mentioned State in the course of the last five years preceding the alienation of the shares or 'jouissance' rights.

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of one of the States in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other State:

(a) if he has a fixed base regularly available to him in the other State for the purpose of performing his activities ; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State ; or

(b) if his stay in the other State is for a period or periods amounting to or exceeding in the aggregate 183 days in the fiscal year concerned ; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 15

DEPENDENT PERSONAL SERVICES

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

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

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in 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 or a fixed base which the employer has in the other State.

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

ARTICLE 16

DIRECTORS' FEES

Directors' fees or other remuneration derived by a resident of one of the States in his capacity as a member of the board of directors, a 'bestuurder' or a 'commissaris' of a company which is a resident of the other State may be taxed in that other State.

ARTICLE 17

ARTISTES AND ATHLETES

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

2. Where income in respect of 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 State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by an entertainer or an athlete who is a resident of one of the States from his personal activities as such exercised in the other State, shall be taxable only in the first-mentioned State, if the activities in the other State are supported wholly or substantially from the public funds of the first-mentioned State including any of its political sub-divisions or local authorities, and such activities are exercised under the terms of a bilateral cultural agreement between the two States.

ARTICLE 18

PENSIONS AND ANNUITIES

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of one of the States in consideration of past employment as well as any annuity paid to such a resident, shall be taxable only in that State.

2. However, where such remuneration is not of a periodical nature and it is paid in consideration of past employment in the other State, it may be taxed in that other State.

3. Any pension paid out under the provisions of a social security system of one of the States to a resident of the other State may be taxed in the first-mentioned State.

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

ARTICLE 19

GOVERNMENT SERVICE

1. (a) Remuneration, other than a pension, paid by one of the States or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State or sub-division or authority may be taxed in that State.

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

1. is a national of that State; or

2. 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, one of the States or a political sub-division or a local authority thereof to an individual in respect of services rendered to that State of sub-division or authority may be taxed in that State.

(b) However, such pension shall be taxable only in the other State if the individual is a resident of, and a national of that State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by one of the States or a political sub division or a local authority thereof.

ARTICLE 20

PROFESSORS, TEACHERS AND RESEARCH SCHOLARS

1. A professor or teacher who is or was a resident of one of the States immediately before visiting the other State for the purpose of teaching or engaging in research, or both, at a university, college, school or other approved institution in that

other State shall be taxable only in the first-mentioned State on any remuneration for such teaching or research for a period not exceeding two years from the date of his arrival in that other State.

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

3. For the purposes of paragraph 1, 'approved institution' means an institution which has been approved in this regard by the competent authority of the State concerned.

ARTICLE 21

STUDENTS AND APPRENTICES

1. Student or business apprentice who is or was a resident of one of the State immediately before visiting the other State and who is present in that other State solely for the purpose of his education or training, shall be exempt from tax in that other State on :

(a) payments made to him by persons residing outside that other State for the purposes of his maintenance, education or training ; and

(b) remuneration from employment in that other State, in an amount not exceeding 5000 guilders or its equivalent in Indian currency during any fiscal year, provided that such employment is directly related to his studies or is undertaken for the purpose of his maintenance.

2. The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaking, but in no event shall any individual have the benefits of this Article, for more than five consecutive years from the date of his first arrival in that other State.

CHAPTER IV

TAXATION ON CAPITAL

ARTICLE 22

CAPITAL

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

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

3. Capital represented by ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in State in which the place of effective management of the enterprise is situated.

For the purposes of this paragraph, the provisions of paragraph 3 of Article 8A shall apply.

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

CHAPTER V

ELIMINATION OF DOUBLE TAXATION

ARTICLE 23

ELIMINATION OF DOUBLE TAXATION

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

2. However, where a resident of the Netherlands derives items of income or owns items of capital which, according to Article 6, Article 7, paragraph 6 of Article 10, paragraph 7 of Article 11, paragraph 7 of Article 12, paragraphs 1, 2, 4 and 5 of Article 13, Article 14, paragraph 1 of Article 15, Article 16, paragraph 3 of Article 18, Article 19 and paragraphs 1 and 2 of Article 22 of this Convention may be taxed in India and are included in the basis referred to in paragraph 1, the Netherlands shall exempt such items of income or capital by allowing a reduction in its tax. These reductions shall be computed in conformity with the provisions of Netherlands law for the avoidance of double taxation. For that purpose the said items of income or capital shall be deemed to be included in the total amount of items of income or capital which are exempted from Netherlands tax under those provisions².

3. Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for items of income which, according to paragraph 2 of Article 8A, paragraph 2 of Article 10, paragraph 2 of Article 11, paragraph 2 of Article 12, Article 17 and paragraph 2 of Article 18 of this Convention may be taxed in India to the extent that these items are included in the basis referred to in paragraph 1. The amount of this deduction shall be equal to the tax paid in India on these items of income, but shall not exceed the amount of the reduction which would be allowed if the items of income so included were the sole items of income which are exempted from Netherlands tax under the provisions of Netherlands tax for the avoidance of double taxation.

Where, by reason of special relief given under the provisions of Indian law for the purpose of encouraging investment in India, the Indian tax actually levied on interest arising in India is lower than the tax India may levy according to subparagraphs (a) and (b) of paragraph 2 of Article 11, then the amount of the tax paid in India on such interest shall be deemed to have been paid at the rates of tax mentioned in the said provisions. However, if the general tax rates under the Indian law applicable to the aforementioned interest are reduced below those mentioned in the foregoing sentence, these lower rates shall apply for the purposes of that sentence. The provisions of the two foregoing sentences shall apply only for a period of ten years after the date on which the Convention became effective. This period may be extended by mutual agreement between the competent authorities.

4. In India, double taxation shall be eliminated as follows:

Where a resident of India derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the Netherlands, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in the Netherlands, whether directly or by deduction; and as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in the Netherlands. Such deduction in either case shall not, however, exceed that part of the income-tax or capital tax (as computed before the deduction is given) which is attributable, as the case may be, to the income or the capital which may be taxed in the Netherlands. Further, where such resident is a company by which sur tax is payable in India, the deduction in respect of income-tax paid in the Netherlands shall be allowed in the first instance from income-tax payable by the company in India and as to the balance, if any, from sur tax payable by it in India:

Provided that income which in accordance with the provisions of this Convention is not to be subjected to tax may be taken into account in calculating the rate of tax to be imposed.

For the purposes of this paragraph in determining the taxes on income paid to the Netherlands, the investment premiums and bonuses and disinvestment payments as meant in the Netherlands Investment Account Law ('Wet investeringsrekening') shall not be taken into account. For the purposes of this paragraph, the taxes referred to in paragraphs 3(a) and 4 of Article 2, other than the capital tax, shall be considered as taxes on income.

5. Where a resident of one of the States derives gains which may be taxed in the other State in accordance with paragraph 6 of Article 13, that other State shall allow a deduction from its tax on such gains to an amount equal to the tax levied in the first-mentioned State on the said gains.

CHAPTER VI
SPECIAL PROVISIONS
ARTICLE 24
NON-DISCRIMINATION

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

2. Except where the provisions of paragraph 3 of Article 7 apply, the taxation on a permanent establishment which an enterprise of one of the States has in the other 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.

3. The provisions of paragraph 2 shall not be construed as obliging one of the States to grant to residents of the other 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 9 of Article 11, or paragraph 9 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of one of the States to a resident of the other State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of one of the States to a resident of the other State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

5. Enterprises of one of the States, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other 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.

ARTICLE 25
MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the 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 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 States.

3. The competent authorities of the States shall endeavour to resolve by mutual agreement any difficulties or doubts

arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the two States.

ARTICLE 26

EXCHANGE OF INFORMATION

1. The competent authorities of the States shall exchange such information as is necessary for carrying out the provisions of the Convention or of the domestic laws of the States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention, in particular for the prevention of fraud or evasion of such taxes. Any information received by one of the States 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 courts or bodies) involved in the assessment or collection of, the enforcement in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions.

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

- (a) to carry out administrative measures at variance with the laws and administrative practices of that or of the other 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 State;
- (c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

ARTICLE 27

DIPLOMATIC AGENTS AND CONSULAR OFFICERS

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

2. For the purposes of the Convention an individual who is a member of a diplomatic or consular mission of one of the States in the other 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 or on capital as are residents of that State.

3. International organisations, organs and officials thereof and members of a diplomatic or consular mission of a third State, being present in one of the States, are not entitled, in the other State, to the reductions or exemptions from tax provided for in Articles 10, 11 and 12 in respect of the items of income dealt with in these Articles and arising in that other State, if such items of income are not subject to a tax on income in the first-mentioned State.

ARTICLE 28

TERRITORIAL EXTENSION

1. This Convention may be extended either in its entirety or with any necessary modifications, to either or both of the countries of Aruba or the Netherlands Antilles, if the country concerned imposes taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions including conditions as to termination, as may be specified and agreed in notes to be exchanged through diplomatic channels.
2. Unless otherwise agreed, the termination of the Convention shall not also terminate any extension of the Convention to any country to which it has been extended under this Article.

The following paragraphs 1 to 3 of Article 10 of the MLI applies and supersedes the provisions of this Convention:

ARTICLE 10 OF THE MLI - ANTI-ABUSE RULE FOR PERMANENT ESTABLISHMENT SITUATED IN THIRD JURISDICTIONS

Paragraph 1 of Article 10 of the MLI

Where:

- a. an enterprise of a [Contracting State] derives income from the other [Contracting State] and the first-mentioned [Contracting State] treats such income as attributable to a permanent establishment of the enterprise situated in a third jurisdiction; and
- b. the profits attributable to that permanent establishment are exempt from tax in the first- mentioned [Contracting State],

the benefits of [the Convention] shall not apply to any item of income on which the tax in the third jurisdiction is less than 60 per cent of the tax that would be imposed in the first-mentioned [Contracting State] on that item of income if that permanent establishment were situated in the first-mentioned [Contracting State]. In such a case, any income to which the provisions of this paragraph apply shall remain taxable according to the domestic law of the other [Contracting State], notwithstanding any other provisions of [the Convention].

Paragraph 2 of Article 10 of the MLI

Paragraph 1 [of Article 10 of the MLI] shall not apply if the income derived from the other [Contracting State] described in paragraph 1 [of Article 10 of the MLI] is derived in connection with or is incidental to the active conduct of a business carried on through the permanent establishment (other than the business of making, managing or simply holding investments for the enterprise's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance enterprise or registered securities dealer, respectively).

Paragraph 3 of Article 10 of the MLI

If benefits under [the Convention] are denied pursuant to paragraph 1 [of Article 10 of the MLI] with respect to an item of income derived by a resident of a [Contracting State], the competent authority of the other [Contracting State] may, nevertheless, grant these benefits with respect to that item of income if, in response to a request by such resident, such competent authority determines that granting such benefits is justified in light of the reasons such resident did not satisfy the requirements of paragraphs 1 and 2 [of Article 10 of the MLI]. The competent authority of the [Contracting State] to which a request has been made under the preceding sentence by a resident of the other [Contracting State] shall consult with the competent authority of that other [Contracting State] before either granting or denying the request.

The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Convention:

ARTICLE 7 OF THE MLI - PREVENTION OF TREATY ABUSE

(Principal Purposes Test provision)

Notwithstanding any provisions of [the Convention], a benefit under [the Convention] shall not be granted in respect of

an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of [the Convention].

CHAPTER VII

FINAL PROVISIONS

ARTICLE 29

ENTRY INTO FORCE

1. Each of the States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Convention. This Convention shall enter into force on the thirtieth day after the latter of the dates on which the respective Governments have notified each other in writing that the formalities constitutionally required in their respective States have been complied with, and its provisions shall have effect:

(a) in the Netherlands for taxable years and periods beginning on or after the first day of January next following the calendar year in which the latter of the notifications is given ;

(b) in India in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the latter of the notifications is given.

2. Notwithstanding the provisions of paragraph 1, the provisions of Article 8 shall have effect:

(a) in the Netherlands for taxable years and periods beginning on or after the first day of January, 1987 ;

(b) in India in respect of income arising in any fiscal year beginning on or after the first day of April, 1987.

ARTICLE 30

TERMINATION

This Convention shall remain in force until terminated by one of the Contracting Parties. Either party may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the expiration of a period of five years from the date of its entry into force. In such event, the Convention shall cease to have effect:

(a) in the Netherlands for taxable years and periods beginning on or after the first day of January next following the calendar year in which the notice of termination has been given ;

(b) in India in respect of income arising in any fiscal year beginning on or after the 1st day of April next following the calendar year in which the notice of termination has been given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Convention. DONE at New Delhi this thirtieth day of July, 1988, in duplicate, in the Hindi, Netherlands and English languages, the three texts being equally authentic. In case of divergence between the Hindi and Netherlands texts, the English text shall be the operative one.

PROTOCOL

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

I. Ad Article 7

1. In respect of paragraphs 1 and 2 of Article 7, where an enterprise of one of the States sells goods or merchandise or carries on business in the other State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of the remuneration which is attributable to the actual activity of the permanent establishment for such sales or business. Especially, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the State where the permanent establishment is situated. The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the State of which the enterprise is a resident.

2. It is understood that with respect to paragraph 2 of Article 7, no profits shall be attributed to a permanent establishment by reason of the facilitation of the conclusion of foreign trade or loan agreements or mere signing thereof.

3. Where the law of the State in which a permanent establishment is situated imposes in accordance with the provisions of subparagraph (a) of paragraph 3 of Article 7 a restriction on the amount of the executive and general administrative expenses which may be allowed as a deduction in determining the profits of such permanent establishment, it is understood that in determining the profits of such permanent establishment the deduction in respect of such executive and general administrative expenses in no case shall be less than what is allowable under the Indian Income-tax Act as on the date of signature of this Convention.

II. Ad Article 8A

It is understood that in case the percentage as is specified in section 44B of the Indian Income-tax Act as on the date of signature of this Convention for the purpose of determining the amount of shipping profits is reduced by any change in the Indian law, the percentage as is mentioned in sub-paragraph (b) of paragraph 2 of Article 8A will be reduced in the same proportion. III. Ad Article 9

It is understood that the fact that associated enterprises have concluded arrangements, such as cost-sharing arrangements or general services agreements, for or based on the allocation of executive, general administrative, technical and commercial expenses, research and development expenses and other similar expenses, is not in itself a condition as meant in paragraph 1 of Article 9.

IV. Ad Articles 10, 11 and 12

1. Where tax has been levied at source in excess of the amount of tax chargeable under the provisions of Article 10, 11 or 12, applications for the refund of the excess amount of tax have to be lodged with the competent authority of the State having levied the tax, within a period of three years after the expiration of the calendar year in which the tax has been levied.

2. If after the signature of this convention under any Convention or Agreement between India and a third State which is a member of the OECD India should limit its taxation at source on dividends, interests, royalties, fees for technical services or payments for the use of equipment to a rate lower or a scope more restricted than the rate or scope provided for in this Convention on the said items of income, then as from the date on which the relevant Indian Convention or Agreement

enters into force the same rate or scope as provided for in that Convention or Agreement on the said items of income shall also apply under this Convention.

V. Ad Article 12

It is understood that in case India applies a levy, not being a levy covered by Article 2, such as the Research and Development Cess, on payments meant in Article 12, and if after the signature of this Convention under any Convention or Agreement between India and a third State which is a member of the OECD India should give relief from such levy, directly, by reducing the rate or the scope of the levy, either in full or in part, or, indirectly, by reducing the rate of the scope of the Indian tax allowed under the Convention or Agreement in question on payments as meant in article 12 of this Convention with the levy, either in full or in part, then, as from the date on which the relevant Indian Convention or Agreement enters into force, such relief as provided for in that Convention or agreement shall also apply under this Convention.

VI. Ad Article 16

It is understood that 'bestuurder' or 'commissaris' of a Netherlands company means persons, who are nominated as such by the general meeting of shareholders or by any other competent body of such company and are charged with the general management of the company and the supervision thereof, respectively.

VII. Ad Article 23
It is understood that for the computation of the reduction mentioned in paragraph 2 of Article 23, the items of capital referred to in paragraph 1 of Article 22 shall be taken into account for the value thereof reduced by the value of the debts secured by mortgage on the capital and the items of capital referred to in paragraph 2 of Article 22 shall be taken into account for the value thereof reduced by the value of the debts pertaining to the permanent establishment or fixed base.

IN WITNESS whereof the undersigned, duly authorised thereto, have signed this Protocol. DONE at New Delhi this thirtieth day of July, 1988, in duplicate, in the Hindi, Netherlands and English languages, the three texts being equally authentic. In case of divergence between the Netherlands and Hindi texts, the English text shall be the operative one.

Amending Notification No. SO 693(E), dated 30-8-1999

WHEREAS the Convention between the Republic of India and the Kingdom of the Netherlands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital came into force on January 21, 1989, after the notification by both the Contracting State to each other of the completion of the procedures required under their laws for bringing into force the said Convention;

AND WHEREAS the Central Government, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), section 24A of the Companies (Profits) Surtax Act, 1964 (7 of 1964) and section 44A of the Wealth-tax Act, 1957 (27 of 1957), had directed that all the provisions of the said Convention annexed to the notification of the Government of India in the Ministry of Finance (Department of Revenue) (Foreign Tax Division) Number G.S.R. 382(E), dated March 27, 1989, shall be given effect to in the Union of India ;

AND WHEREAS article IV of the protocol dated July 30, 1988, to the aforesaid Convention provides that if after the signature of the aforesaid Convention under any Convention or Agreement between India and a third State which is a member of the Organisation for Economic Co-operation and Development, India, should limit its taxation at source on dividends, interest, royalties, fees for technical services or payments for the use of equipment to a rate lower or a scope more restricted than the rate or scope provided for in this Convention on the said items of income, then, as from the date on which the relevant Indian Convention or Agreement enters into force the same rate or scope as provided for in that Convention or Agreement on the said items of income shall also apply under this Convention;

AND WHEREAS in the Convention between India and Germany which entered into force on October 26, 1996, the Convention between India and Sweden which entered into force on December 25, 1997, the Convention between India and

the Swiss Confederation which entered into force on October 19, 1994, and the Convention between India and the United States of America which entered into force on December 18, 1990, which states are members of the Organisation for Economic Cooperation and Development, the Government of India, has limited the taxation at source on dividends, interest, royalties, fees for technical services and payments for the use of equipment to a rate lower or a scope more restricted than that provided in the Convention between India and the Netherlands on the said items of income;

NOW, THEREFORE, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that the following modifications shall be made in the Convention notified by the said notification which are necessary for implementing the aforesaid Convention between India and the Netherlands, namely:

I. With effect from April 1, 1997, for the existing paragraph 2 of article 10 relating to dividends, the following paragraph shall be read :

"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 10 per cent of the gross amount of the dividends."

II. With effect from April 1, 1997, for the existing paragraph 2 of article 11 relating to interest, the following paragraph shall be read :

"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 per cent of the gross amount of the interest."

III. With effect from April 1, 1997, for the existing article 12 relating to royalty, fees for technical services and payments for the use of equipment the following article shall be read :

"Article 12 : Royalties and Fees for Technical Services - 1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties and fees for technical services 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 or fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed :

(a) in the case of royalties referred to in sub-paragraph (a) of paragraph 4 and fees for technical services as defined in this article (other than services described in sub-paragraph (b) of this paragraph):

(i) during the first five taxable years for which this Convention has effect,—

(A) 15 per cent of the gross amount of the royalties or fees for technical services as defined in this article, where the payer of the royalties or fees is the Government of that Contracting State, a political subdivision or a public sector company ; and

(B) 20 per cent of the gross amount of the royalties or fees for technical services in all other cases ; and

(ii) during the subsequent years, 15 per cent of the gross amount of royalties or fees for technical services ; and

(b) in the case of royalties referred to in sub-paragraph (b) of paragraph 4 and fees for technical services as defined in this article that are ancillary and subsidiary to the enjoyment of the property for which payment is received under paragraph 4(b) of this article, 10 per cent of the gross amount of the royalties or fees for technical services.

3. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraph 2.

4. The term "royalties" as used in this article means:

(a) 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 motion picture films and works on film or video-tape for use in connection with television, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial

or scientific experience ; and

(b) payments of any kind received as consideration for the use of, or the right to use industrial, commercial or scientific equipment, other than payments derived by an enterprise described in paragraph 1 of articles 8 and 8A (shipping and air transport) from activities described in paragraph 2(a) of article 8 or paragraph 4(b) of article 8A.

5. For purposes of this article, "fees for technical services" means payments of any kind to any person in consideration for the rendering of any technical or consultancy services (including through the provision of services of technical or other personnel) if such services :

(a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 4 of this article is received ; or

(b) make available technical knowledge, experience, skill, know-how or processes or consist of the development and transfer of a technical plan or technical design.

6. Notwithstanding paragraph 5, "fees for technical services" does not include amounts paid:

(a) for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property other than a sale described in paragraph 4(a) ;

(b) for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships or aircraft in international traffic;

(c) for teaching in or by educational institutions;

(d) for services for the personal use of the individual or individuals making the payment ; or

(e) to an employee of the person making the payments or to any individual or partnership for professional services as defined in article 14 (independent personal services) of this Convention.

7. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of one of the States, carries on business in the other State, in which the royalties or fees for technical services arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the royalties or fees for technical services are 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.

8. Royalties or fees for technical services shall be deemed to arise in one of the States when the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, whether he is a resident of one of the States or not, has in one of the States a permanent establishment or a fixed base in connection with which the contract under which the royalties or fees for technical services are paid was concluded, and such royalties or fees for technical services are borne by such permanent establishment or fixed base, then such royalties or fees for technical services shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

9. 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 royalties or fees for technical services, having regard to the royalties or fees for technical services 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 payment shall remain taxable according to the laws of each State, due regard being had to the other provisions of this Convention."

IV. With effect from April 1, 1995, for paragraph 6 of article 12 relating to royalties and fees for technical services referred to in paragraph III above, the following paragraph shall be read:

"6. Notwithstanding paragraph 5, 'fees for technical services' does not include amounts paid :

- (a) for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property ;
- (b) for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships or aircraft in international traffic;
- (c) for teaching in or by educational institutions;
- (d) for services for the personal use of the individual or individuals, making the payment ; or
- (e) to an employee of the person making the payments or to any individual or partnership for professional services as defined in article 14 (independent personal services) of this Convention."

V. With effect from April 1, 1997, for paragraph 2 of article 12, relating to royalties and fees for technical services referred to in paragraph III above the following paragraph shall be read :

"2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, or fees for technical services, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties or the fees for technical services."

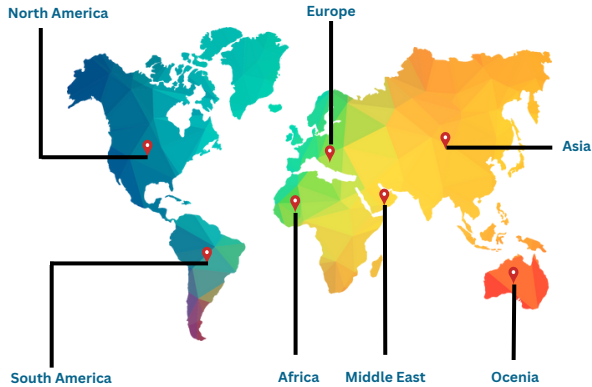
VI. With effect from April 1, 1998, for paragraph 4 of article 12 relating to royalties and fees for technical services referred to in paragraph III above the following paragraph shall be read :

"4. The term 'royalties' as used in this article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trademark, design or model, plan, secret formula or process, for information concerning industrial, commercial or scientific experience."

VII. The memorandum of understanding and the confirmation of understanding, dated September 12, 1989, with reference to paragraph 4 of article 12 of the Indo-USA Double Taxation Avoidance Convention (DTAC), will apply mutatis mutandis for the purpose of paragraphs III, IV, V and VI above.



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