

**CONVENTION BETWEEN THE SWISS CONFEDERATION AND THE KINGDOM OF THE NETHERLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME**

The Swiss Federal Council

and

The Government of the Kingdom of the Netherlands,

Desiring to replace by a new convention the existing Convention between the Swiss Confederation and the Kingdom of the Netherlands for the avoidance of double taxation with respect to taxes on income and on capital, with Protocol, signed at The Hague on 12 November, 1951, as supplemented by the Supplementary Protocol signed at The Hague on 12 November, 1951, and as amended by the Supplementary Convention signed at The Hague on 22 June, 1966,

Have agreed as follows:

## CHAPTER I

### SCOPE OF THE CONVENTION

#### Article 1

##### PERSONS COVERED

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

#### Article 2

##### TAXES COVERED

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

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

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

a) in the Netherlands:

- income tax (de inkomstenbelasting);
- wages tax (de loonbelasting);
- company tax (de vennootschapsbelasting) including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mijnbouwwet (the Mining Act);
- dividend tax (de dividendbelasting);

(hereinafter referred to as "Netherlands tax");

b) in Switzerland:

- the federal, cantonal and communal taxes on income (total income, earned income, income from capital, industrial and commercial profits, capital gains and other items of income);

(hereinafter referred to as "Swiss tax").

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

5. The Convention shall not apply to taxes withheld at source on prizes in a lottery.

## **CHAPTER II**

### **DEFINITIONS**

#### **Article 3**

##### **GENERAL DEFINITIONS**

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

- a) the terms “a Contracting State” and “the other Contracting State” mean the Kingdom of the Netherlands (the Netherlands) or Switzerland, as the context requires;
- b) the term “the Netherlands” means the part of the Kingdom of the Netherlands that is situated in Europe, including its territorial sea, and any area beyond the territorial sea within which the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights;
- c) the term “Switzerland” means the Swiss Confederation;
- d) the term “person” includes an individual, a company and any other body of persons;
- e) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- f) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- g) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

- h) the term “competent authority” means:
  - (i) in the Netherlands the Minister of Finance or his authorised representative;
  - (ii) in Switzerland the Director of the Federal Tax Administration or his authorised representative;
  
- i) the term “national” means:
  - (i) any individual possessing the nationality of a Contracting State;
  - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

#### **Article 4**

#### **RESIDENT**

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

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

- a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only 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 only of the State in which he has an habitual abode;

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

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

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

## **Article 5**

### **PERMANENT ESTABLISHMENT**

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

2. The term "permanent establishment" includes especially:

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

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

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

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

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

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

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

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

**CHAPTER III****TAXATION OF INCOME****Article 6****INCOME FROM IMMOVABLE PROPERTY**

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

**Article 7****BUSINESS PROFITS**

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar

activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

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

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

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

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

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

## **Article 8**

### **SHIPPING, INLAND WATERWAYS AND AIR TRANSPORT**

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

2. Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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



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

### **Article 9**

#### **ASSOCIATED ENTERPRISES**

1. Where

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

or

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

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly. It is understood, however, that the fact that associated enterprises have concluded arrangements, such as cost sharing arrangements or general services agreements, for or based on the allocation of executive, general administrative, technical and commercial expenses, research and development expenses and other similar expenses, is not in itself a condition as meant in the preceding sentence.

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

**Article 10**

**DIVIDENDS**

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

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

3. Notwithstanding the provisions of paragraph 2, the Contracting State of which the company is a resident shall exempt the dividends paid by that company if:

- a) the beneficial owner of the dividends is a company which is a resident of the other Contracting State and which holds directly at least 10 per cent of the capital of the company paying the dividends; or
- b) the beneficial owner of the dividends is a pension fund; or
- c) as far as Switzerland is concerned, the beneficial owner of the dividends is a social security scheme.

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

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

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

7. The provisions of paragraphs 1, 2, 3 and 9 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and

the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

8. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

9. Paragraphs 1, 2 and 8 shall not prevent the Netherlands from applying its domestic tax law to an individual in respect of the so-called "preservative tax assessment" ("conserverende aanslag") that has been issued to that individual, before that person ceased to be a resident of the Netherlands, with respect to a substantial interest in a company. The preceding sentence shall only apply insofar the assessment or a part thereof is still outstanding.

## **Article 11**

### **INTEREST**

1. Interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

2. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraph 1.

3. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums 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.

4. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent

personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

## **Article 12**

### **ROYALTIES**

1. Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

2. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraph 1.

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

4. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain

taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

### **Article 13**

#### **CAPITAL GAINS**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or such fixed base may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic, boats engaged in inland waterways transport or movable property pertaining to the operation of such ships, aircraft or boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains derived by a resident of a Contracting State from the alienation of shares - other than shares which are quoted on a stock exchange as may be agreed by the Contracting States - or other corporate rights in a company the assets of which consist directly or indirectly for more than 50 per cent of immovable property referred to in Article 6 may be taxed in the other Contracting State. The provisions of the preceding sentence shall not apply if:
  - a) the person who derives the gains owns less than 5 per cent of the shares or other corporate rights in the company prior to the alienation; or
  - b) the gains are derived in the course of a corporate reorganisation, amalgamation, division or similar transaction; or
  - c) the immovable property is used by a company for its own business.
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 Contracting State of which the alienator is a resident.

6. Paragraph 5 shall not prevent the Netherlands from applying its domestic tax law to an individual in respect of the so-called "preservative tax assessment" ("conserverende aanslag") that has been issued to that individual, before that person ceased to be a resident of the Netherlands, with respect to a substantial interest in a company. The preceding sentence shall only apply insofar the assessment or a part thereof is still outstanding.

#### **Article 14**

##### **INDEPENDENT PERSONAL SERVICES**

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

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

#### **Article 15**

##### **DEPENDENT PERSONAL SERVICES**

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

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

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

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

## **Article 16**

### **DIRECTORS' FEES**

1. Directors' fees, attendance fees, fixed remunerations and other payments received by the members of a board of directors or supervisory board in that capacity from a company resident in Switzerland may be taxed in Switzerland.

2. Directors' fees, attendance fees, fixed remunerations and other payments received by "*bestuurders*" or "*commissarissen*" in that capacity from a company resident in the Netherlands may be taxed in the Netherlands.

3. Notwithstanding the provision of paragraph 2, wages and salaries paid by a company resident in the Netherlands to its "*bestuurders*" resident in Switzerland shall be liable to tax in respect of one half in the Netherlands and in respect of the other half in Switzerland. However, such wages and salaries received by "*bestuurders*" by reason of the exercise of his activities in that capacity in a permanent establishment situated in Switzerland of a company resident in the Netherlands and which are borne by the permanent establishment may be taxed in Switzerland.

4. Remunerations for services actually received by persons referred to in paragraphs 1 and 2 in another capacity shall be taxable in accordance with the provisions of Articles 14 or 15.

5. For the purposes of paragraph 2 of this Article, the terms "*bestuurders*" and "*commissarissen*" mean respectively persons who are charged with the general management of the company and persons who are charged with the supervision thereof.

**Article 17****ENTERTAINERS AND SPORTSPERSONS**

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

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised, unless it is established that neither the entertainer or sportsperson nor persons related thereto (whether or not residents of that State) participate directly or indirectly in the receipts or profits of that other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions, or other distributions.

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

**Article 18****PENSIONS, ANNUITIES AND SOCIAL SECURITY PAYMENTS**

1. Pensions and other similar remuneration as well as annuities paid to a resident of a Contracting State, shall be taxable only in that State. Any pension and other payment paid out under the provisions of a social security system of a Contracting State to a resident of the other Contracting State shall be taxable only in that other State. Annuities paid from the Netherlands to residents of Switzerland are treated as pension payments for Swiss income taxation.

2. Notwithstanding the provisions of paragraph 1, a pension or other similar remuneration, annuity, or any pension and other payment paid out under the provisions of a social security system of a Contracting State, may be taxed in the Contracting State from which it is derived, in accordance with the laws of that State:



- a) insofar as the entitlement to this pension or other similar remuneration or annuity is exempt from tax in the Contracting State from which it is derived, or the contributions associated with the pension or other similar remuneration or annuity made to the pension scheme or insurance company were deducted in the past when calculating taxable income in that State or qualified for other tax relief in that State; and
- b) insofar as this pension or other similar remuneration or annuity or this pension or other payment paid out under the provisions of a social security system of a Contracting State is not taxed in the Contracting State of which the recipient thereof is a resident at the generally applicable rate for income derived from employment in the Netherlands and the generally applicable income tax rate in Switzerland, or less than 90 per cent of the gross amount of the pension or other similar remuneration or annuity or payment is taxed; and
- c) if the total gross amount of the pensions and other similar remuneration and annuities, and of any pension and other payment paid out under the provisions of a social security system of a Contracting State that according to subparagraphs a) and b) may be taxed in the Contracting State from which it is derived, in any calendar year exceeds the sum of 20.000 Euro.

3. Notwithstanding the provisions of paragraphs 1 and 2, if this pension or other similar remuneration is not periodic in nature, is paid in the other Contracting State and is paid out before the date on which the pension commences, or if a lump sum payment is made in lieu of the right to an annuity before the date on which the annuity commences, the payment or this lump sum may also be taxed in the Contracting State from which it is derived.

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

5. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraph 2. They shall also decide what details the resident of a Contracting State must submit for the purpose of the proper application of the Convention in the other Contracting State, in particular so that it can be established whether the conditions referred to in subparagraphs a), b) and c) of paragraph 2 have been met.

6. 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 and to the extent that the entitlement or

the contribution associated with the annuity qualified for tax relief in the Contracting State from which the annuity is derived.

### **Article 19**

#### **GOVERNMENT SERVICE**

1. a) Subject to the provisions of Article 18, salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority may be taxed in that State.  
b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
  - (i) is a national of that State; or
  - (ii) did not become a resident of that State solely for the purpose of rendering the services.
  
2. The provisions of Articles 15, 16 and 17 shall apply to salaries, wages and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

### **Article 20**

#### **STUDENTS**

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

**Article 21****OTHER INCOME**

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

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

**CHAPTER IV****ELIMINATION OF DOUBLE TAXATION****Article 22****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 which, according to the provisions of this Convention, may be taxed in Switzerland.

2. However, where a resident of the Netherlands derives items of income which according to paragraphs 1, 3 and 4 of Article 6, paragraph 1 of Article 7, paragraph 7 of Article 10, paragraph 4 of Article 11, paragraph 4 of Article 12, paragraphs 1, 2 and 4 of Article 13, paragraph 1 of Article 14, paragraphs 1 and 3 of Article 15, paragraph 2 of Article 18, paragraph 1 (subparagraph a) of Article 19 and paragraph 2 of Article 21 of this Convention may be taxed in Switzerland and are included in the basis referred to in paragraph 1, the Netherlands shall exempt such items of income by allowing a reduction of its tax. This reduction shall be computed in conformity with the provisions of the Netherlands law for the avoidance of double taxation. For that purpose the said items of income shall be deemed to be included in the amount of the items of income which are exempt from Netherlands tax under those provisions.

3. Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for the items of income which according to paragraph 2 of Article 10, paragraph 1 of Article 16, paragraphs 1 and 2 of Article 17 and paragraph 3 of Article 18 of this Convention may be taxed in Switzerland 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 Switzerland on these items of income, but shall, in case the provisions of the Netherlands law for the avoidance of double taxation provide so, not exceed the amount of the deduction which would be allowed if the items of income so included were the sole items of income which are exempt from Netherlands tax under the provisions of the Netherlands law for the avoidance of double taxation.

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

4. Notwithstanding the provisions of paragraph 2, the Netherlands shall allow a deduction from the Netherlands tax for the tax paid in Switzerland on items of income which according to paragraph 1 of Article 7, paragraph 7 of Article 10, paragraph 4 of Article 11, paragraph 4 of Article 12 and paragraph 2 of Article 21 of this Convention may be taxed in Switzerland to the extent that these items are included in the basis referred to in paragraph 1, insofar as the Netherlands under the provisions of the Netherlands law for the avoidance of double taxation allows a deduction from the Netherlands tax of the tax levied in another country on such items of income. For the computation of this deduction the provisions of paragraph 3 of this Article shall apply accordingly.

5. In the case of Switzerland, double taxation shall be avoided as follows:

- a) Where a resident of Switzerland derives income which, in accordance with the provisions of this Convention, may be taxed in the Netherlands, Switzerland shall, subject to the provisions of subparagraph b), exempt such income from tax but may, in calculating tax on the remaining income of that resident, apply the rate of tax which would have been applicable if the exempted income had not been so exempted. However, such exemption shall apply to gains and income referred to in paragraph 4 of Article 13 and paragraphs 1 and 2 of Article 17 only if actual taxation of such gains and income in the Netherlands is demonstrated.
- b) Where a resident of Switzerland derives dividends or non periodic pension payments which, in accordance with the provisions of Article 10 or Article 18, paragraph 3, may be taxed in the Netherlands, Switzerland shall allow, upon request, a relief to such resident. The relief may consist of:

- (i) a deduction from the tax on the income of that resident of an amount equal to the tax levied in the Netherlands in accordance with the provisions of Article 10 or Article 18, paragraph 3; such deduction shall not, however, exceed that part of the Swiss tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in the Netherlands; or
- (ii) a lump sum reduction of the Swiss tax; or
- (iii) a partial exemption of such dividends or non periodic pension payments from Swiss tax, in any case consisting at least of the deduction of the tax levied in the Netherlands from the gross amount of the dividends or non periodic pension payments.

Switzerland shall determine the applicable relief and regulate the procedure in accordance with the Swiss provisions relating to the carrying out of international conventions of the Swiss Confederation for the avoidance of double taxation.

## **CHAPTER V**

### **SPECIAL PROVISIONS**

#### **Article 23**

##### **CONTINENTAL SHELF ACTIVITIES**

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

2. In this Article the term “continental shelf activities” means activities which are carried on offshore in connection with the exploration or exploitation of the seabed and its subsoil and their natural resources, situated in the Netherlands, in accordance with international law.

3. An enterprise of Switzerland which carries on continental shelf activities in the Netherlands shall, subject to paragraph 4 of this Article, be deemed to carry on, in respect of those activities, business in the Netherlands through a permanent establishment situated therein, unless the continental shelf activities in question are carried on in the Netherlands for a period or periods of less than in the aggregate 30 days in any twelve month period.

For the purposes of this paragraph:

- a) where an enterprise carrying on continental shelf activities in the Netherlands is associated with another enterprise and that other enterprise continues, as part of the same project, the same continental shelf activities that are or were being carried on by the first-mentioned enterprise, and the aforementioned activities carried on by both enterprises - when added together - constitute a period of at least 30 days, then each enterprise shall be deemed to carry on its activities for a period of at least 30 days in any twelve month period;
- b) an enterprise shall be regarded as associated with another enterprise if one holds directly or indirectly at least one third of the capital of the other enterprise or if a person holds directly or indirectly at least one third of the capital of both enterprises.

4. However, for the purposes of paragraph 3 of this Article the term "continental shelf activities" shall be deemed not to include:

- a) one or any combination of the activities mentioned in paragraph 4 of Article 5;
- b) towing or anchor handling by ships primarily designed for that purpose and any other activities performed by such ships;
- c) the transport of supplies or personnel by ships, boats or aircraft in international traffic.

5. A resident of Switzerland who carries on continental shelf activities in the Netherlands which consist of professional services or other activities of an independent character, shall be deemed to perform those activities from a fixed base in the Netherlands if the continental shelf activities in question last for a continuous period of 30 days or more in any twelve month period.

6. Notwithstanding the second sentence of paragraph 1 of this Article, salaries, wages and other similar remunerations derived by a resident of Switzerland in respect of an employment connected with continental shelf activities carried on through a permanent establishment or a fixed base in the Netherlands may, to the extent that the employment is exercised on its continental shelf and borne by that permanent establishment or a fixed base, be taxed in the Netherlands.

#### **Article 24**

#### **NON-DISCRIMINATION**

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular

with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 5 of Article 11, or paragraph 5 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

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

5. Nothing contained in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

6. Contributions made by or on behalf of an individual who exercises employment or self-employment in a Contracting State ("the host state") to a pension scheme that is recognised for tax purposes in the other Contracting State ("the home state") shall, for the purposes of:

- a) determining the individual's tax payable in the host state; and
- b) determining the profits of his employer which may be taxed in the host state;

be treated in that State in the same way and subject to the same conditions and limitations as contributions made to a pension scheme that is recognised for tax purposes in the host state, to the extent that they are not so treated by the home state.

The precedent subparagraph applies only if the following conditions are met:

- a) the individual is subject to the legislation of the home state in accordance with the Agreement on Freedom of the Movement of Persons signed on 21 June 1999, between the Swiss Confederation on one side and the European Community and its Member States on the other side; and

- b) the individual was not a resident of the host state, and was participating in the pension scheme (or in another similar pension scheme for which the first-mentioned pension scheme was substituted), immediately before he began to exercise employment or self-employment in the host state; and
- c) the pension scheme is accepted by the competent authority of the host state as generally corresponding to a pension scheme recognised as such for tax purposes by that State.

For the purposes of this paragraph:

- a) the term “a pension scheme” means an arrangement in which the individual participates in order to secure retirement benefits payable in respect of the employment or self-employment referred to in this paragraph;
- b) a pension scheme is recognised for tax purposes in a Contracting State if the contributions to the scheme would qualify for tax relief in that State and if payments made to the scheme by the individual’s employer are not deemed in that State to be taxable income of the individual.

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

## Article 25

### **MUTUAL AGREEMENT PROCEDURE**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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



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

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

5. Where

- a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and
- b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within three years from the presentation of the case to the competent authority of the other Contracting State,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

The Contracting States may release to the arbitration board, established under the provisions of this paragraph, such information as is necessary for carrying out the arbitration procedure. The members of the arbitration board shall be subject to the limitation of disclosure described in paragraph 2 of Article 26 with respect to the information so released.

#### **Article 26**

### **EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of

the Contracting State, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

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

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

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

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

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

interests in a person. In order to obtain such information, the tax authorities of the requested Contracting State shall therefore have the power to enforce the disclosure of information covered by this paragraph, notwithstanding paragraph 3 or any contrary provisions in its domestic laws.

## **Article 27**

### **MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS**

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

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

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

## **Article 28**

### **TERRITORIAL EXTENSION**

1. This Convention may be extended, either in its entirety or with any necessary modifications, to the parts of the Kingdom of the Netherlands situated outside Europe, if the parts concerned impose taxes substantially similar in character to those to which the Convention applies. Any such extension shall be agreed upon between the two Contracting Parties in an exchange of notes through diplomatic channels and shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as shall be specified therein.

2. Unless otherwise expressly agreed upon between the Contracting States, the termination of this Convention shall also terminate any extension of the Convention to any part of the Kingdom of the Netherlands to which it has been extended under this Article.

**CHAPTER VI****FINAL PROVISIONS****Article 29****ENTRY INTO FORCE**

1. This Convention shall enter into force on the thirtieth day after receipt of the last notification by which the respective Contracting States have informed each other in writing that the formalities constitutionally required in their respective States have been complied with, and its provisions shall have effect for taxable years and periods beginning on or after the first day of January in the calendar year following that in which the Convention has entered into force.

2. Notwithstanding paragraph 1 of this Article, Article 26 and Article XVI of the Protocol to the Convention shall have effect for requests made on or after the date of entry into force of this Convention regarding information that relates to any date beginning on or after the first day of March following the date of signature of this Convention.

3. The Convention between the Swiss Confederation and the Kingdom of the Netherlands for the avoidance of double taxation with respect to taxes on income and on capital, with Protocol, signed at The Hague on 12 November, 1951, as supplemented by a Supplementary Protocol signed at The Hague on 12 November, 1951, and as amended by the Supplementary Convention signed at The Hague on 22 June, 1966, shall terminate upon the entry into force of this Convention. However, the provisions of the first-mentioned Convention shall continue to have effect for taxable years and periods which are expired before the time at which the provisions of this Convention shall be effective.

**Article 30****TERMINATION**

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year. In such event the Convention shall cease to have effect for taxable years and periods beginning after the end of the calendar year in which the notice of termination has been given.

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

DONE at The Hague, this 26th day of February 2010, in duplicate, in the French, Netherlands and English languages, the three texts being equally authentic. In case there is any divergence of interpretation between the French and Netherlands texts, the English text shall prevail.

For the Swiss Confederation  
The Ambassador of Switzerland  
Dominik M. Alder

For the Kingdom of the Netherlands  
The Minister of Finance  
Jan Kees de Jager

## **Protocol**

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

### **I. General**

1. In case an item of income is derived from a Contracting State through an entity that is fiscally transparent under the laws of either Contracting State and is organised in one of the Contracting States or in a third State, the first-mentioned State shall grant the benefits of the Convention with respect to that item of income to the person that is a resident of the other Contracting State according to the laws of that other State, to the extent that that person is taxed for that item of income and satisfies any other conditions specified in the Convention.

2. Notwithstanding the provision of paragraph 1, in case an item of income is derived from a Contracting State through an entity that is fiscally not transparent under the laws of that State and is organised in that State, that Contracting State shall not grant the benefits of the Convention with respect to that item of income.

3. Notwithstanding the provision of paragraph 1, in case an item of income is derived from a Contracting State through an entity that is fiscally transparent under the laws of that State and is organised in that State or in a third State, that Contracting State shall grant the benefits of the Convention with respect to that item of income to a resident of the other Contracting State, provided that item would have been exempt from tax under the laws of that other State, if it had been directly derived by that resident, and that resident satisfies any other conditions specified in the Convention.

### **II. Ad Article 3, paragraph 2, and Article 25**

It is understood that if the competent authorities of the Contracting States, by mutual agreement have reached a solution, within the context of the Convention, for cases in which double taxation or double exemption would occur

- a) as a result of the application of paragraph 2 of Article 3 with respect to the interpretation of a term not defined in the Convention; or
- b) as a result of differences in classification (for example of an element of income or of a person),

this solution, after publication thereof by both competent authorities, shall for the application of the Convention also be binding in other similar cases in the application of the Convention as long as the competent authorities have not published a different decision.

### **III. Ad Article 4, paragraph 1**

It is understood that the term “resident of a Contracting State” includes a pension fund that is recognised and controlled according to the statutory provisions of a Contracting State and of which the income is generally exempt from tax in that State.

### **IV. Ad Article 4**

An individual living aboard a ship or a boat without any real domicile in either of the Contracting States shall be deemed to be a resident of the Contracting State in which the ship or the boat has its home harbour.

### **V. Ad Articles 5, 6, 7, 13 and 23**

It is understood that with respect to the Netherlands, rights to the exploration and exploitation of natural resources shall be regarded as immovable property located in the Contracting State to whose seabed - and subsoil thereof - these rights apply, and that these rights are regarded as assets of a permanent establishment in that State. Furthermore, it is understood that the aforementioned rights include rights to interests in, or benefits from assets that arise from, that exploration or exploitation.

### **VI. Ad Article 5, paragraph 3**

For enterprises resident of a Contracting State and having started their activities on a building site or construction or installation project in the other Contracting State before the entry into force of the new Convention, the existence or not of a permanent establishment in the other State is determined according to the rules of the Convention of November 12, 1951, as supplemented by a Supplementary Protocol of November 12, 1951, and as amended by the Supplementary Convention of June 22, 1966.

**VII. Ad Article 7, paragraphs 1 and 2**

In respect of paragraphs 1 and 2 of Article 7, where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other Contracting 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 that portion of the income of the enterprise that is attributable to the actual activity of the permanent establishment in respect of such sales or business. Specifically, 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 attributable to 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 that is effectively carried out by the permanent establishment in the Contracting 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 Contracting State of which the enterprise is a resident.

**VIII. Ad Article 10**

It is understood that the provisions of Article 10 shall not apply, if the relation between the company paying the dividends and the receiving company has been established or maintained mainly for purposes of taking advantage of the benefits provided for in this Article.

**IX. Ad Article 10, paragraph 3**

1. It is understood that, on the one hand, there shall be regarded as companies which are residents of the Netherlands and are entitled to the benefits of paragraph 3 of Article 10, the resident taxpayers within the meaning of the Netherlands Corporate Income Tax Act 1969 ("*Wet op de vennootschapsbelasting 1969*"), as it may be amended or replaced. On the other hand, Swiss companies which are entitled to the benefits of paragraph 3 of Article 10 are the "société anonyme", the "société à responsabilité limitée", the "société en commandite par actions", the "société coopérative", as well as any other company or entity that is treated as these companies for the purpose of Swiss corporate taxation.

2. It is understood that the term "pension fund" includes, in the case of Switzerland, the pension schemes according to the Federal Act on old age, widows/widowers and orphans and invalidity insurance payable in respect of employment or self-employment of 25 June 1982, the non registered pension schemes which offer professional pension plans and the forms of individual recognised pension schemes comparable with the professional pension plans in accordance with Article 82 of the above-mentioned Federal Act.



**X. Ad Article 10, paragraph 6, Article 11, paragraph 3, and Article 13**

Notwithstanding the provisions of paragraph 6 of Article 10, paragraph 3 of Article 11 and Article 13, it is understood that payments on a loan, including payments on value changes of the loan, shall be treated as a dividend insofar as these payments are treated as a distribution by the tax laws of the Contracting State of which the company making the payments is a resident.

**XI. Ad Article 10, paragraph 9**

Where a resident of Switzerland receives dividends that may be taxed in the Netherlands in accordance with paragraph 9 of Article 10, the Netherlands shall grant a refund. The amount of this refund shall be equal to the tax due in Switzerland on this income but shall in no case exceed 10 per cent of this income.

**XII. Ad Articles 10, 11 and 12**

Applications for relief at source or the refund of the excess amount of tax have to be lodged with the competent authority of the State levying or having levied the tax, based on an official certificate of residence from the tax authorities of the other Contracting State and in conformity with the national laws and regulations of the State levying or having levied the tax.

**XIII. Ad Articles 10 and 13**

1. It is understood that income received in connection with the (partial) liquidation of a company or a purchase of own shares by a company is treated as income from shares and not as capital gains. The credit for tax at source shall be granted for the tax period in which the income is taxed in the State of residence.

2. It is understood that in case of an assessment as mentioned in paragraph 9 of Article 10 and paragraph 6 of Article 13, postponement of payment shall be granted under the condition that standing security be given.

**XIV. Ad Article 13, paragraph 6**

1. It is understood that the provisions of paragraph 6 of Article 13 shall only apply to an accrual of the value of the shares to which that paragraph applies during a period in which the individual was a resident of the Netherlands.

2. It is understood that, where the postponement of payment of the outstanding assessment is ended due to the alienation of the shares, "jouissance" rights or debt-claims to which paragraph 6 of Article 13 applies, a remission of tax is given if at the moment of alienation the market value of these shares, rights or claims has decreased in comparison to their value at the moment of emigration, insofar as the decrease was not caused by a distribution of profits or a refund of paid-up capital. The given amount of remission is equal to 25 per cent of the difference between the market value of these shares, rights or claims at the moment of alienation and their value at the moment of emigration.

3. When according to paragraph 2 remission of tax is given for the purpose of the *Wet inkomstenbelasting 2001*, the value of the shares, "jouissance" rights or debt-claims at the moment of emigration shall be decreased by four times of the amount of tax that is remitted.

**XV. Ad Article 25**

The competent authorities of the Contracting States may also agree, with respect to any agreement reached as a result of a mutual agreement procedure as meant in Article 25, if necessary contrary to their respective national legislation, that the State in which there is an additional tax charge as a result of the aforementioned agreement shall not impose any increases, surcharges, interest and costs with respect to this additional tax charge, if the other State in which there is a corresponding reduction of tax as a result of the agreement refrains from the payment of any interest due with respect to such a reduction of tax.

**XVI. Ad Article 26**

- a) It is understood that an exchange of information will only be requested once the requesting Contracting State has pursued all means available to obtain information available under the internal taxation procedure.
- b) It is understood that the tax authorities of the requesting State shall provide the following information to the tax authorities of the requested State when making a request for information under Article 26 of the Convention:

- (i) information sufficient to identify the person(s) under examination or investigation, in particular name, and, to the extent known, address, account number, and other particulars facilitating that persons identification, such as date of birth, marital status, tax identification number;
  - (ii) the period of time for which the information is requested;
  - (iii) a statement of the information sought including its nature and the form in which the requesting State wishes to receive the information from the requested State;
  - (iv) the tax purpose for which the information is sought;
  - (v) the name and, to the extent known, address of any person in possession of the requested information.
- c) The purpose of referring to information that may be foreseeably relevant is intended to provide for exchange of information in tax matters to the widest possible extent without allowing the Contracting States to engage in “fishing expeditions” or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. While paragraph b contains important procedural requirements that are intended to ensure that fishing expeditions do not occur, subparagraphs (i) through (v) nevertheless need to be interpreted with a view not to frustrate effective exchange of information.
- d) Although Article 26 of the Convention does not restrict the possible methods for exchanging information, it shall not commit a Contracting State to exchange information on an automatic or spontaneous basis. The Contracting States expect to provide information to one another necessary for carrying out the provisions of the Convention.
- e) It is understood that in case of an exchange of information, the administrative procedural rules regarding taxpayers’ rights provided for in the requested Contracting State remain applicable before the information is transmitted to the requesting Contracting State.
- f) It is understood that the carrying out of the income-related regulations in the Netherlands is typically another purpose as meant in the last sentence of paragraph 2 of Article 26.

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

DONE at The Hague this 26th day of February 2010, in duplicate, in the French, Netherlands and English languages, the three texts being equally authentic. In case there is any divergence of interpretation between the French and Netherlands texts, the English text shall prevail.

For the Swiss Confederation  
The Ambassador of Switzerland  
Dominik M. Alder

For the Kingdom of the Netherlands  
The Minister of Finance  
Jan Kees de Jager