STATUTORY INSTRUMENTS

1980 No. 1961

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Netherlands) Order 1980

Laid before the House of Commons in draft

Made - - - - 17th December 1980

At the Court at Buckingham Palace, the 17th day of December 1980

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the House of Commons in accordance with the provisions of section 497(8) of the Income and Corporation Taxes Act 1970(a), and an Address has been presented to Her Majesty by that House praying that an Order may be made in the terms of that draft:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 497 of the Income and Corporation Taxes Act 1970, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Netherlands) Order 1980.

2. It is hereby declared—

(*a*) that the arrangements specified in the Convention set out in the Schedule to this Order have been made with the Government of the Netherlands with a view to affording relief from double taxation in relation to income tax, corporation tax, petroleum revenue tax, development land tax or capital gains tax and taxes of a similar character imposed by the laws of the Netherlands; and

(*b*) that it is expedient that those arrangements should have effect.

N. E. Leigh,
Clerk of the Privy Council.

(a) 1970 c. 10; section 497 was amended and extended by sections 98(2) and 100(1) of the Finance Act 1972 (c. 41) and section 10 of the Capital Gains Tax Act 1979 (c. 14).

SCHEDULE

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND 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.

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of the Netherlands;

Desiring to replace by a new convention the Convention between the Government of the Kingdom of the Netherlands and the Government of the United Kingdom of Great Britain and Northern Ireland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital signed at London on 31 October 1967, as amended by the Protocol signed at London on 22 March 1977;

Have agreed as follows:

ARTICLE 1

Personal scope

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

ARTICLE 2

Taxes covered

(1) The taxes which are the subject of this Convention are:

(*a*) in the United Kingdom of Great Britain and Northern Ireland:

(i) the income tax;

(ii) the corporation tax;

(iii) the capital gains tax;

(iv) the petroleum revenue tax; and

(v) the development land tax;

(hereinafter referred to as "United Kingdom tax");

(*b*) in the Netherlands:

(i) the income tax (*inkomstenbelasting*);

(ii) the wages tax (*loonbelasting*);

(iii) the company tax (*vennootschapsbelasting*); and

(iv) the dividend tax (*dividendbelasting*);

(hereinafter referred to as "Netherlands tax").

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

ARTICLE 3

General definitions

(1) In this Convention, unless the context otherwise requires:

(*a*) the term "United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated,

under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised;

(*b*) the term "Netherlands" comprises the part of the Kingdom of the Netherlands that is situated in Europe and the part of the sea bed and its sub-soil under the North Sea over which the Kingdom of the Netherlands has sovereign rights in accordance with international law;

(*c*) the term "State" means the United Kingdom or the Netherlands, as the context requires; the term "States" means the United Kingdom and the Netherlands;

(*d*) the term "national" means:

(i) in relation to the United Kingdom, any citizen of the United Kingdom and Colonies, or any British subject not possessing that citizenship or the citizenship of any other Commonwealth country or territory, provided in either case he has the right of abode in the United Kingdom, and any legal person, partnership or association deriving its status as such from the law in force in the United Kingdom;

(ii) in relation to the Netherlands, any individual possessing the nationality of the Netherlands and any legal person, partnership or association deriving its status as such from the law in force in the Netherlands;

(*e*) the term "tax" means United Kingdom tax or Netherlands tax, as the context requires;

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

(*g*) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(*h*) 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 and an enterprise carried on by a resident of the other State;

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

(*j*) the term "political subdivision", in relation to the United Kingdom, includes Northern Ireland;

(*k*) the term "competent authority" means in the case of the United Kingdom the Commissioners of Inland Revenue or their authorised representative, and in the case of the Netherlands the Minister of Finance or his authorised representative.

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

ARTICLE 4

Residence

(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. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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

(*b*) if the State in which he has his centre of vital interests cannot by 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 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 sub-paragraphs (*a*) to (*e*) provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

(5) Notwithstanding the provisions of paragraphs (1) and (2), where a person—other than an agent of an independent status to whom paragraph (6) applies—is acting on behalf of an enterprise and has, and habitually exercises, in one of the States 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 one of the States 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 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 of the other.

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

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

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

ARTICLE 8

Shipping and air transport

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

(2) If the place of effective management of a shipping enterprise is aboard a ship then it shall be deemed to be situated in the 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 ship is a resident.

(3) Where profits within paragraph (1) of this Article are derived by an enterprise from participation in a pool, a joint business or an international operating agency, the profits attributable to that enterprise shall be taxable only in the State in which the place of effective management of that enterprise is situated. For the purposes of this paragraph the expression "a pool, a joint business or an international agency" shall not include a person, as defined in Article 3 of this Convention.

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 income, deductions, receipts or outgoings which would, but for those conditions, have been attributed to one of the enterprises, but, by reason of those conditions, have not been so attributed, may be included in the profits or losses of that enterprise and taxed accordingly.

(2) Where one of the States 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 items so included comprise income, deductions, receipts or outgoings which would have been attributed 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 the competent authorities of the States may consult together with a view to reaching an agreement on the adjustment of profits or losses in both States.

ARTICLE 10

Dividends

(1) Dividends derived from a company which is a resident of one of the States by a resident of the other State may be taxed in that other State.

(2) However, such dividends may be taxed in the State of which the company paying the dividends is a resident, and according to the law of that State, but where such

dividends are beneficially owned by a resident of the other State the tax so charged shall not exceed:

(*a*) 5 per cent of the gross amount of the dividends if the beneficial owner is a company the capital of which is wholly or partly divided into shares and it controls directly or indirectly at least 25 per cent of the voting power in the company paying the dividends;

(*b*) in all other cases 15 per cent of the gross amount of the dividends.

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

(3) As long as an individual resident in the United Kingdom is entitled under United Kingdom law to a tax credit in respect of dividends paid by a company which is resident in the United Kingdom, paragraph (2) of this Article shall not apply to dividends derived from a company which is a resident of the United Kingdom by a resident of the Netherlands. In these circumstances the following provisions of this paragraph shall apply:

(*a*)(i) Where a resident of the Netherlands is entitled to a tax credit in respect of such a dividend under sub-paragraph (*b*) of this paragraph tax may also be charged in the United Kingdom, and according to the laws of the United Kingdom, on the aggregate of the amount or value of that dividend and the amount of that tax credit at a rate not exceeding 15 per cent.

(ii) Where a resident of the Netherlands is entitled to a tax credit in respect of such a dividend under sub-paragraph (*c*) of this paragraph tax may also be charged in the United Kingdom, and according to the laws of the United Kingdom, on the aggregate of the amount or value of that dividend and the amount of that tax credit at a rate not exceeding 5 per cent.

(iii) Except as provided in sub-paragraphs (*a*)(i) and (*a*)(ii) of this paragraph dividends derived from a company which is a resident of the United Kingdom and which are beneficially owned by a resident of the Netherlands shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

(*b*) A resident of the Netherlands who receives dividends from a company which is a resident of the United Kingdom shall, subject to the provisions of sub-paragraphs (*c*) and (*d*) of this paragraph and provided he is the beneficial owner of the dividends, be entitled to the tax credit in respect thereof to which an individual resident in the United Kingdom would have been entitled had he received those dividends, and to the payment of any excess of that tax credit over his liability to tax in the United Kingdom.

(*c*) The provisions of sub-paragraph (*b*) of this paragraph shall not apply where the beneficial owner of the dividend is a company which either alone or together with one or more associated companies controls directly or indirectly 10 per cent or more of the voting power in the company paying the dividend. In these circumstances a company which is a resident of the Netherlands and receives dividends from a company which is a resident of the United Kingdom shall, subject to the provisions of sub-paragraph (*d*) of this paragraph and provided it is the beneficial owner of the dividends, be entitled to a tax credit equal to one half of the tax credit to which an individual resident in the United Kingdom would have been entitled had he received those dividends, and to the payment of any excess of that tax credit over its liability to tax in the United Kingdom. For the purposes of this sub-paragraph, two companies shall be deemed to be associated if one controls directly or indirectly more than 50 per cent of the voting power in the other company, or a third company controls more than 50 per cent of the voting power in both of them.

(*d*)(i) Notwithstanding the provisions of sub-paragraphs (*b*) and (*c*) of this paragraph, no tax credit shall be payable where the beneficial owner of the dividends is a company, other than a company whose shares are officially quoted on a Netherlands stock exchange, provided that the conditions for admission to such quotation, and in particular those governing the minimum value of the shares to be admitted, the transferability and the dispersion of

the shares, are in conformity with the conditions set out in schedule A to the Directive of the Council of the European Communities dated 5 March 1979 No. 79/279/EEC(a), unless the company shows that it is not controlled by a person or two or more associated or connected persons together, who or any of whom would not have been entitled to a tax credit if he had been the beneficial owner of the dividends.

(ii) For the purposes of this sub-paragraph a person or two or more associated or connected persons together shall be treated as having control of a company if under the laws of the United Kingdom relating to the taxes covered by this Convention he or they could be treated as having control of it for any purpose, and persons shall be treated as associated or connected if under those laws they could be so treated for any purpose. However, where an individual is treated as having control of a company by reason only of the fact that he holds ordinary shares in the company carrying full voting and dividend rights and that individual holds not more than 10 per cent of the total number of such shares in the company, the shares held by him shall be left out of account in determining whether the company is controlled by a person or two or more associated or connected persons together, who or any of whom would not have been entitled to a tax credit if he had been the beneficial owner of the dividends payable to the company, provided that not more than 25 per cent of the total of such shares in the company may be left out of account.

(4) The term "dividends" for United Kingdom tax purposes includes any item which under the law of the United Kingdom is treated as a distribution and for Netherlands tax purposes includes any item which under the law of the Netherlands is subject to dividend tax.

(5) The provisions of paragraphs (1), (2) and (3) of this Article shall not apply if the beneficial owner of the dividend, 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 a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

(6) If the beneficial owner of the dividends being a resident of one of the States, owns 10 per cent or more of the class of shares in respect of which the dividends are paid and does not suffer tax thereon in that State, then paragraph (2), or as the case may be paragraph (3), of this Article shall not apply to the dividends to the extent that they can have been paid only out of profits which the company paying the dividends earned or other income which it received in a period ending twelve months or more before the relevant date. For the purposes of this paragraph the term "relevant date" means the date on which the beneficial owner of the dividends became the owner of 10 per cent or more of the class of shares in question.

Provided that this paragraph shall apply only if the shares were acquired primarily for the purpose of securing the benefit of this Article and not for *bona fide* commercial reasons.

(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.

(a) OJ No,L66, 16.12.1979, p. 21

ARTICLE 11

Interest

(1) Interest arising in one of the States which is derived and beneficially owned by a resident of the other State shall be taxable only in that other State.

(2) 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 but does not include income dealt with in Article 10. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

(3) The provisions of paragraph (1) of this Article 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.

(4) Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person the amount of the interest paid exceeds the amount of interest which would have been determined, taking into consideration the terms and amount of the debt-claim 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 of interest. In that 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.

(5) Any provision in the law of one of the States relating only to interest paid to a non-resident company shall not operate so as to require such interest paid to a resident of the other State to be treated as a distribution made by the company paying such interest or to be left out of account as a deduction in computing the taxable profits of the company paying the interest. The preceding sentence shall not apply to interest paid by a resident of one of the States to a company resident in the other State, more than 50 per cent of the voting power in which is controlled, directly or indirectly, by a person or persons who are residents of the first-mentioned State.

(6) The provisions of this Article shall not apply if the debt-claim in respect of which the interest is paid was created or assigned mainly for the purpose of taking advantage of this Article and not for *bona fide* commercial reasons.

ARTICLE 12

Royalties

(1) Royalties derived and beneficially owned by a resident of one of the States shall be taxable only in that State.

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

(3) The provisions of paragraph (1) of this Article shall not apply if the beneficial owner of the royalties, being a resident of one of the States, carries on business in the other 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 a case the provisions of Article 7 or Article 14, as the case may be, shall apply.

(4) Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties exceeds, for whatever reason, 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 that 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.

(5) The provisions of this Article shall not apply if the right or property giving rise to the royalties was created or assigned mainly for the purpose of taking advantage of this Article and not for *bona fide* commercial reasons.

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 a permanent establishment (alone or with the whole enterprise) or of such a 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.

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

(5) The provisions of paragraph (4) shall not affect the right of either of the States to levy according to its own law a tax on gains from the alienation of any property derived by an individual who is a resident of the other State and has been a resident of the first-mentioned State at any time during the five years immediately preceding the alienation of the property.

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 unless he has a fixed base regularly available to him in the other 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, 19 and 20, 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) of this Article, 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 taxable year of that State; 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 in respect of an employment exercised aboard a ship or aircraft shall be taxable only in the State of which the employee is a resident, provided that such remuneration may be taxed in the State of which the person deriving the profits from the operation of the ship or aircraft is a resident if that remuneration is paid in respect of a voyage solely between places in that State, or in respect of regular voyages between a port in that State and an overseas port involving an absence from that State of less than forty-eight hours.

ARTICLE 16

Directors' fees

(1) Directors' fees or other similar 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.

(2) Where however the remuneration mentioned above is derived by persons, who exercise activities which may be reasonably related to a permanent establishment situated in a State other than the State of which the company is a resident then, notwithstanding the provisions of paragraph (1) of this Article, such remuneration may be taxed in the State in which the permanent establishment is situated.

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.

ARTICLE 18

Pensions and annuities

(1) Subject to the provisions of paragraph (2) of Article 19, any pension or other similar remuneration in consideration of past employment and any annuity paid to a resident of one of the States 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) 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 subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority may be taxed in that State.

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

(2) (*a*) Any pension paid by, or out of funds created by, one of the States or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority may be taxed in that State.

(*b*) However, such pension shall be taxable only in the other State if the individual is a resident 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 subdivision or a local authority thereof.

ARTICLE 20

Students

Payments which a student or business apprentice who is or was immediately before visiting one of the States a resident of the other 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 one of the States, wherever arising, other than income paid out of trusts, which are not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

(2) The provisions of paragraph (1) of this Article 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 one of the States, carries on business in the other 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.

ARTICLE 22

Elimination of double taxation

(1) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof):

(*a*) Netherlands tax payable under the laws of the Netherlands and in accordance with the provisions of this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within the Netherlands (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the Netherlands tax is computed;

(*b*) where such income is a dividend paid by a company which is a resident of the Netherlands to a company which is a resident of the United Kingdom and which controls directly or indirectly not less than one-tenth of the voting power in the former company, the credit shall take into account (in addition to any Netherlands tax payable in respect of the dividend) the Netherlands tax payable by that former company in respect of its profits.

(2) (*a*) The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed the items of income which, according to the provisions of this Convention, may be taxed in the United Kingdom;

(*b*) however, where a resident of the Netherlands derives items of income which according to Articles 6, 7, 10(5), 11(3), 12(3), 13(1) and (2), 14, 15(1), 17 and 19 of this Convention may be taxed in the United Kingdom and are included in the basis referred to in sub-paragraph (*a*) of this paragraph, the Netherlands shall exempt such items 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 total amount of the items of income which are exempt from Netherlands tax under those provisions;

(*c*) further, the Netherlands shall allow a deduction from the Netherlands tax so computed for the items of income which according to Articles 10(2) or (3), as the case may be, 13(5), 16(1), and 18(2) of this Convention may be taxed in the United Kingdom to the extent that these items are included in the basis referred to in sub-paragraph (*a*) of this paragraph. The amount of this deduction shall be equal to the tax paid in the United Kingdom on these items of income, but shall not exceed the amount of the reduction which would be allowed if the items of income so included were the sole items of income which are exempt from Netherlands tax under the provisions of Netherlands law for the avoidance of double taxation.

(3) For the purposes of paragraph (1) of this Article, profits, income and capital gains owned by a resident of the United Kingdom which may be taxed in the Netherlands in accordance with this Convention shall be deemed to arise from sources in the Netherlands.

ARTICLE 23

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.

(2) 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) Nothing contained in this Article shall be construed as obliging either State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident, nor as conferring any exemption from tax in one of the States in respect of dividends paid to a company which is a resident of the other State.

(4) 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.

(5) The provisions of this Article shall apply to taxes of every kind and description.

ARTICLE 24

Mutual agreement procedure

(1) Where a person considers that the actions of one or both of the 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 23 and he is a resident of one of the States and a national of the other State, to that of the State of which he is a national. The case must be presented within six 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.

(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 to consider measures to counteract improper use of the provisions of 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.

ARTICLE 25

Exchange of information

(1) The competent authorities of the States shall exchange such information as is necessary for carrying out the provisions of this 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. 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 bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

(*a*) to carry out administrative measures at variance with the laws or administrative practice 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 26

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) This Convention shall not apply to international organisations, organs and officials thereof and members of a diplomatic or consular mission of a third State, being present in one of the States, if they are not subjected in the last-mentioned State to the same obligations in respect of taxes on income as are residents of that State.

ARTICLE 27

Miscellaneous Rules

(1) Where under any provision of this Convention income is relieved from Netherlands tax, either in full or in part and, under the law in force in the United Kingdom, an individual, in respect of the said income is subject to tax by reference to the amount thereof which is remitted to or received in the United Kingdom and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the Netherlands shall apply only to so much of the income as is remitted to or received in the United Kingdom.

(2) Subject to the provisions of paragraph (4) of this Article, individuals who are residents of the Netherlands shall be entitled to the same personal allowances, reliefs and reductions for the purposes of United Kingdom taxation as British subjects not resident in the United Kingdom.

(3) Subject to the provisions of paragraph (4) of this Article, individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Netherlands tax as Netherlands nationals not resident in the Netherlands.

(4) Nothing in this Convention shall entitle an individual who is a resident of one of the States and whose income from the other State consists solely of dividends, interest or royalties (or solely of any combination thereof) to the personal allowances, reliefs and reductions of the kind referred to in this Article for the purposes of taxation in that other State.

(5) The reductions and exemptions from tax in the State of source given by Articles 10, 11, and 12 as well as the payment of the United Kingdom tax credit referred to in paragraph (3) of Article 10 shall be effected in accordance with the mode of application determined (having due regard to the taxation laws of that State) by the competent authorities of the States.

(6) Where tax has been deducted at the source in excess of the amount of tax chargeable under the provisions of Articles 10, 11 or 12, the excess amount of tax shall be refunded upon application to the competent authorities concerned, provided that the application is made within a period of six years after the end of the calendar year in which the tax was deducted.

ARTICLE 28

Territorial extension

(1) This Convention may be extended, either in its entirety or with any necessary modifications, to any territory for whose international relations the United Kingdom of Great Britain and Northern Ireland is responsible as well as to the Netherlands Antilles, if the territory or country concerned imposes taxes substantially similar in character to those to which this 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 this Convention shall not also terminate the application of this Convention to any territory or country to which it has been extended under this Article.

ARTICLE 29

Entry into force

(1) Each of the Contracting Governments shall notify to the other the completion of the procedure required by its law for the bringing into force of this Convention. The Convention shall enter into force 3 days after the date of receipt of the later of these notifications.

(2) The following agreements between the Kingdom of the Netherlands and the United Kingdom shall terminate upon the entry into force of this Convention in respect of taxes to which this Convention in accordance with the provisions of paragraph (1) of this Article, applies:

(*a*) the Convention between the United Kingdom of Great Britain and Northern Ireland 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 Capital signed at London on 31 October 1967(**a**), as amended by the Protocol signed at London on 22 March 1977(**b**);

(*b*) the Agreement dated 20 May, 1926(**c**), for the Reciprocal Exemption from Income Tax in certain cases of Profits accruing from the Business of Shipping;

(*c*) the Convention dated 6 June, 1935(**d**), for Reciprocal Exemption from Taxes in certain cases; and

(*d*) the Agreement constituted by the Exchange of Notes dated 27 August, 1936(**e**), for reciprocal exemptions from certain taxation in respect of the business of air transport.

(3) This Convention shall not affect any Agreement in force extending previous Conventions between the Contracting States to territories or countries for whose foreign relations either State is responsible.

ARTICLE 30

Termination

(1) This Convention shall remain in force until denounced by one of the States. Either State may denounce the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year 1985. In such event, the Convention shall cease to have effect:

(**a**) S.I. 1968/577. (**b**) S.I. 1977/1300. (**c**) S.I. 1926/824.
(**d**) S.I. 1936/1134. (**e**) S.I. 1936/1331.

(*a*) in the United Kingdom:

(i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April in the calendar year next following that in which the notice is given;

(ii) in respect of corporation tax and development land tax, for any financial year beginning on or after 1 April in the calendar year next following that in which the notice is given;

(iii) in respect of petroleum revenue tax, for any chargeable period beginning on or after 1 January in the calendar year next following that in which the notice is given.

(*b*) in the Netherlands for any taxable year or period beginning after the end of the year in which the notice is given.

(2) The termination of this Convention shall not have the effect of reviving any treaty or arrangement abrogated by this Convention or by treaties previously concluded between the States.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Convention.

Done in duplicate at The Hague this 7th day of November 1980 in the English and Netherlands languages both texts being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

SIR JOHN TAYLOR

For the Government of the Kingdom of the Netherlands:

C. A. VAN DER KLAAUW

EXPLANATORY NOTE

(This Note is not part of the Order.)

The Convention with the Netherlands scheduled to this Order replaces the Convention signed in London on 31 October 1967, as amended by the Protocol signed in London on 22 March 1977. It provides that certain trading profits not arising through a permanent establishment, interest, royalties, pensions (other than Government pensions) and the earnings of temporary business visitors are (subject to certain conditions) to be taxed only in the country of the taxpayer's residence. Government salaries and pensions are normally to be taxed by the paying Government only. Payments made for the maintenance of visiting students are (subject to certain conditions) to be exempt in the country visited. Provision is made for income from immovable property to be taxed in the country in which the property is situated. Capital gains arising from the disposal of movable property are normally to be taxed only in the country of the taxpayer's residence unless they arise from the disposal of assets of a permanent establishment which the taxpayer has in the other country. Shipping and air transport profits are to be taxed only in the country in which the place of effective management is situated.

The Dividends Article provides rules which are to apply to the taxation of dividends as long as under United Kingdom law an individual resident in the United Kingdom is entitled to a tax credit in respect of dividends paid by a company resident in the United Kingdom.

Where a United Kingdom company pays a dividend to a Netherlands company controlling 10 per cent or more of its voting power, the Netherlands company receiving the dividends will be entitled to a tax credit equal to one half of the tax credit which would be payable to a United Kingdom resident individual less a sum of not more than 5 per cent of the aggregate amount of the dividend and the tax credit. Where the recipient is an individual resident in the Netherlands or a Netherlands company controlling less than 10 per cent of the voting power of the United Kingdom company the tax credit payable will be equal to the tax credit which would be payable to a United Kingdom resident less a sum not exceeding 15 per cent of the aggregate amount of the dividend and tax credit. The tax credit will not be payable where the beneficial owner of the dividends is a company which is not quoted on a Netherlands Stock Exchange unless the company can show that it is not controlled by a person or a group of persons who would not have been entitled to a tax credit had the dividends been received direct. The rate of Netherlands withholding tax on dividends paid to a United Kingdom company controlling at least 25 per cent of the voting power of a Netherlands paying company will be limited to a maximum of 5 per cent. In all other cases the Netherlands withholding tax will be not more than 15 per cent.

Where income continues to be taxable in both countries, relief from double taxation is to be given by the country of the taxpayer's residence. There are also provisions safeguarding nationals and enterprises of one country against discriminatory taxation in the other country and for the exchange of information and for consultation between the taxation authorities of the two countries.

The Convention is to enter into force 3 days after the date of receipt of the later of the notifications by each of the Contracting Governments of the completion of the procedure required by its law for the bringing into force of the Convention, and will thereupon have immediate effect.

SI 1980/1961
ISBN 0-11-007961-2

