

# TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

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JAARGANG 2015 Nr. 75

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## A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden en de Republiek Malawi tot het vermijden van dubbele belasting en het voorkomen van het ontgaan van belasting met betrekking tot belastingen naar het inkomen;  
(met Protocol)  
Washington, 19 april 2015*

## B. TEKST

### **Agreement between the Kingdom of the Netherlands and the Republic of Malawi for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income**

The Kingdom of the Netherlands

and

The Republic of Malawi,

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

#### Article 1

##### *Persons Covered*

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

#### Article 2

##### *Taxes Covered*

1. This Agreement 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 Agreement shall apply are in particular:
  - a) in the case of the Netherlands:
    - (i) the income tax;
    - (ii) the wages tax;
    - (iii) the company tax including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mining Act; and
    - (iv) the dividend tax;  
(hereinafter referred to as "Netherlands tax");
  - b) in the case of Malawi:
    - (i) the income tax; and
    - (ii) the fringe benefits tax;  
(hereinafter referred to as "Malawi tax").

4. This Agreement shall also apply to any identical or substantially similar taxes that are imposed after the date of its signature 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.

### Article 3

#### *General Definitions*

1. For the purposes of this Agreement, unless the context otherwise requires:
  - a) the term "Malawi" means the Republic of Malawi;
  - b) the term "the Kingdom of the Netherlands" means the Kingdom of the Netherlands, in respect of the European part of the Netherlands;
  - c) the terms "a Contracting State" and "the other Contracting State" mean Malawi or the Netherlands, as the context requires;
  - d) the term "business" includes the performance of professional services and of other activities of an independent character;
  - e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - f) the term "competent authority" means:
    - (i) in the case of Malawi, the Minister of Finance or his authorized representative;
    - (ii) in the case of the Netherlands, the Minister of Finance or his authorized representative;
  - g) the term "enterprise" applies to the carrying on of any business;
  - h) 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;
  - i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
  - j) the term "national" means:
    - (i) any individual possessing the nationality of a Contracting State; and
    - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
  - k) the term "person" includes an individual, a company and any other body of persons;
  - l) the term "pension fund" means:
    - (i) in the case of Malawi, a fund, plan, scheme, trust or other arrangement established in Malawi by an employer to pay retirement benefits contributed by the employer and employees, and supervised by the Reserve Bank of Malawi;
    - (ii) in the case of the Netherlands, any plan, scheme, fund, trust or other arrangement established in the Netherlands which is:
      - generally exempt from income taxation in that State;
      - operated principally to administer or provide pension or retirement benefits or to earn income for the benefit of one or more such arrangements; and
      - supervised by the Central Bank of the Netherlands.
2. As regards the application of the Agreement 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 Agreement 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 Agreement, 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 incorporation or registration, place of management, or any other criterion of a similar nature. 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) the individual shall be deemed to be a resident only of the State in which a permanent home is available to the individual; if a permanent home is available to the individual in both States, the individual shall be deemed to be a resident only of the State with which the individual's personal and economic relations are closer (centre of vital interests);
  - b) if the State in which the individual has a centre of vital interests cannot be determined, or if a permanent home is not available to the individual in either state, the individual shall be deemed to be a resident only of the State in which the individual has an habitual abode;

- c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident only of the State of which the individual is a national;
  - d) if the individual 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 Agreement, 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 or exploitation of natural resources.
3. A building site or construction or assembly or installation project or supervisory activity connected therewith, where such site, project or activity continues for a period of more than 183 days.
4. Notwithstanding the provisions of paragraph 1, 2 and 3, the term "permanent establishment" shall be deemed to include:
  - a) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue for the same or a connected project within the Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned;
  - b) the performing of services in a contracting state by an individual but only if the individual is present in the other State for the purposes of performing those services, for a period or periods exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned.
5. 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.
6. Notwithstanding the provisions of paragraphs 1, 2 and 4 where a person – other than an agent of an independent status to whom paragraph 7 applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 5 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.
7. 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.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries 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 a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

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

## Article 7

### *Business Profits*

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

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

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

## Article 8

### *Shipping and Air Transport*

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic shall include in particular:

- a) Profits from the rental on a bareboat basis of ships or aircraft; and
- b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise where such rental or such use, maintenance or rental, as the case may be, is ancillary to the operation of ships or aircraft in international traffic.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency, but only to so much of the profits so derived as is attributable to the participant in proportion to its share in the joint operation.

## 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 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 where that other State considers the adjustment justified. In determining such adjustment, due regard shall be had to the other provisions of the Agreement 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:

- a) 10 per cent of the gross amount of the dividends in case the company paying the dividends is a resident of Malawi;
- b) 15 per cent of the gross amount of the dividends in case the company paying the dividends is a resident of the Netherlands.

3. Notwithstanding the provisions of paragraph 2, the Contracting State of which the company is a resident shall levy a tax on dividends paid by that company not exceeding 5 per cent, if the beneficial owner of the dividends is a company (other than a partnership) which is a resident of the other Contracting State and holds directly at least 10 per cent of the capital of the company paying the dividends.

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

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

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

7. 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.

8. The provisions of paragraphs 1, 2, 3 and 4 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

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

10. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid, or with the establishment, acquisition or maintenance of the company that is the beneficial owner of the dividends and the conduct of its operations, to take advantage of this Article. The competent authority of the Contracting State which has to grant the benefits shall consult with the competent authority of the other Contracting State before denying the benefits under this paragraph.

## Article 11

### *Interest*

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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

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. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by a pension fund that is a resident of the other Contracting State or by the Government of a Contracting State.

For the purposes of this paragraph the term Government of a Contracting State shall include:

- a) in the case of Malawi:
  - (i) the Reserve Bank of Malawi; and
  - (ii) a statutory body or any institution wholly or mainly owned by the Government of Malawi as may be agreed from time to time between the competent authorities of the Contracting States;
- b) in the case of the Netherlands:
  - (i) the Central Bank of the Netherlands (de Nederlandsche Bank NV);
  - (ii) Atradius State Business NV in respect of loans granted, approved, guaranteed or insured by the Government of the Netherlands;
  - (iii) the Netherlands' Finance Company for Developing Countries (de Nederlandse Financierings Maatschappij voor Ontwikkelingslanden NV); and
  - (iv) a statutory body or any institution wholly or mainly owned or controlled by the Government of the Netherlands as may be agreed from time to time between the competent authorities of the Contracting States.

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



6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

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

8. 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 Agreement.

9. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment. The competent authority of the Contracting State which has to grant the benefits shall consult with the competent authority of the other Contracting State before denying the benefits under this paragraph.

## Article 12

### *Royalties*

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

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

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

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the 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 Agreement.

8. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment. The competent authority of the Con-

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

#### Article 13

##### *Capital Gains*

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.
3. Gains of an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.
4. Gains derived by a resident of a Contracting State from the alienation of shares, or other comparable interests, deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State, may be taxed in that other State.  
However, such gains shall be taxable only in the first-mentioned State where:
  - a) the resident owns less than 30 per cent of the shares or other comparable interests;
  - b) the shares or other comparable interests are traded on a recognized stock exchange;
  - c) the shares or other comparable interests derive their value from immovable property in which that company or the holders of those interests carry on their business;
  - d) the gains are derived in the course of a corporate reorganization, amalgamation, division or similar transaction; or
  - e) the resident is a pension fund, provided that the gains are not derived from the carrying on of a business, directly or indirectly by that pension fund.
5. Gains from the alienation of any property, other than that referred to in the preceding paragraphs shall be taxable only in the Contracting State of which the alienator is a resident.

#### Article 14

##### *Income from Employment*

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom 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 any twelve month period commencing or ending in the fiscal year concerned, and
  - b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
  - c) the remuneration is not borne by a permanent establishment which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

#### Article 15

##### *Directors' Fees*

1. Directors' fees and other similar payments or other remuneration derived by a resident of a Contracting State in that person's capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.



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

#### Article 16

##### *Artistes and Sportspersons*

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that person's 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 sports person in that person's capacity as such accrues not to the entertainer or sports person but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sports person are exercised.

3. Income derived by a resident of a Contracting State from activities exercised in the other Contracting State as envisaged in paragraphs 1 and 2 of this Article, shall be exempt from tax in that other State if the visit to that other State is supported wholly or mainly by public funds of the first mentioned Contracting State or takes place under a cultural agreement or arrangement between the Governments of the Contracting States.

#### Article 17

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

1. Pensions and other similar remuneration, as well as annuities, arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned State.

2. Pensions paid and other payments made under the provisions of the social security legislation of a Contracting State to a resident of the other Contracting State may be taxed in the first-mentioned State.

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

4. The term "annuity" means:

- a) in the case of annuities arising in the Netherlands: an annuity as mentioned in the Netherlands Income Tax Act 2001 ("Wet inkomstenbelasting 2001"), or any subsequent identical or substantially similar laws or regulations replacing this act, the benefits of which are part of taxable income from employment and dwellings ("belastbaar inkomen uit werk en woning");
- b) in the case of Malawi: 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.

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

#### Article 18

##### *Government Service*

1. a) Salaries, wages and other similar remuneration, other than a pension, 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 shall be taxable only in that State.
- b) However such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
  - (i) is a national of that State; or
  - (ii) did not become a resident of that State solely for the purpose of rendering the services.

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

#### Article 19

##### *Students and Business Apprentices*

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 that person's education or training receives for the purpose of that person's maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

#### Article 20

##### *Professors and Teachers*

1. Notwithstanding Article 14, payments and other remuneration which a professor or a teacher who is a resident of a Contracting State and who is present in the other Contracting State for the purpose of teaching or scientific research for a maximum period of two years, starting from the date of the actual start of the teaching or scientific research, in a university, college or other establishment for teaching or scientific research in that other State, receives for such teaching or research, shall be exempt from taxation in the other Contracting State if these payments or other remuneration do not originate from that other Contracting State.

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

#### 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 Agreement shall be taxable only in that State.

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

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of the Agreement and arising in the other Contracting State may also be taxed in that other State.

#### Article 22

##### *Elimination of Double Taxation*

1. In Malawi double taxation shall be eliminated as follows:  
tax paid by residents of Malawi in respect of income taxable in the Netherlands in accordance with the provisions of this Agreement shall be deducted from the taxes due according to the Malawi fiscal law. Such deduction shall not, however, exceed that part of the Malawi tax as computed before the deduction is given, which is attributable to the income which in accordance with the provision of this Agreement may be taxed in the Netherlands.

2. 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 Agreement, may be taxed or shall be taxable only in Malawi.

3. 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 8 of Article 10, paragraph 6 of Article 11, paragraph 5 of Article 12, paragraphs 1, 2 and 4 of Article 13, paragraph 1 of Article 14, paragraphs 1 and 2 of Article 17, paragraph 1 (subparagraph a) of Article 18 and paragraph 2 of Article 21 of this Agreement may be taxed or shall be taxable only in Malawi and are included in the basis referred to in paragraph 2, the Netherlands shall exempt such items of income by allowing a reduction of its tax. This reduction shall be computed in conform-

ity 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 the Netherlands tax under those provisions.

4. Further, the Netherlands shall allow a reduction from the Netherlands tax so computed for the items of income which according to paragraphs 2 and 3 of Article 10, paragraph 2 of Article 11, paragraph 2 of Article 12, paragraph 1 of Article 15, paragraphs 1 and 2 of Article 16, paragraph 5 of Article 17 and paragraph 3 of Article 21 of this Agreement may be taxed in Malawi to the extent that these items are included in the basis referred to in paragraph 2. The amount of this reduction shall be equal to the tax paid in Malawi on these items of income, but shall, in case the provisions of the Netherlands law for the avoidance of double taxation provide so, not exceed the amount of the reduction which would be allowed if the items of income so included were the sole items for which the Netherlands gives a reduction 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 reduction of the 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 Malawi on the said items of income to subsequent years.

5. Notwithstanding the provisions of paragraph 3, the Netherlands shall allow a reduction from the Netherlands tax for the tax paid in Malawi on items of income which according to paragraph 1 of Article 7, paragraph 8 of Article 10, paragraph 6 of Article 11, paragraph 5 of Article 12, paragraph 4 of Article 13 and paragraph 2 of Article 21 of this Agreement may be taxed in Malawi to the extent that these items are included in the basis referred to in paragraph 2, insofar as the Netherlands under the provisions of the Netherlands law for the avoidance of double taxation allows a reduction from the Netherlands tax of the tax levied in another country on such items of income. For the computation of this reduction the provisions of paragraph 4 of this Article shall apply accordingly.

## Article 23

### *Non-Discrimination*

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

2. Stateless persons who are residents of a Contracting State shall not be subjected in either Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of the State concerned in the same circumstances, in particular with respect to residence, are or may be subjected.

3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 8 of Article 11, or paragraph 7 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.

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

6. The provisions of this Article shall not be construed as preventing a Contracting State from imposing on the profits attributable to a permanent establishment in that Contracting State of a company which is a resident of the other Contracting State, a tax at a rate which does not exceed the rate of income tax or normal tax on companies, as the case may be, by more than 5 percentage points.

7. Contributions paid by, or on behalf of, an individual who exercises employment or self-employment in a Contracting State to a pension fund that is recognized for tax purposes in the other Contracting State shall be

treated in the same way for tax purposes in the first-mentioned State as a contribution paid to a pension fund that is recognized for tax purposes in that first-mentioned State, provided that

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

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

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

## Article 24

### *Mutual Agreement Procedure*

1. Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Agreement, that person may, irrespective of the remedies provided by the domestic law of those States, present a case to the competent authority of the Contracting State of which the person is a resident or, if the case comes under paragraph 1 of Article 23, to that of the Contracting State of which the person 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 Agreement.

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 Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. 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 Agreement; 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 issue arising from the case shall be submitted to arbitration if the person so requests. 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.

## Article 25

### *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 Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Not-

withstanding 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. The Contracting States may release to the arbitrators involved in a case which has been submitted for arbitration under the provisions of paragraph 5 of Article 24, such information as is necessary for carrying out the arbitration procedure. The arbitrators shall be subject to the limitations on disclosure described in paragraph 2 with respect to any information so released.

4. In no case shall the provisions of the preceding paragraphs 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*).

5. 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 4 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.

6. In no case shall the provisions of paragraph 4 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.

7. The competent authorities of the Contracting States may agree upon the mode of application of this Article.

## Article 26

### *Assistance in the Collection of Taxes*

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2.

2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. The provisions of this Article shall apply only to a revenue claim that forms the subject of an instrument permitting enforcement in the requesting State and, unless otherwise agreed between the competent authorities, that is not contested. However, where the claim relates to a liability to tax of a person as a non-resident of the requesting State, this Article shall only apply, unless otherwise agreed between the competent authorities, where the claim may no longer be contested. The revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that requested State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such and, unless otherwise agreed between the competent authorities, cannot be collected by imprisonment for debt of the debtor.



In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

- a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
  - b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection
- the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy (*ordre public*);
- c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

9. The competent authorities of the Contracting States may agree upon the mode of application of this Article.

#### Article 27

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

1. Nothing in this Agreement 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 this Agreement, 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 the individual is subjected therein to the same obligations in respect of taxes on income as are residents of that State.

3. This Agreement 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 Agreement may be extended, either in its entirety or with any necessary modifications, to any part of the Kingdom of the Netherlands which is not situated in Europe and imposes taxes substantially similar in character to those to which the Agreement applies. Any such extension shall take effect from such date and shall be subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures.

2. Unless otherwise agreed, the termination of this Agreement shall also terminate the Agreement for any part(s) of the Kingdom of the Netherlands to which it has been extended under this Article.



## Article 29

### *Entry into Force*

1. The Contracting States shall notify each other by means of exchange of diplomatic notes, that the procedures required by their respective laws for the bringing into force of this Agreement have been completed. This Agreement shall enter into force on the last day of the month following the month in which the later of these notifications has been received.
2. The provisions of this Agreement shall have effect:
  - a) in Malawi:  
in respect of taxes on income relating to the fiscal year (including accounting periods beginning in any such year) next following that in which this Agreement enters into force and subsequent years; and
  - b) in the Netherlands:  
for any taxable years and periods beginning, and taxable events occurring, on or after the first day of January in the calendar year following that in which this Agreement enters into force.

## Article 30

### *Termination*

1. This Agreement shall remain in force indefinitely but either of the Contracting States may terminate the Agreement, through the diplomatic channels, by giving to the other Contracting State written notice of termination at least six months before the end of any calendar year starting five years after the year in which the Agreement entered into force. Notice of termination shall be regarded as having been given by a Contracting State on the date of receipt of such notice by the other Contracting State.
2. In such event this Agreement shall cease to apply:
  - a) in Malawi in respect of taxes on income relating to the fiscal year (including accounting periods beginning in such year) next following that specified in the notice of termination; and
  - b) in the Netherlands for taxable years and periods beginning, and taxable events occurring, after the end of the calendar year following the calendar year in which the notice of the termination has been given.

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

DONE at Washington this 19<sup>th</sup> day of April 2015, in duplicate, in the English language.

*For the Kingdom of the Netherlands,*

E.M.J. PLOUMEN

*For the Republic of Malawi,*

G.E. GONDWE

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### **Protocol**

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

#### I.

##### *General*

1. It is understood that the provisions of this Agreement which are identical or in substance similar to the provisions of the OECD Model Tax Convention On Income and On Capital shall be interpreted in accordance with the OECD Commentary thereon at the moment of application of this Agreement.
2. Where entities are considered to be transparent by one of the Contracting States and are considered to be non-transparent by the other Contracting State, and this leads to double taxation or taxation not in accordance with the provisions of this Agreement, the competent authorities of the Contracting States shall find

solutions pursuant to Article 24 in order to avoid double taxation or taxation not in accordance with the Agreement and, at the same time, to prevent that, merely as a result of the application of the Agreement income is (partly) not subject to tax.

II.

*Ad paragraph 2 of Article 3 and Article 24*

It is understood that, if the competent authorities of the Contracting States have, by mutual agreement, reached a solution within the context of the Agreement for cases in which

- a) application of paragraph 2 of Article 3 with respect to the interpretation of a term not defined in the Agreement; or
  - b) differences in qualification (for example of an element of income or of a person);
- would result in double taxation or double exemption, this solution, after publication thereof by both competent authorities, shall also be binding for the application of the provisions of the Agreement in other similar cases.

III.

*Ad Article 1 and Article 4*

1. Notwithstanding the provisions of Article 1, the competent authorities of the Contracting States may by mutual agreement decide to which extent a resident of a Contracting State that is subject to a special regime shall not be entitled to the benefits of this Agreement.

2. It is understood that a person, other than an individual, shall be regarded to be liable to tax:
- a) in the Netherlands if the person is a resident of the Netherlands for the purposes of the company tax;
  - b) in Malawi if the person is a resident of Malawi for the purposes of the income tax;
- provided that the income derived by that person is treated under the tax laws of that State as income of that person and not as the income of the person's beneficiaries, members or participants.

IV.

*Ad paragraph 1 of Article 4*

It is understood that in the case of an individual living aboard a ship "any other criterion of a similar nature" shall include the home harbour of that ship.

V.

*Ad Articles 5, 6, 7 and 13*

It is understood that rights to the exploration and exploitation of natural resources shall be regarded as immovable property located in the Contracting State to whose territorial sea and any area beyond and adjacent to its territorial sea as meant in paragraph 1, subparagraph b of Article 3, within which that State, in accordance with international law, exercises jurisdiction or sovereign rights, including the 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 7*

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 on the arm's length 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.

VII.

*Ad Article 8*

It is understood that the provisions of Article 8 shall also apply to taxes levied on the basis of the gross receipts in respect of the carriage of passengers and cargo in international traffic.

VIII.

*Ad Article 10*

The determination of the main purpose referred to in paragraph 10 of Article 10 shall be based on all facts and circumstances including:

- a) the nature and volume of the activities of the company in its country of residence in relation to the nature and volume of the dividends;
- b) both the historical and the current ownership of the company; and
- c) the business reasons for the company residing in its country of residence including the extent to which the company that beneficially owns the dividends would be entitled to treaty benefits comparable to those afforded by this Agreement if it had been a resident of the country of residence of the majority of its shareholders.

IX.

*Ad Article 10 and 13*

1. Notwithstanding the provisions of paragraphs 1, 2, and 9 of Article 10, dividends paid by a company which under the laws of the Netherlands is a resident of that State, to an individual who is a resident of Malawi and who upon ceasing to be a resident of the Netherlands is taxed on the appreciation of capital as meant in paragraph 2 of this provision, may also be taxed in the Netherlands in accordance with the laws of the Netherlands, but only insofar as the assessment on the appreciation of capital is still outstanding.

2. Where an individual has been a resident of the Netherlands and has become a resident of Malawi, paragraph 5 of Article 13, shall not prevent the Netherlands from taxing under its domestic law the capital appreciation of shares, profit sharing certificates, call options and usufruct on shares and profit sharing certificates, in and debt-claims on a company for the period of residency of that individual in the Netherlands. In such case, the appreciation of capital taxed in the Netherlands shall not be included in the tax base when determining the appreciation of capital by Malawi.

X.

*Ad Articles 10, 11 and 12*

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

XI.

*Ad Articles 10 and 13*

It is understood that benefits received in connection with the (partial) liquidation of a company or a purchase of own shares by a company is treated:

- a) in the case of the Netherlands as income from shares and not as capital gains; and
- b) in the case of Malawi as capital gains.

XII.

*Ad Article 24*

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 24, 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.

XIII.

*Ad Article 25*

1. The provisions of Article 25 shall apply accordingly to information that is relevant for carrying out the income-related regulations under the laws of the Netherlands by the tax authorities of the Netherlands concerned with the implementation, administration or enforcement of these income-related regulations.

2. Any information received under paragraph 1 of this provision in connection with Article 25 of this Agreement, shall be used only for the purpose of the determination and levying of the contributions and the determination and granting of the benefits under the income related regulations as meant in paragraph 1 of this provision.

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

DONE at Washington this 19<sup>th</sup> day of April 2015, in duplicate, in the English language.

*For the Kingdom of the Netherlands,*

E.M.J. PLOUMEN

*For the Republic of Malawi,*

G.E. GONDWE

#### D. PARLEMENT

Het Verdrag, met Protocol, behoeft ingevolge artikel 91 van de Grondwet de goedkeuring van de Staten-Generaal, alvorens het Koninkrijk aan het Verdrag, met Protocol, kan worden gebonden.

#### G. INWERKINGTREDING

De bepalingen van het Verdrag, met Protocol, zullen ingevolge artikel 29, eerste lid, juncto de preambule tot het Protocol, in werking treden op de laatste dag van de maand volgend op de maand waarin de laatste kennisgeving, waarin beide verdragsluitende staten elkaar langs diplomatieke weg ervan in kennis hebben gesteld dat zij alle vereiste nationale wettelijke procedures voor de inwerkingtreding van dit Verdrag hebben voltooid, is ontvangen.

Uitgegeven de *elfde* mei 2015.

*De Minister van Buitenlandse Zaken,*

A.G. KOENDERS