25 (2012) Nr. 1

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2012 Nr. 179

A. TITEL

Overeenkomst tussen het Koninkrijk der Nederlanden en de Federale Democratische Republiek Ethiopië tot het vermijden van dubbele belasting en het voorkomen van het ontgaan van belasting met betrekking tot belastingen naar het inkomen;
(met Protocol)
Addis Abeba, 10 augustus 2012

B. TEKST

Convention between the Kingdom of the Netherlands and the Federal Democratic Republic of Ethiopia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes and income

The Government of the Kingdom of the Netherlands

and

The Government of the Federal Democratic Republic of Ethiopia,

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (hereinafter referred to as "the Convention")

Have agreed as follows:

CHAPTER I

SCOPE OF THE CONVENTION

Article 1

Persons covered

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

Article 2

Taxes covered

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

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

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

a) in the European part of the Netherlands:
   (i) de inkomstenbelasting (income tax);
   (ii) de loonbelasting (wages tax);
   (iii) de vennootschapsbelasting (company tax) including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mijnbouwwet (the Mining Act);
   (iv) de dividendbelasting (dividend tax), and

   in the Caribbean part of the Netherlands:
   (i) de inkomstenbelasting (income tax);
   (ii) de loonbelasting (wages tax);
   (iii) de vastgoedbelasting (property tax);
   (iv) de opbrengstbelasting (revenue tax);
   (v) het aandeel van de Regering in de nettowinsten behaald met de exploitatie van natuurlijke rijkdommen geheven krachtens de Mijnwet BES, het Mijnbesluit BES of de Petroleumwet Saba Bank BES (Government share in the net profits of the exploitation of natural resources pursuant to the Mining Act BES, the Mining decree BES or Petroleum Act Saba Bank BES);

   (hereinafter referred to as "Netherlands tax");

b) In the case of Ethiopia:

(i) the tax on income and profit imposed by the Income Tax Proclamation No. 286/2002; and
(ii) the tax on income from mining, petroleum and agricultural activities imposed by respective proclamations;
(hereinafter referred to as "Ethiopian tax").

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

CHAPTER II

DEFINITIONS

Article 3

General definitions

1. For the purposes of this Convention, unless the context otherwise requires:
a) the terms "a Contracting State" and "the other Contracting State" mean the Kingdom of the Netherlands (the Netherlands) or Ethiopia as the context requires;
b) the term "the Netherlands" means:
(i) the European part of the Netherlands, including its territorial sea, and any area beyond its territorial sea within which the Kingdom of the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights; and
(ii) the Caribbean part of the Netherlands, which consists of the island territories of Bonaire, Sint Eustatius and Saba, including its territorial sea, and any area beyond its territorial sea within which the Kingdom of the Netherlands in accordance with international law, exercises jurisdiction or sovereign rights.
c) the term "Ethiopia" means the Federal Democratic Republic of Ethiopia, when used in a geographical sense, it means the national territory and any other area which in accordance with international law is or may be designated as an area in which Ethiopia exercises sovereign rights or its jurisdiction;
d) the term "person" includes an individual, a company and any other body of persons;
e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
f) the term "enterprise" applies to the carrying on of any business;

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

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

i) the term "competent authority" means:
   i) in the case of the Netherlands, the Minister of Finance or his authorised representative;
   (ii) in the case of Ethiopia, the Minister of Finance and Economic Development or his authorised representative;

j) the term "national", in relation to a Contracting State, means:
   (i) any individual possessing the nationality of that contracting state; and
   (ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;

k) the term "pension fund" means any plan, scheme, fund, trust or other arrangement which is operated principally to administer or provide pension or retirement benefits and is recognized and controlled according to the statutory provisions of a Contracting State;

l) the term "recognised stock exchange" means:
   (i) any of the stock exchanges in Ethiopia;
   (ii) any of the stock exchanges in the Netherlands and the Economic European Area (EEA);
   (iii) the NASDAQ System and any stock exchange in the United States of America which is registered with the U.S. Securities and Exchange Commission as a national securities exchange under the U.S. Securities Exchange Act of 1934;
   (iv) any other stock exchange agreed upon by the competent authorities of the Contracting States, provided that the purchase or sale of shares on the stock exchange is not implicitly or explicitly restricted to a limited group of investors.

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

Article 4

Resident

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

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

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

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

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

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

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

Article 5

Permanent establishment

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

2. The term "permanent establishment" includes especially:

a) a place of management;

b) a branch;
c) an office;
d) a factory;
e) a shop;
f) a workshop;
g) a commercial warehouse (in relation to a person carrying on business in the field of storage);
h) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on; and
i) 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 six months.

4. Notwithstanding the provisions of paragraphs 1, 2 and 3, an enterprise of a Contracting State which carries on activities in the territorial sea, and any area beyond the territorial sea within which the other Contracting State, in accordance with international law, exercises jurisdiction or sovereign rights (offshore activities), shall be deemed to carry on, in respect of those activities except as regards paragraph 2 of Article 15, business in that other State through a permanent establishment situated therein, unless the activities in question are carried on in the other State for a period or periods of less than in the aggregate 30 days in any twelve month period.

5. For the purposes of paragraph 4, offshore activities shall be deemed not to include:
a) one or any combination of the activities mentioned in paragraph 7;
b) towing or anchor handling by ships primarily designed for that purpose and any other activities performed by such ships;
c) the transport of supplies or personnel by ships or aircraft in international traffic.

6. For the purposes of determining the duration of the offshore activities under paragraph 4 in connection with paragraph 5, where an enterprise carrying on offshore activities in the other Contracting State is associated with another enterprise and that other enterprise continues, as part of the same project, the same offshore activities that are or were being carried on by the first-mentioned enterprise, and the aforementioned activities carried on by both enterprises – when added together – constitute a period of at least 30 days, each enterprise shall be deemed to carry on its activities for a period of at least 30 days in any twelve month period. An enterprise shall be regarded as associated with another enterprise if one enterprise holds directly or indirectly at least one third of the capital of the other enterprise or if a person holds directly or indirectly at least one third of the capital of both enterprises.

7. 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 stock of goods or merchandise belonging to the enterprise, which is exhibited at a trade fair or exhibition, and which is sold by the enterprise at the end of such fair or exhibition, provided that the frequency of such trade fair or exhibition shall not exceed once in a year;

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

f) the maintenance of a fixed place of business solely for the purposes of advertising, for the supply of information for scientific research, for the enterprise;

g) 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;

h) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to g), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

8. Notwithstanding the provisions of paragraphs 1, 2 and 4, where a person – other than an agent of an independent status to whom paragraph 9 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 7 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.

9. 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. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those

which would have been made between independent enterprises, he would not be considered an agent of an independent status within the meaning of this paragraph.

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

CHAPTER III

TAXATION OF INCOME

Article 6

Income from immovable property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

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

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

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

Business profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If

the enterprise carries on business as aforesaid, the profits that are attributable to the permanent establishment in accordance with the provisions of paragraph 2 may be taxed in that other State but only so much of them as is attributable to that permanent establishment.

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

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. This provision shall apply subject to limitations under the domestic law, provided that those limitations are consistent with the principles of paragraph 2 of Article 23.

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

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

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

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

Article 8

International traffic

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

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

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

a) profits from the rental on a bareboat basis of ships and aircraft;

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 incidental to the operation of ships or aircraft in international traffic; and

c) profits from the sale of tickets for the service of transportation by sea or air on behalf of other enterprises.

4. For the purposes of this Article, interest or funds directly connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, and the provisions of Article 11 shall not apply to such interest.

5. The provisions of paragraph 1, 3 and 4 of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated enterprises

1. Where

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

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

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

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the 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 this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10

Dividends

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

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

a) 10 per cent of the gross amount of the dividends in case the company paying the dividends is a resident of Ethiopia;

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

c) 5 per cent of the gross amount of the dividends, if the beneficial owner of the dividends is:

(i) 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; or
(ii) a pension fund.

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

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

5. The term "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.

6. The provisions of paragraphs 1, 2 and 8 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

8. Notwithstanding the provisions of paragraphs 1, 2, and 7, dividends and distributions in regard of profit sharing certificates paid by a company which under the laws of a Contracting State is a resident of that State, to an individual who is a resident of the other Contracting State and who upon ceasing to be a resident of the first-mentioned State is taxed on the appreciation of capital as meant in paragraph 6 of Article 13, may also be taxed in that State in accordance with the laws of

that State, but only for a period of ten years after emigration of the individual insofar as the assessment on the appreciation of capital is still outstanding.

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 5 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to, or on loans guaranteed or insured directly or indirectly by, the Government, a local authority or the Central Bank of the other Contracting State shall be exempt from tax in the first-mentioned State.

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

5. 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.

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

tion with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base 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 Convention.

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 paragraphs 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 computer software, cinematograph films, and films or tapes for radio or television broadcasting, transmission of every kind to the public, 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, 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. In such case the provisions of Article 7 or Article 14, as the case may be, 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 he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base 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 Convention.

Article 13

Capital gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to the resident of a Contracting State in the other Contracting State for the purposes 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 fixed base, may be taxed in that other State.

3. Gains derived by a resident of a Contracting State from the alienation of shares, other than shares which are traded on a recognised stock exchange, or other comparable interests deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State, other than immovable property in which that company or the holders of those interests carry on their business, may

be taxed in that other Contracting State. However, such gains shall be taxable only in the first-mentioned State where:

a) the resident owned less than 50 per cent of the shares or other comparable interests prior to the first alienation;

b) the gains are derived in the course of a corporate reorganization, amalgamation, division or similar transaction.

4. 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 Contracting State in which the place of effective management is situated.

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

6. Where an individual has been a resident of a Contracting State and has become a resident of the other Contracting State, paragraph 5 shall not prevent the first-mentioned State 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 first-mentioned State.

Article 14

Independent personal services

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

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

Article 15

Income from employment

1. Subject to the provisions of Articles 16, 17, 18, 19 and 20, 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 by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated in international traffic, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16

Directors' fees

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

Article 17

Pensions, annuities and social security payments

1. Pensions or 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) (i) in the case of the European part of 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");

(ii) in the case of the Caribbean part of the Netherlands: an annuity as mentioned in the Netherlands Caribbean Income Tax Act ("Wet inkomstenbelasting BES"), or any subsequent identical or substantially similar laws or regulations replacing this act, the benefits of which are considered to be income from periodic payments ("opbrengst van rechten op periodieke uitkeringen").

b) in the case of Ethiopia: a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under a commitment with 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. Subject to the provisions of Article 17,

a) salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority may be taxed in that State;

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

(i) is a national of that State; or

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

2. The provisions of Articles 15, 16 and 17 shall apply to salaries, wages and other similar remuneration in respect of services rendered in

connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

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

Article 20

Professors and researchers

1. An individual who is a resident of a Contracting State and who, at the invitation of any university, college, school or other similar non-profitable educational institution, which is recognized by the Government of the other Contracting State, is present in that other State for a period not exceeding two years from the date of his first visit for that purpose in that other State, solely for the purpose of teaching or research or both, at such educational institution shall be exempt from tax in that other State on his remuneration for teaching or research received from outside that State.

2. The provisions of paragraph 1 shall not apply to income from research if such research is undertaken not in the public interest but 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 Convention shall be taxable only in that State.

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

with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, if a resident of a Contracting State derives income from sources within the other Contracting State in form of games of chance, such income may be taxed in the other Contracting State.

CHAPTER IV

ELIMINATION OF DOUBLE TAXATION

Article 22

Elimination of double taxation

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

2. However, where a resident of the Netherlands derives items of income which according to paragraphs 1, 3 and 4 of Article 6, paragraph 1 of Article 7, paragraph 6 of Article 10, paragraph 6 of Article 11, paragraph 6 of Article 12, paragraphs 1 and 2 of Article 13, paragraph 1 of Article 14, paragraph 1 of Article 15, paragraphs 1 and 2 of Article 17, paragraph 1 (subparagraph a) of Article 18, and paragraph 2 of Article 21 of this Convention may be taxed in Ethiopia and are included in the basis referred to in paragraph 1, the Netherlands shall exempt such items of income by allowing a reduction of its tax. This reduction shall be computed in conformity with the provisions of the Netherlands law for the avoidance of double taxation. For that purpose the said items of income shall be deemed to be included in the amount of the items of income which are exempt from Netherlands tax under those provisions.

3. Further, the Netherlands shall allow a reduction from the Netherlands tax so computed for the items of income which according to paragraphs 2 and 8 of Article 10, paragraph 1 of Article 11, paragraph 1 of Article 12, paragraph 3 of Article 13, Article 16, paragraph 5 of Article 17 and paragraph 3 of Article 21 of this Convention may be taxed in Ethiopia to the extent that these items are included in the basis referred to in paragraph 1. The amount of this reduction shall be equal to the tax paid in Ethiopia 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 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 Ethiopia on the said items of income to subsequent years.

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

5. In Ethiopia, double taxation shall be eliminated as follows:

where a resident of Ethiopia derives income, which in accordance with the provisions of this Convention may be taxed in the Netherlands, Ethiopia shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in the Netherlands. Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in the Netherlands.

CHAPTER V

SPECIAL PROVISIONS

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. 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 recognised for tax purposes in the other Contracting State shall be treated in the same way for tax purposes in the first-mentioned State as a contribution paid to a pension fund that is recognised 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 recognised 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.

7. 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 him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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

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

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

5. Where,

a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and

b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two 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. The arbitration 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 Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

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

3. The Contracting States may release to the arbitration board, established under the provisions of paragraph 5 of Article 24, such information as is necessary for carrying out the arbitration procedure. The members of the arbitration board shall be subject to the limitations on disclosure described in paragraph 2 of this Article with respect to any information so released.

4. In no case shall the provisions of the previous 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.

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. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article. No request for assistance may be made if the total amount of the relevant claim is less than EUR 1,500.

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 Convention 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 applicant 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 applicant 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 pro-

visions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other 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.

Article 27

Members of diplomatic missions and consular posts

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

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

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

CHAPTER VI

FINAL PROVISIONS

Article 28

Entry into force

1. This Convention shall enter into force on the first day of the second month after the later of the dates on which the respective Governments have notified each other in writing that the formalities constitutionally required in their respective States have been complied with.

2. The provisions of the Convention shall thereupon have effect:
a) in Ethiopia:
(i) with regard to taxes withheld at source, in respect of amounts paid on or after the eighth day of July next following the date upon which the Convention enters into force;
(ii) with regard to other taxes, in respect of any tax year beginning on or after the eighth day of July next following the date upon which the Convention enters into force;
b) in the Netherlands: for any tax year and period beginning, and taxable events occurring, on or after the first day of January in the calendar year following that in which the Convention enters into force.

3. Notwithstanding the provision of paragraph 2, the provisions of Article 26 shall only apply if, after the signing of the Convention, Ethiopia is capable of fulfilling the obligations of that Article. In such case, Ethiopia shall inform the Netherlands of the date from which Ethiopia is capable of fulfilling the obligations of Article 26 through diplomatic channels.

Article 29

Termination

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiry of five years from the date of entry into force of the Convention. In such event, the Convention shall cease to have effect:
a) in Ethiopia:
(i) with regard to taxes withheld at source, in respect of amounts paid on or after the eighth day of July of the calendar year next following the calendar year in which such notice is given;
(ii) with regard to other taxes, in respect of any tax year beginning on or after the eighth day of July of the calendar year next following the calendar year in which such notice is given;
b) in the Netherlands: for any tax year and period beginning, and taxable events occurring, after the end of the calendar year following the calendar year in which such notice is given.

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

DONE at Addis Ababa this 10th day of August 2012, in duplicate, in the English language.

For the Government of the Kingdom of the Netherlands,

J. F. L. BLANKENBERG

For the Government of the Federal Republic of Ethiopia,

A. GUJO

Protocol to the Convention between the Kingdom of the Netherlands and the Federal Democratic Republic of Ethiopia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes and income

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

I.

General

1. It is understood that the OECD Commentary as it may be revised from time to time may be an important source of interpretation of the provisions of the Convention which are drafted according to the corresponding provisions of the OECD Model Convention on Income and on Capital.

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 Convention, 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 Convention and, at the same time, to prevent that, merely as a result of the application of the Convention, income is (partly) not subject to tax.

II.

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 Convention.

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 or the revenue tax;

b) in Ethiopia if the person is resident of Ethiopia 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.

III.

Ad 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 Convention for cases in which

a) application of paragraph 2 of Article 3 with respect to the interpretation of a term not defined in the Convention; 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 Convention in other similar cases.

IV.

Ad 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 the territorial sea 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 Articles 6, 10, 11, 12 and 13

1. Income and gains from collective investment through closed funds for joint account based in a Contracting State (closed FJA's) and umbrella funds consisting of several closed FJA's, are allocated to the participants that invest through the closed FJA's, in proportion to their participations in the fund.

2. A closed FJA which is established in a Contracting State and which receives income or gains arising from the other Contracting State may itself, represented by its fund manager or its depository, in lieu of and instead of the participants in the closed FJA, claim the benefits of an agreement for the avoidance of double taxation, to which the other State is a party and which is specifically applicable to any of the investors concerned, on behalf of those participants in the closed FJA.

Such claims may be subject to enquiry and, where requested, a fund manager or depository shall provide relevant information which may include a schedule of participants and allocated income or gains relevant to a claim, as well as the particular agreements for the avoidance of double taxation under which an application for benefits is made by the FJA.

3. Notwithstanding the provision of paragraph 2, a closed FJA may not claim treaty benefits on behalf of a participant in the closed FJA if the participant has itself made a claim for benefits in respect of the same income or gains.

VII.

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 only on the basis of that portion of the income of the enterprise that is attributable to the actual activity of the permanent establishment in respect of such sales or business.

VIII.

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.

IX.

Ad Articles 8, 13, 15 and 21

1. For the purposes of Articles 8, 13, 15 and 21, the place of effective management of the enterprise of Koninklijke Luchtvaartmaatschappij N.V. (KLM N.V.) shall be deemed to be situated in the Netherlands, as long as the Netherlands has an exclusive taxing right with respect to the enterprise of KLM N.V. under the tax convention concluded between the Netherlands and France.

2. The provision of paragraph 1 shall also apply in any situation where the air transport activities of the existing KLM N.V. would be continued fully or substantially by another person. This person shall be considered to be a resident of the Netherlands for the purposes of this Convention.

X.

Ad Article 10

1. The provisions of paragraph 2 (subparagraph b) of Article 10 shall apply as long as, under the provisions of its income tax laws the Netherlands applies a full tax exemption to participation dividends which a company receives from a company which is resident of Ethiopia.

2. The provisions of paragraph 2 (subparagraph c) of Article 10 shall apply as long as, under the provisions of the income tax laws of the Netherlands the income of pension funds are exempt.

XI.

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.

XII.

Ad Articles 10 and 13

It is understood that income received in connection with the (partial) liquidation of a company or a purchase of own shares by a company is treated as income from shares and not as capital gains.

XIII.

Ad Article 16

It is understood that the term "member of the board of directors" means persons who are charged with the general management of the company and persons who are charged with the supervision thereof.

XIV.

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.

XV.

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 in connection with Article 25, 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.

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

DONE at Addis Ababa this 10th day of August 2012, in duplicate, in the English language.

For the Government of the Kingdom of the Netherlands,

J. F. L. BLANKENBERG

For the Government of the Federal Republic of Ethiopia,

A. GUJO

D. PARLEMENT

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

G. INWERKINGTREDING

De bepalingen van de Overeenkomst, met Protocol, zullen ingevolge artikel 28, eerste lid, van het Verdrag juncto de preambule tot het Protocol in werking treden op de eerste dag van de tweede maand na de laatste der datums waarop beide regeringen elkaar er schriftelijk van in

kennis hebben gesteld dat aan de in hun respectieve staten constitutioneel vereiste formaliteiten voor de inwerkingtreding van de Overeenkomst is voldaan.

Uitgegeven de *achtentwintigste* september 2012.

De Minister van Buitenlandse Zaken,

U. ROSENTHAL

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