26 (1996) Nr. 1

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 1996 Nr. 210

A. TITEL

Verdrag tussen het Koninkrijk der Nederlanden en het Koninkrijk Denemarken tot het vermijden van dubbele belasting en het voorkomen van het ontgaan van belasting met betrekking tot belastingen naar het inkomen en naar het vermogen, met Protocol; Kopenhagen, 1 juli 1996

B. TEKST

Convention between the Kingdom of the Netherlands and the Kingdom of Denmark for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital

The Government of the Kingdom of the Netherlands

and

the Government of the Kingdom of Denmark,

Desiring to replace by a new Convention the existing Convention between the Kingdom of the Netherlands and the Kingdom of Denmark for the avoidance of double taxation and the establishment of rules of reciprocal administrative assistance with respect to taxes on income and on capital, with Protocol, signed at Copenhagen on 20 February, 1957, as supplemented by the notes exchanged at Copenhagen on 20 February, 1957, and as amended by the Supplementary Convention signed at The Hague on 20 January, 1966,

Have agreed as follows:

CHAPTER I

SCOPE OF THE CONVENTION

Article 1

Personal Scope

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

Article 2

Taxes Covered

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

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

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

a) in the Netherlands:

– de inkomstenbelasting (income tax),

– de loonbelasting (wages tax),

– de vennootschapsbelasting (company tax) including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mijnwet 1810 (the Mining Act of 1810) with respect to concessions issued from 1967, or pursuant to the Mijnwet Continentaal Plat 1965 (the Netherlands Continental Shelf Mining Act of 1965),

– de dividendbelasting (dividend tax),

– de vermogensbelasting (capital tax), (hereinafter referred to as ''Netherlands tax'');

b) in Denmark:

– indkomstskatten til staten (the income tax to the state),

– den kommunale indkomstskat (the municipal income tax),

– den amtskommunale indkomstskat (the income tax to the county municipalities),

– kirkeskatten (the church tax),

– udbytteskatten (the tax on dividends),

– renteskatten (the tax on interest),

– royaltyskatten (the tax on royalties),

– skatter i henhold til kulbrinteskatteloven (taxes imposed under the Hydrocarbon Tax Act),

(hereinafter referred to as ''Danish tax'').

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

CHAPTER II

DEFINITIONS

Article 3

General Definitions

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

a) the term ''State'' means the Netherlands or Denmark, as the context requires; the term ''States'' means the Netherlands and Denmark;

b) the term ''the Netherlands'' means the part of the Kingdom of the Netherlands that is situated in Europe including its territorial sea, and any area beyond the territorial sea within which the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights with respect to the sea bed, its sub-soil and its superjacent waters, and their natural resources;

c) the term ''Denmark'' means the Kingdom of Denmark including any area outside the territorial sea of Denmark, to the extent that that area in accordance with international law has been or may hereafter be designated under Danish laws as an area within which Denmark may exercise sovereign rights for the purpose of exploring and exploiting the natural resources of the sea bed or its subsoil and the superjacent waters and with regard to other activities for the economic exploitation and exploration of the area; the term does not comprise the Faroe Islands and Greenland;

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 which is treated as a body corporate for tax purposes;

f) the terms ''enterprise of one of the States'' and ''enterprise of the other State'' mean respectively an enterprise carried on by a resident of one of the States and an enterprise carried on by a resident of the other State;

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

h) the term ''nationals'' means:

1. all individuals possessing the nationality of one of the States;

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

i) the term ''competent authority'' means:

1. in the Netherlands the Minister of Finance or his duly authorised representative;

2. in Denmark the Minister of Taxation or his duly authorised representative.

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

Article 4

Resident

1. For the purposes of this Convention, the term ''resident of one of the States'' means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

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

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

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

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

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

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

Article 5

Permanent Establishment

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

2. The term ''permanent establishment'' includes especially:
a) a place of management;
b) a branch;
c) an office;
d) a factory;
e) a workshop, and
f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

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

4. Notwithstanding the preceding provisions of this Article, the term ''permanent establishment'' shall be deemed not to include:
a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

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

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

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

CHAPTER III

TAXATION OF INCOME

Article 6

Income from immovable property

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

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

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

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

Article 7

Business Profits

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

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

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

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

4. Insofar as it has been customary in one of the States 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 State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

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

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

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

Article 8

Shipping and Air Transport

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

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

3. With respect to profits derived by the air transport consortium Scandinavian Airlines System (SAS) the provisions of paragraph 1 shall apply only to such part of the profits as corresponds to the participation held in that consortium by Det Danske Luftfartsselskab (DDL), the Danish partner of Scandinavian Airlines System.

The participation in the enterprise of SAS by DDL shall for the purpose of paragraph 1 be considered to constitute an enterprise operating aircraft in international traffic having its place of effective management in Denmark.

4. For the purposes of this Article, profits derived from the operation in international traffic of ships and aircraft include profits derived from the rental on a bareboat basis of ships and aircraft if operated in international traffic if such rental profits are incidental to the profits described in paragraph 1.

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

Article 9

Associated Enterprises

1. Where

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

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the States and an enterprise of the other State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly. 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 one of the States includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent

enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the States shall if necessary consult each other.

Article 10

Dividends

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

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

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

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

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

7. Where a company which is a resident of one of the States derives profits or income from the other State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the hold-

ing in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

Interest

1. Interest arising in one of the States and paid to a resident of the other State shall be taxable only in that other State if such resident is the beneficial owner of the interest.

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

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

4. Interest shall be deemed to arise in one of the States when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of one of the States or not, has in one of the States a permanent establishment or a fixed base in connection with which the indebtness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

Article 12

Royalties

1. Royalties arising in one of the States and paid to a resident of the other State shall be taxable only in that other State if such resident is the beneficial owner of the royalties.

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

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

4. Royalties shall be deemed to arise in one of the States when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of one of the States or not, has in one of the States a permanent establishment or a fixed base in connection with which the obligation 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 State in which the permanent establishment or fixed base is situated.

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

Article 13

Capital gains

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

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of one of the States has in the other State or of movable property pertaining to a fixed base available to a resident of one of the States in the other State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the State in which the place of effective management of the enterprise is situated. For the purposes of this paragraph the provisions of paragraph 2 of Article 8 shall apply. With respect to gains derived by the air transport consortium Scandinavian Airlines System, the provisions of this paragraph shall apply only to such portion of the gains as corresponds to the participation held in that consortium by Det Danske Luftfartsselskab (DDL), the Danish partner of Scandinavian Airlines System.

The participation in the enterprise of SAS by DDL shall for the purpose of this paragraph be considered to constitute an enterprise operating aircraft in international traffic having its place of effective management in Denmark.

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

5. The provisions of paragraph 4 shall not affect the right of the Netherlands to levy according to its own law a tax on gains from the alienation of shares or ''jouissance'' rights in a company, the capital of which is wholly or partly divided into shares and which is, under the laws of the Netherlands, a resident of the Netherlands, derived by an individual who is a resident of Denmark and has been a resident of the Netherlands in the course of the last five years preceding the alienation of the shares or ''jouissance'' rights.

Article 14

Independent personal services

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

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

Article 15

Dependent personal services

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

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

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any period of 12 months, and

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

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

Article 16

Director's fees

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

Article 17

Artistes and Sportsmen

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of one of the States as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a

sportsman, from his personal activities as such exercised in the other State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the State in which the activities of the entertainer or sportsman are exercised.

Article 18

Pensions, annuities and social security payments

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

2. However, where such remuneration is not of a periodical nature and it is paid in consideration of past employment exercised in the other State, or where instead of the right to annuities a lump sum is paid, this remuneration or this lump sum may be taxed in the State in which it arises.

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

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

Article 19

Government Service

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

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

1. is a national of that State; or
2. did not become a resident of that State solely for the purpose of rendering the services.

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

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

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

Article 20

Students

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

Article 21

Other Income

1. Items of income of a resident of one of the States, wherever arising, 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 one of the States, carries on business in the other State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Articles 7 or Article 14, as the case may be, shall apply.

CHAPTER IV

TAXATION OF CAPITAL

Article 22

Capital

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

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

3. Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the State in which the place of effective management of the enterprise is situated. For the purposes of this paragraph the provisions of paragraph 2 of Article 8 shall apply. With respect to capital owned by the air transport consortium Scandinavian Airlines System, the provisions of this paragraph shall apply only to such portion of the capital owned as corresponds to the participation held in that consortium by Det Danske Luftfartsselskab (DDL), the Danish partner of Scandinavian Airlines System. The participation in the enterprise of SAS by DDL shall for the purpose of this paragraph be considered to constitute an enterprise operating aircraft in international traffic having its place of effective management in Denmark.

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

CHAPTER V

ELIMINATION OF DOUBLE TAXATION

Article 23

Elimination of double taxation

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

2. However, where a resident of the Netherlands derives items of income or owns items of capital which according to Article 6, Article 7, paragraph 6 of Article 10, paragraph 3 of Article 11, paragraph 3 of Article 12, paragraphs 1 and 2 of Article 13, Article 14, paragraph 1 of Article 15, paragraph 3 of Article 18, paragraphs 1 (sub-paragraph a) and 2 (sub-paragraph a) of Article 19, paragraph 2 of Article 21 and paragraphs 1 and 2 of Article 22 of this Convention may be taxed in Denmark and are included in the basis referred to in paragraph 1, the Netherlands shall exempt such items of income or capital by allowing a reduction of its tax. This reduction shall be computed in conformity with the provisions of Netherlands law for the avoidance of double taxation. For that purpose the said items of income or capital shall be deemed to be included in the total amount of the items of income or capital which are exempt from Netherlands tax under those provisions.

3. Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for the items of income which according to paragraph 2 of Article 10, paragraph 5 of Article 13, Article 16, Article 17 and paragraph 2 of Article 18 of this Convention may be taxed in Denmark to the extent that these items are included in the basis referred to in paragraph 1. The amount of this deduction shall be equal to the tax paid in Denmark on these items of income, but shall not exceed the amount of the reduction which would be allowed if the items of income so included were the sole items of income which are exempt from Netherlands tax under the provisions of Netherlands law for the avoidance of double taxation.

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

5. a) Subject to the provisions of subparagraph c), where a resident of Denmark derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the Netherlands, Denmark shall allow:

(i) as a deduction from the taxes on the income of that resident, an amount equal to the taxes on income paid in the Netherlands;

(ii) as a deduction from the tax on the capital of that resident, an amount equal to the tax on capital paid in the Netherlands.

b) Such deduction in either case shall not, however, exceed that part of income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in the Netherlands.

c) Where a resident of Denmark derives income or owns capital which, in accordance with the provisions of this Convention shall be taxable only in the Netherlands or may be taxed in the Netherlands in accordance with the provisions of article 15 and article 19, Denmark may include this income or capital in the tax base, but shall allow as a deduction from the income tax or capital tax that part of the income tax or capital tax, which is attributable, as the case may be, to the income derived from or the capital owned in the Netherlands.

d) Notwithstanding the provisions of sub-paragraph a) and b) of this paragraph, dividends paid by a company which is a resident of the Netherlands to a company which is a resident of Denmark shall be

exempt from Danish tax according to the provisions of Danish law governing the exemption of tax on dividends paid to Danish companies by subsidiaries abroad.

However, in the case where dividends do not qualify for the exemption from Danish tax, Denmark shall – in addition to the deduction from tax as mentioned in sub-paragraph a) and b) – allow as a deduction from the tax on such dividends the tax payable in respect of the profits out of which such dividends are paid in conformity with article 4 of the EC council directive of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States as it may be amended.

e) In the case of an individual who was a resident of Denmark for a period of five years or more and has become resident of the Netherlands and under the national law of Denmark has been taxed in respect of capital gains on shares, up to the change of residence, then Denmark shall allow where the shares are subsequently alienated and the gains from such alienation are taxed in the Netherlands as a deduction from the tax on the income an amount equal to the income tax which is paid in the Netherlands with respect to the income which was taxed in Denmark.

Such deduction shall not, however, exceed the income tax as computed before the deduction is given, which is levied on the said income in Denmark.

f) For the purposes of this paragraph, the taxes referred to in paragraphs 3a) and 4 of Article 2, other than the capital tax, shall be considered taxes on income.

CHAPTER VI

SPECIAL PROVISIONS

Article 24

Offshore activities

1. In case of activities covered by this Article, its provisions shall apply notwithstanding any other provisions of this Convention. However, this Article shall not apply where offshore activities of a person constitute for that person a permanent establishment under the provisions of Article 5 or a fixed base under the provisions of Article 14.

2. In this Article the term ''offshore activities'' means activities which are carried on offshore in connection with the exploration or exploitation of the sea bed and its subsoil and their natural resources, situated in one of the States.

3. An enterprise of one of the States which carries on offshore activities in the other State shall, subject to paragraph 4 of this Article, be deemed to be carrying on, in respect of those activities, business in that

other State through a permanent establishment situated therein, unless the offshore activities in question are carried on in the other State for a period or periods not exceeding in the aggregate 30 days in any period of 12 months.

For the purposes of this paragraph:

a) where an enterprise carrying on offshore activities in the other 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 - exceed a period of 30 days, then each enterprise shall be deemed to be carrying on its activities for a period exceeding 30 days in a 12 months-period;

b) an enterprise shall be regarded as associated with another enterprise if one holds directly or indirectly at least one third of the capital of the other enterprise or if a person holds directly or indirectly at least one third of the capital of both enterprises.

4. However, for the purposes of paragraph 3 of this Article the term ''offshore activities'' shall be deemed not to include one or any combination of the activities mentioned in paragraph 4 of Article 5.

5. Profits derived by a resident of one of the States from the transportation of supplies or personnel to a location, or between locations, where activities in connection with the exploration or exploitation of the sea bed and subsoil and their natural resources are being carried on in one of the States, or from the operation of tugboats and other vessels auxiliary to such activities, shall be taxable only in the State in which the place of effective management of the enterprise is situated.

6. A resident of one of the States who carries on offshore activities in the other State, which consist of professional services or other activities of an independent character, shall be deemed to be performing those activities from a fixed base in the other State if the offshore activities in question last for a continuous period of 30 days or more.

7. Salaries, wages and other similar remuneration derived by a resident of one of the States in respect of an employment connected with offshore activities carried on through a permanent establishment in the other State may, to the extent that the employment is exercised offshore in that other State, be taxed in that other State.

8. Salaries, wages and other similar remuneration derived by an individual who is a resident of one of the States in respect of an employment exercised aboard a ship or aircraft covered by paragraph 5 shall be taxed in accordance with paragraph 3 of Article 15.

9. Where documentary evidence is produced that tax has been paid in Denmark on the items of income which may be taxed in Denmark according to Article 7 and Article 14 in connection with respectively

paragraph 3 and paragraph 6 of this Article, and to paragraph 7 of this Article, the Netherlands shall allow a reduction of its tax which shall be computed in conformity with the rules laid down in paragraph 2 of Article 23.

Article 25

Non-discrimination

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

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

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

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

5. Contributions borne by an individual who renders dependent personal services in one of the States to a pension scheme established in and recognised for tax purposes in the other State shall, during a period not exceeding in the aggregate 60 months, be deducted, in the first-

mentioned State in determining the individual's taxable income, and treated in that State, in the same way and subject to the same conditions and limitations as contributions made to a pension scheme that is recognised for tax purposes in that first-mentioned State, provided that:

a) the individual was not a resident of that State, and was contributing to the pension scheme, immediately before he began to exercise employment in that State; and

b) the individual is either still employed by the same employer as immediately before he began to exercise employment in that State, or by an employer which is an associated enterprise of the aforementioned employer, and

c) the pension scheme is accepted by the competent authority of that State as generally corresponding to a pension scheme recognised as such for tax purposes by that State.

Payments to the pension scheme by the enterprise paying his remuneration shall not be deemed to be taxable income of the individual.

6. For the purposes of paragraph 5:

a) the term ''a pension scheme'' means a compulsory arrangement in which the individual participates in order to secure retirement benefits payable in respect of the dependent personal services referred to in paragraph 5; and

b) a pension scheme is recognised for tax purposes in a State if the contributions to the scheme would qualify for tax relief in that State.

The competent authorities may consult each other in case a pension scheme is not a compulsory arrangement with a view to decide whether it is justified to apply the provisions of this paragraph and paragraph 5 in such case.

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

Article 26

Mutual agreement procedure

1. Where a person considers that the actions of one or both of the States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent

authority of the other State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the States.

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

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

Article 27

Exchange of information

The competent authorities of the States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. Any information received by one of the States shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

Article 28

Assistance in recovery

1. The States agree to lend each other assistance and support with a view to the collection, in accordance with their respective laws or administrative practice, of the taxes to which this Convention shall apply and of any increases, surcharges, overdue payments, interests and costs pertaining to the said taxes.

2. At the request of the applicant State the requested State shall recover tax claims of the first-mentioned State in accordance with the law and administrative practice for the recovery of its own tax claims. However, such claims do not enjoy any priority in the requested State and cannot be recovered by imprisonment for debt of the debtor. The requested State is not obliged to take any executory measures which are not provided for in the laws of the applicant State.

3. The provisions of paragraph 2 shall apply only to tax claims which form the subject of an instrument permitting their enforcement in the applicant State and, unless otherwise agreed between the competent authorities, which are not contested.

However, where the claim relates to a liability to tax of a person as a non resident of the applicant State, paragraph 2 shall only apply, unless otherwise agreed between the competent authorities, where the claim may no longer be contested.

4. The obligation to provide assistance in the recovery of tax claims concerning a deceased person or his estate is limited to the value of the estate or the property acquired by each beneficiary of the estate, according to whether the claim is to be recovered from the estate or from the beneficiaries thereof.

5. The requested State shall not be obliged to accede to the request:

a) if the applicant State has not pursued all means available in its own territory, except where recourse to such means would give rise to disproportionate difficulty;

b) if and insofar as it considers the tax claim to be contrary to the provisions of this Convention or of any other convention to which both of the States are parties.

6. The request for administrative assistance in the recovery of a tax claim shall be accompanied by:

a) a declaration that the tax claim concerns a tax covered by the Convention and that the conditions of paragraph 3 are met;

b) an official copy of the instrument permitting enforcement in the applicant State;

c) any other document required for recovery;

d) where appropriate, a certified copy confirming any related decision emanating from an administrative body or a public court.

7. The applicant State shall indicate the amounts of the tax claim to be recovered in both the currency of the applicant State and the currency of the requested State. The rate of exchange to be used for the purpose of the preceding sentence is the last selling price settled on the most representative exchange market or markets of the applicant State. Each amount recovered by the requested State shall be transferred to the applicant State in the currency of the requested State. The transfer shall be carried out within a period of a month from the date of the recovery.

8. At the request of the applicant State, the requested State shall, with a view to the recovery of an amount of tax, take measures of conservancy even if the claim is contested or is not yet the subject of an instrument permitting enforcement, in so far as such is permitted by the laws and administrative practice of the requested State.

9. The instrument permitting enforcement in the applicant State shall, where appropriate and in accordance with the provisions in force in the

requested State, be accepted, recognised, supplemented or replaced as soon as possible after the date of the receipt of the request for assistance by an instrument permitting enforcement in the requested State.

10. Questions concerning any period beyond which a tax claim cannot be enforced shall be governed by the law of the applicant State. The request for assistance in the recovery shall give particulars concerning that period.

However, the requested State shall not comply with a request for administrative assistance which is submitted after the period beyond which the tax claim cannot be enforced under the law of that State.

11. Acts of recovery carried out by the requested State in pursuance of a request for assistance, which, according to the laws of that State, would have the effect of suspending or interrupting the period mentioned in paragraph 10, shall also have this effect under the laws of the applicant State. The requested State shall inform the applicant State about such acts and when necessary consult each other.

12. The requested State may allow deferral of payment or payment by instalments, if its laws or administrative practice permit it to do so in similar circumstances; but it shall first inform the applicant State.

13. The competent authorities of the States shall by common agreement prescribe rules concerning minimum amounts of tax claims subject to a request for assistance.

14. The States shall reciprocally waive any restitution of costs resulting from the respective assistance and support which they lend each other in applying this Convention. However, this will not include costs of court proceedings and of advice from experts. The applicant State shall in any event remain responsible towards the requested State for the pecuniary consequences of acts of recovery which have been found unjustified in respect of the reality of the tax claim concerned or of the validity of the instrument permitting enforcement in the applicant State.

Article 29

Limitation of Articles 27 and 28

In no case shall the provisions of Articles 27 and 28 of this Convention be construed so as to impose on one of the States the obligation:

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

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other State;

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

Article 30

Miscellaneous rules

1. The competent authorities of the States may by mutual agreement settle the mode of application of Articles 10, 11 and 12.

2. The competent authorities of each of the States, in accordance with the practices of that State, may prescribe regulations necessary to carry out other provisions of this Convention.

3. It is understood that:

a) where under the provisions of this Convention a resident of the Netherlands is exempt or entitled to relief from Danish tax, similar exemption or relief shall be applied to the undivided estate of a deceased person insofar as one or more of the beneficiaries are residents of the Netherlands;

b) for the purposes of Article 23, the Danish tax on the undivided estate of a deceased person shall, insofar as the income or capital accrues to a beneficiary who is a resident of the Netherlands, be regarded as tax on the income or capital of such beneficiary.

Article 31

Diplomatic agents and consular officers

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

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

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

Article 32

Territorial extension

1. This Convention may be extended, either in its entirety or with any necessary modifications, to either or both of the countries of the Neth-

erlands Antilles or Aruba, or to the Faroe Islands and Greenland, if the country or territory concerned imposes taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed in notes to be exchanged through diplomatic channels.

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

CHAPTER VII

FINAL PROVISIONS

Article 33

Entry into force

1. This Convention shall enter into force on the thirtieth day after the latter of the dates on which the respective Governments have notified each other in writing that the formalities constitutionally required in their respective States have been complied with, and its provisions shall have effect for taxable years and periods beginning on or after the first day of January in the calendar year next following that in which the latter of the notifications has been received.

2. The Convention between the Kingdom of the Netherlands and the Kingdom of Denmark for the avoidance of double taxation and the establishment of rules of reciprocal administrative assistance, with respect to taxes on income and on capital, with Protocol, signed at Copenhagen on 20 February, 1957, as supplemented by the notes exchanged at Copenhagen on 20 February, 1957, and as amended by the Supplementary Convention signed at The Hague on 20 January, 1966, shall terminate upon the entry into force of this Convention. However, the provisions of the first-mentioned Convention shall continue in effect for taxable years and periods, which are expired before the time at which the provisions of this Convention shall be effective.

3. The following Agreements between the Kingdom of the Netherlands and the Kingdom of Denmark shall not have effect in respect of any year or period for which the present Convention is in force, to wit:

– the Agreement of 8 November, 1930, for the reciprocal exemption from income tax of certain profits derived from the business of shipping;

– the Agreement concluded by exchange of notes of 15 december, 1937, and 24 March, 1938, providing for reciprocal exemption of income tax of certain profits derived from air transport.

Article 34

Termination

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

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

DONE at Copenhagen this first day of July 1996, in duplicate, in the English language.

For the Government of the Kingdom of the Netherlands

(sd.) J. W. SEMEYNS DE VRIES VAN DOESBURGH

For the Government of the Kingdom of Denmark

(sd.) PETER LOFT

Protocol

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

I. *Taxes on capital*

1. The provisions of this Convention relating to the taxation of capital and avoidance of double taxation on capital will only be effective if and as long as both States levy a tax on capital.

2. The States shall inform each other through diplomatic channels of the introduction or the abolition of a tax on capital.

II. *Ad Article 4*

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

III. *Ad Articles 5, 6, 13 and 22*

It is understood that exploration and exploitation rights of the sea bed and its subsoil and their natural resources shall be regarded as immovable property situated in the one of the States the sea bed and subsoil of which they are related to, and that these rights shall be deemed to pertain to the property of a permanent establishment in that State. Furthermore, it is understood that the aforementioned rights include rights to interests in, or to benefits of, assets to be produced by such exploration or exploitation.

IV. *Ad Article 7*

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

V. *Ad Article 8*

It is understood that the provisions of paragraph 4 of Article 8 shall be interpreted in accordance with paragraph 9 and 10 of the Commentary on article 8 of the OECD Model Double Taxation Convention on Income and Capital 1977.

VI. *Ad Article 10 and 11*

It is understood that notwithstanding the provisions of article 11, in case one of the States subjects the income from profit sharing bonds to a tax on dividends, article 10 is applicable to such income arising in that State.

VII. *Ad Article 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 three years after the expiration of the calendar year in which the tax has been levied.

VIII. *Ad Article 13*

In case Danish law is changed in such a way that Denmark can exercise a taxation right as laid down in paragraph 5 of Article 13 then at the request of Denmark, the provisions of paragraph 5 of Article 13 may be changed and replaced by the following text:

''5. The provisions of paragraph 4 shall not affect the right of each of the States to levy according to its own law a tax on gains from the alienation of shares or 'jouissance' rights in a company, the capital of which is wholly or partly divided into shares and which is, under the laws of that State, a resident of that State, derived by an individual who is a resident of the other State and has been a resident of the first-mentioned State in the course of the last five years preceding the alienation of the shares or 'jouissance' rights.''

The request for such change shall be made through diplomatic channels, by giving notice to the Netherlands. The change shall enter into force on the thirtieth day after the date on which the Netherlands has received such notice, and its provisions shall thereupon have effect in respect of taxes on capital gains derived on or after the first of January in the calendar year immediately following the year in which the change entered into force.

IX. *Ad Article 16*

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

X. *Ad Article 18*

It is understood that the Netherlands and Denmark will enter into discussions to consider if an amendment of article 18 is needed in view of developments in the EC or the OECD relating to the question whether it is still appropriate to maintain the exclusive taxation right of the State

of residence with respect to pensions and other similar remuneration paid to a resident of one of the States in consideration of past employment and any annuity as mentioned in paragraph 1 of article 18.

XI. *Ad Article 23*

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

2. It is understood that the terminology ''the tax payable in respect of the profits out of which such dividends are paid'', as mentioned in paragraph 5 sub-paragraph d) of Article 23, shall include any tax directly or indirectly suffered by the company paying the dividends on the profits or income out of which the dividends are paid.

XII. *Ad Article 24*

It is understood that the term ''offshore activities'' includes activities carried out in an exploration or exploitation area which extends from a place offshore in that other State to the onshore territory of that State, provided the activities carried on onshore are incidental to the offshore activities.

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

DONE at Copenhagen this 1st July, 1996, in duplicate, in the English language.

For the Government of the Kingdom of the Netherlands

(sd.) J. W. SEMEYNS DE VRIES VAN DOESBURGH

For the Government of the Kingdom of Denmark

(sd.) PETER LOFT

D. PARLEMENT

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

G. INWERKINGTREDING

De bepalingen van Verdrag en Protocol zullen ingevolge artikel 33, eerste lid, van het Verdrag, juncto de preambule tot het Protocol, in werking treden op de dertigste dag na de laatste der beide data waarop de onderscheiden Regeringen elkaar schriftelijk hebben medegedeeld, dat de in hun onderscheiden Staten grondwettelijk vereiste formaliteiten zijn vervuld.

J. GEGEVENS

Van de op 8 november 1930 te 's-Gravenhage tot stand gekomen Overeenkomst tussen het Koninkrijk der Nederlanden en het Koninkrijk Denemarken tot wederzijdse vrijstelling van inkomstenbelasting in zekere gevallen waarbij winsten voortvloeien uit het zeescheepvaartbedrijf, naar welke Overeenkomst wordt verwezen in artikel 33, derde lid, van het onderhavige Verdrag, is de Franse tekst alsmede de vertaling geplaatst in *Stb.* 1930, 463.

Van de op 15 december 1937 en 24 maart 1938 te Kopenhagen tot stand gekomen Notawisseling tussen de Nederlandse en de Deense Regering houdende een overeenkomst inzake wederzijdse vrijstelling van inkomstenbelasting in zekere gevallen, waarin winsten voortvloeien uit het luchtvaartbedrijf, naar welke Notawisseling eveneens wordt verwezen in artikel 33, derde lid, van het onderhavige Verdrag, is de tekst alsmede de vertaling geplaatst in *Stb.* 1938, 29.

Van de op 20 februari 1957 te Kopenhagen tot stand gekomen Overeenkomst tussen het Koninkrijk der Nederlanden en het Koninkrijk Denemarken tot het vermijden van dubbele belasting en tot het vaststellen van regelen voor wederzijdse administratieve hulp met betrekking tot belastingen van inkomsten en van vermogen, naar welke Overeenkomst wordt verwezen in onder meer de preambule tot het onderhavige Verdrag, is de tekst geplaatst in *Trb.* 1957, 52; zie ook, laatstelijk, *Trb.* 1986, 91.

Van de op 20 januari 1966 te 's-Gravenhage tot stand gekomen Aanvullende Overeenkomst tot wijziging en aanvulling van de Overeenkomst tussen het Koninkrijk der Nederlanden en het Koninkrijk Denemarken tot het vermijden van dubbele belasting en tot het vaststellen van regelen voor wederzijdse administratieve hulp met betrekking tot belastingen van inkomsten en van vermogen, naar welke Overeenkomst onder meer in wordt verwezen de preambule tot het onderhavige Verdrag, is de tekst geplaatst in *Trb.* 1966, 103; zie ook, laatstelijk, *Trb.* 1986, 92.

Van het op 25 maart 1957 te Rome tot stand gekomen Verdrag tot oprichting van de Europese Gemeenschap, waarnaar wordt verwezen in Onderdeel X van het Protocol bij het onderhavige Verdrag, is de Franse tekst geplaatst in *Trb.* 1957, 74 en de Nederlandse tekst in *Trb.* 1957, 91; zie ook, laatstelijk, *Trb.* 1995, 76.

De Organisatie voor Economische Samenwerking en Ontwikkeling, naar welke Organisatie onder meer wordt verwezen in Onderdeel V van het Protocol bij het onderhavige Verdrag is opgericht bij het Verdrag van 14 december 1960. De tekst van dat Verdrag is geplaatst in *Trb.* 1961, 42 en de vertaling in *Trb.* 1961, 60; zie ook, laatstelijk, *Trb.* 1994, 193.

Uitgegeven de *viertiende* augustus 1996.

De Minister van Buitenlandse Zaken,

H. A. F. M. O. VAN MIERLO

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