

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 1986 Nr. 169

A. TITEL

Verdrag tussen het Koninkrijk der Nederlanden met betrekking tot de Nederlandse Antillen en de Verenigde Staten van Amerika ter vermindering van dubbele belasting en ter voorkoming van het ontgaan van belasting met betrekking tot belastingen naar het inkomen;
Willemstad, 8 augustus 1986

B. TEKST

Convention between the Government of the Kingdom of the Netherlands in respect of the Netherlands Antilles and the Government of the United States of America for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income

The Government of the Kingdom of the Netherlands in respect of the Netherlands Antilles and the Government of the United States of America, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

Article 1

General Scope

1. This Convention shall apply to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Convention.

2. This Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded:

- by the laws of either Contracting State; or
- by any other agreement between the Contracting States.

3. Notwithstanding any provision of this Convention except paragraph 4 of this Article, a Contracting State may tax its residents (as determined under Article 4 (Residence)), and by reason of citizenship may tax its citizens, as if this Convention had not come into effect. For this purpose, the term "citizen" shall include a former citizen whose loss of citizenship had as one of its principal purposes the avoidance of tax, but only for a period of 10 years following such loss.

4. The provisions of paragraph 3 shall not affect:

- a) the benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), under paragraphs 1 b) and 4 of Article 18 (Pensions, Annuities, Alimony, and Child Support), and under Articles 23 (Relief from Double Taxation), 24 (Non-Discrimination), and 25 (Mutual Agreement Procedure); and
- b) the benefits conferred by a Contracting State under Articles 19 (Government Service), 20 (Students, Trainees and Teachers) and 27 (Diplomatic Agents and Consular Officers), upon individuals who are neither citizens of, nor have immigrant status in, that State.

Article 2

Taxes Covered

1. The existing taxes to which this Convention shall apply are:

- a) in the United States: the Federal income taxes imposed by the Internal Revenue Code (but excluding the accumulated earnings tax, except as provided in paragraph 6 of Article 10 (Dividends), the personal holding company tax, and social security taxes), and the excise taxes imposed on insurance premiums paid to foreign insurers and with respect to private foundations (hereinafter referred to as "United States tax"). The Convention shall, however, apply to the excise taxes imposed on insurance premiums paid to foreign insurers only to the extent that the risks covered by such premiums are not reinsured with a person not entitled to the benefits of this or any other convention which applies to these taxes; and
- b) in the Netherlands Antilles: the income tax (inkomstenbelasting); the wages tax (loonbelasting); the profit tax (winstbelasting); and the surtaxes on the income and profits taxes (hereinafter referred to as "Netherlands Antillean tax").

2. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of significant changes which have been made in their respective taxation laws and of any official published material concerning the application of this Convention, including explanations, regulations, rulings, or judicial decisions.

Article 3

General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:
 - a) the term "person" includes an individual, an estate, a trust, a partnership, a company, and any other body of persons;
 - b) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - c) 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;
 - d) the term "competent authority" means
 - i) in the United States: the Secretary of the Treasury or his delegate; and
 - ii) in the Netherlands Antilles: the Minister of Finance or his authorized representative;
 - e) the term "United States" means the United States of America, but does not include Puerto Rico, the Virgin Islands, Guam, or any other United States possession or territory;
 - f) the term "Netherlands Antilles" means that part of the Kingdom of the Netherlands that is situated in the Caribbean area and consisting of the Island Territories of Bonaire, Curaçao, Saba, St. Eustatius and St. Maarten (Dutch part);
 - g) the term "Contracting State" means the United States or the Kingdom of the Netherlands in respect of the Netherlands Antilles as the context requires;
 - h) the term "national" means:
 - i) in relation to the Netherlands Antilles, an individual who has Dutch nationality and who would be eligible to vote in the Netherlands Antilles if he were of age and present in the Netherlands Antilles, provided however, if an individual is not resident in the Netherlands Antilles, he must either have been born in the Netherlands Antilles or have been a resident thereof for at least five years; and
 - ii) in relation to the United States, a United States citizen;
 - i) the term "pension fund of a Contracting State" means with respect to each Contracting State a trust, company, or other organization which is created under the laws of such State or a political subdivision thereof, which is constituted and operated exclusively to administer and provide benefits under one or more funds or plans established to provide pension, retirement, or other employee benefits, which is generally exempt from tax in a taxable year in such State, and with respect to which at least 80 percent of the benefits accrued as of the beginning of a taxable year are payable

to individuals who are then residents of such State or who were residents thereof at the time their benefits accrued; and

j) the term "charitable organization of a Contracting State" means with respect to each Contracting State a religious, scientific, literary, educational or charitable organization which is organized under the laws of such State or a political subdivision thereof, which exclusively serves the public interest, which is generally exempt from tax in a taxable year in such State, and with respect to which 80 percent or more of its expenditures (not including those expenses which are ordinary and necessary costs of operating the organization) for the 3-year period ending with the close of the preceding taxable year were made for the direct or indirect benefit of individual residents of such State.

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 25 (Mutual Agreement Procedure), have the meaning which it has under the laws of that State concerning the taxes to which the Convention applies.

Article 4

Residence

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, citizenship, place of management, place of incorporation, or any other criterion of a similar nature, provided, however, that

a) 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; and

b) in the case of income derived or paid by a partnership, estate, or trust, this term applies only to the extent that the income derived by such partnership, estate, or trust is subject to tax in that State as the income of a resident, either in its hands or in the hands of its partners or beneficiaries.

For purposes of this Convention, the term "resident of a Contracting State" shall also include with respect to each State a pension fund of such State and a charitable organization of such 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 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 (center of vital interests);

b) if the State in which he has his center of vital interests cannot be determined, or if he does not have 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 Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, then if it is created under the laws of a Contracting State or a political subdivision thereof, it shall be deemed to be a resident of that State.

4. In any case where residence of a person in a single Contracting State for purposes of this Convention is not determined under the preceding paragraphs of this Article, the competent authorities of the Contracting States shall settle the question by mutual agreement and determine the mode of application of the Convention to such person.

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 branch;
- b) an office;
- c) a factory;
- d) a workshop;
- e) a store or premises used as a sales outlet;
- f) a warehouse, in relation to a person providing storage facilities for others; and
- g) 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, or an installation or drilling rig or ship used for the exploration or exploitation of natural resources, constitutes a permanent establishment only if such site or activity continues for more than twelve months, provided that a permanent establishment shall not exist in any taxable year in which such site or activity continues within

that State for a period or periods aggregating less than 30 days in that taxable year.

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, other than goods or merchandise held for sale by such enterprise in a store or premises used as a sales outlet;

b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display, or delivery other than goods or merchandise held for sale by such enterprise in a store or premises used as a sales outlet;

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 the activities mentioned in subparagraphs a) to e).

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

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

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

Article 6

Income from Real Property

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

2. The term "real 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 real property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of real 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 real property.

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

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

5. A resident of a Contracting State who is subject to tax in the other Contracting State on income from real property situated in the other Contracting State may elect for any taxable year to compute the tax on such income on a net basis as if such income were attributable to a permanent establishment in such other State. Any such election shall be binding for the taxable year of the election and all subsequent taxable years unless the competent authorities of the Contracting States, pursuant to a request by the taxpayer made to the competent authority of the Contracting State in which the taxpayer is a resident, agree to terminate the election.

Article 7

Business Profits

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

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the business profits which it might be expected to make if it were a distinct and independent 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 and other enterprises controlling, controlled by, or subject to the same control as that enterprise.

3. In determining the business profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including a reasonable allocation of executive and general administrative expenses, research and development expenses, interest, and other expenses incurred for the purposes of the enterprise as a whole (or the part thereof which includes the permanent establishment), whether incurred in the State in which the permanent establishment is situated or elsewhere.

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

5. For the purposes of this Convention, the business profits to be attributed to the permanent establishment shall include only the profits derived from the assets or activities of the permanent establishment and shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

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

7. For the purposes of this Convention, the term "business profits" means income derived from any trade or business, including the rental of tangible personal property.

Article 8

Shipping and Air Transport

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State. For the purposes of this Convention, the term "international traffic" with reference to a resident of a Contracting State means any voyage of a ship or aircraft used to transport passengers or property

(whether or not operated or used by that resident) except where the principal purpose of the voyage is to transport passengers or property between places within the other Contracting State.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include profits derived from the rental of ships or aircraft if such ships or aircraft are operated in international traffic by the lessee or if such rental profits are incidental to other profits described in paragraph 1.

3. Profits of an enterprise of a Contracting State from the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) used in international traffic shall be taxable only in that State.

4. The provisions of paragraphs 1 and 3 shall also apply to profits from 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, but for those conditions would 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.

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, if it agrees that the actions of the first-mentioned State are in accordance with this Article, shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be paid to the other provisions of this

Convention and the competent authorities of the Contracting States shall if necessary consult each other.

3. The provisions of paragraph 1 shall not limit any provisions of the law of either Contracting State which permit the distribution, apportionment, or allocation of income, deductions, credits, or allowances between persons, whether or directly or indirectly by the same interests when necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such persons, subject to the provisions of Article 25 (Mutual Agreement Procedure).

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) 5 percent of the gross amount of the dividends if the beneficial owner is a company which owns at least 10 percent of the voting stock of the company paying the dividends;

b) 15 percent of the gross amount of the dividends in all other cases.

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

3. The term "dividends" as used in this Convention means income from 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.

4. The provisions of paragraph 2 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 dividends are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

5. A Contracting State may not impose any tax on dividends paid by a company which is not a resident of that State, except insofar as:

- a) the dividends are paid to a resident of that State;
- b) the dividends are attributable to a permanent establishment or a fixed base situated in that State; or
- c) except with respect to companies described in paragraph 6 of Article 16 (Limitation on Benefits), the dividends are paid out of profits attributable to one or more permanent establishments of such company in that State, provided that the gross income of the company attributable to such permanent establishment constituted at least 50 percent of the company's gross income from all sources.

6. The income of a Netherlands Antilles company qualifying for fiscal incentives under the Hotel and Industries, Real Estate Development, Free Zone or Exporting Industries ordinances (as in effect on the date of signature of this Convention) or such fiscal incentives as the competent authorities may agree pursuant to Article 25 (Mutual Agreement Procedure) shall not be subject to the United States accumulated earnings tax. In addition, a company which is a resident of the Netherlands Antilles shall be exempt from United States accumulated earnings tax if individuals (other than United States citizens) who are residents of the Netherlands Antilles control directly or indirectly throughout the last half of the taxable year more than 50 percent of the entire voting power and value of the company. For purposes of determining the applicability of the United States accumulated earnings tax with respect to a company which is a resident of the Netherlands Antilles and described in paragraph 5 of Article 16 (Limitation on Benefits) (other than a company described in subparagraph (a)(i) of such paragraph), a United States person eligible to own shares of such company under subparagraph (a)(ii)(D) of such paragraph shall not be treated as a United States person.

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 percent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2:

- a) interest (in respect of a loan made in connection with the

performance of governmental functions) arising in a Contracting State and paid to the Government of the other Contracting State or any agency or instrumentality (including a financial institution) wholly owned by that Government shall be exempt from tax in the first-mentioned State;

b) interest arising in a Contracting State, beneficially owned by a resident of the other Contracting State, and paid in respect of a bond, debenture, or other similar obligation issued by the Government of the first-mentioned State or by a political subdivision, local authority or instrumentality thereof shall be exempt from tax in that first-mentioned State; and

c) interest arising in a Contracting State, beneficially owned by a resident of the other Contracting State which is a company described in paragraph 5 of Article 16 (Limitation on Benefits), shall be exempt from tax in that first-mentioned State.

4. The term "interest" as used in this Convention 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.

5. The provisions of paragraph 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the interest is attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payor is that State itself or a political subdivision, local authority, or 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 connection 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.

7. Where, owing to a special relationship between the payor 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 payor 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 the Convention.

8. A Contracting State may not impose any tax on interest paid by a resident of the other Contracting State, except insofar as:

- a) the interest is paid to a resident of the first-mentioned State;
- b) the interest is attributable to a permanent establishment or a fixed base situated in the first-mentioned State; or
- c) the interest arises in the first-mentioned State.

Article 12

Royalties

1. Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State may be taxed by both Contracting States.

2. However, the tax imposed by the first mentioned Contracting State shall not exceed 5 percent of the gross amount of the royalties.

3. The term "royalties" as used in this Convention means payments of any kind received as a consideration for the use of, or the right to use, any copyright of a literary, artistic, or scientific work including royalties in respect of motion pictures and works on film, tape or other means of reproduction for use in connection with radio or television, any patent, trademark, design or model, plan, secret formula or process, or other like right or property, or for information concerning industrial, commercial or scientific experience. The term royalties also includes gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof.

4. The provisions of paragraph 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 royalties are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

5. Where, by reason of a special relationship between the payor 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 payor and the beneficial owner

in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of the Convention.

6. Royalties shall be deemed to arise in a Contracting State to the extent that such royalties are with respect to the use of, or the right to use, rights of property within that State.

Article 13

Gains

1. Gains derived by a resident of a Contracting State from the alienation of real property situated in the other Contracting State may be taxed in that other State.

2. For the purposes of this Article:

a) the term "real property situated in the other Contracting State", where the United States is that other Contracting State, includes a United States real property interest, and real property referred to in Article 6 (Income from Real Property) which is situated in the United States; and

b) the term "real property" in the case of the Netherlands Antilles, shall have the meaning which it has under the laws in force from time to time in the Netherlands Antilles and, without limiting the foregoing, includes:

- i) real property referred to in Article 6;
- ii) shares or comparable interests in a company, the assets of which consist wholly or principally of real property situated in the Netherlands Antilles; and
- iii) an interest in a partnership, trust or estate of a deceased individual, the assets of which consist wholly or principally of real property situated in the Netherlands Antilles.

3. For the purposes of this Article, real property consisting of shares or comparable interests in a company referred to in sub-paragraph 2(b)(ii), and interests in a partnership, trust or estate referred to in sub-paragraph 2(b)(iii), shall be deemed to be situated in the Netherlands Antilles.

4. Gains from the alienation of personal property which are attributable to a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, or which are attributable to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, and gains from the alienation of such

a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in that other State.

5. Gains derived by an enterprise of a Contracting State from the alienation of ships, aircraft, or containers operated in international traffic shall be taxable only in that State.

6. Gains described in Article 12 (Royalties) shall be taxable only in accordance with the provisions of Article 12.

7. Gains from the alienation of any property other than property referred to in paragraphs 1 through 6 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

Independent Personal Services

Subject to Article 22 (Directors' Fees), income derived by an individual who is a resident of a Contracting State in respect of professional services or other independent personal services shall be taxable only in that State. However, in the following circumstances such income as is derived from services performed in the other Contracting State may be taxed in the other Contracting State:

a) if the individual's stay in the other State is for a period or periods aggregating 183 days or more in the taxable year; or

b) if the individual has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State.

Article 15

Dependent Personal Services

1. Subject to the provisions of Articles 18 (Pensions, Annuities, Alimony, and Child Support), 19 (Government Service) and 22 (Directors' Fees), salaries, wages, and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

a) the recipient is present in the other State for a period or periods

not exceeding in the aggregate 183 days in the taxable year concerned;

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 deductible in determining taxable profits of a permanent establishment, a fixed base or a trade or business 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 as a member of the crew of a ship or aircraft operated in international traffic may be taxed only in that State.

Article 16

Limitation on Benefits

1. A person which is a resident of a Contracting State and which derives income from sources within the other Contracting State shall not be entitled, in that other Contracting State, to the benefits of Article 6 (Income from Real Property) through Article 24 (Non-discrimination) if:

a) 50 percent or less of the beneficial interest in such person (or, in the case of a company, 50 percent or less of the number of shares of any class of the company's shares) is owned, directly or indirectly, by any combination of one or more individual residents of a Contracting State or citizens of the United States;

b) the evidence of and rights to the ownership of any interests (other than interests solely as a creditor) in such person are in bearer form; or

c) more than 50 percent of the gross income of such person is used, or, for purposes of the tax laws of the Contracting State of which such person is resident, is deemed to be used, directly or indirectly, to make non-prorata distributions to, or meet liabilities (including liabilities for interest, royalties, or other expenses, the actual or deemed payment of which is allowable, in whole or in part, as a deduction for purposes of the tax laws of the Contracting State of which such person is resident) to, or to be accumulated for the benefit of, persons who are not residents of either of the Contracting States and who are not citizens of the United States.

2. The provisions of paragraph 1 (other than subparagraph (b)) shall not apply if the income derived from the other Contracting State is derived in connection with, or is incidental to, the active conduct by such person of a trade or business in the first-mentioned Contracting State (other than the business of making or managing investments for such person's, or a related person's, account).

3. The provisions of paragraph 1 shall not apply if the person deriving the income is a company which is a resident of a Contracting State in whose principal class of shares there is substantial and regular trading on a recognized stock exchange. For purposes of the preceding sentence, the term "recognized stock exchange" means:

- a) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for purposes of the Securities Exchange Act of 1934; and
- b) any other stock exchange agreed upon by the competent authorities of the Contracting States.

4. Where, pursuant to any provision of this Convention, a Contracting State reduces the rate of tax on or exempts income of a person who is a resident of the other Contracting State and under the law in force in that other Contracting State such income is subject to a rate of tax or a tax burden which is substantially less than the tax which generally would be imposed by that Contracting State on such income if derived from sources within that Contracting State or on business income whether from sources within or without that Contracting State, then such reduction in rate of tax or exemption from tax shall not apply to such income. The provisions of the preceding sentence shall not apply to income of a resident of the Netherlands Antilles derived from the United States and qualifying for fiscal incentives under the Hotel and Industries, Real Estate Development, Free Zone or Exporting Industries ordinances of the Netherlands Antilles (as in effect on the date of signature of this Convention) or such fiscal incentives as the competent authorities may agree pursuant to Article 25 (Mutual Agreement Procedure).

5. The provisions of paragraphs 1 and 4 shall not apply if the person deriving the income is a company which is a resident of a Contracting State and which meets the requirements of each of the following subparagraphs:

- a) the company must:
 - i) be one in all of whose classes of shares there is substantial and regular trading on a designated stock exchange (defined as any recognized stock exchange described in paragraph 3 or any other stock exchange agreed upon in letters exchanged at the time of the signing of this Convention or by the competent authorities of the Contracting States as a designated stock exchange for purposes of this subparagraph), provided that any such class may include bearer shares only if the designated stock exchange permits trading in such shares; or
 - ii) be one:
 - A) each share of stock of which is registered in the name of an ultimate beneficial owner or a bank or other

financial institution which, under procedures mutually agreed to by the competent authorities, provides to such company the name, place of residence and such other information regarding the ultimate beneficial owner as may be necessary to determine the application of this paragraph,

- B) which at all times during any taxable period has no fewer than 100 shareholders who include residents of no fewer than 5 countries (not including the other Contracting State),
- C) of which no shareholder (including any investment adviser) other than an individual who is a resident of the same Contracting State as the company may at any time during a taxable period own, by reason of the acquisition of shares of any class of stock, more than 15 percent of the value of such class or own, by reason of the redemption of shares of any class of stock by any other person, more than 30 percent of the value of such class (such ownership to be determined by taking into account the attribution of ownership rules of section 318(a) of the U.S. Internal Revenue Code, except that "10 percent" shall be substituted for "50 percent" each time it appears therein), and
- D) none of the stock of which is owned (or is considered as being owned by taking into account the attribution of ownership rules as described above) at any time during a taxable period by a person resident in the other Contracting State (except that 10 percent or less of the value of any class of the stock may be so owned by a person acting as an investment adviser to the company who is resident of such other Contracting State or, until the expiration of five calendar years after the death of such investment adviser, by the person to whom the stock is transferred by reason of the death of the investment adviser);

b) the company must:

- i) carry on all of the following functions substantially in or from such State (provided that it may obtain ancillary assistance outside such State when necessary):
 - A) communicating with its shareholders (including the furnishing of financial reports),
 - B) communicating with the general public,
 - C) accepting the subscriptions of new stockholders,
 - D) maintaining its principal corporate records and books of account,
 - E) auditing its books of account,

- F) disbursing payments of dividends, legal fees, accounting fees, and officers' and directors' salaries,
- G) publishing or furnishing the offering and redemption price of the shares of stock issued by it,
- H) conducting meetings of its shareholders and the annual meeting of its board of directors, and
- I) making redemptions of its own stock;
- ii) not solicit sales of its own stock in the other Contracting State; and
- iii) A) meet the requirement that 50 percent or more of the investment advisory fees it incurs are paid to an investment adviser who is a resident of the same Contracting State as the company and who performs substantial investment advisory activities in such State (provided that such investment adviser may obtain ancillary assistance outside that State if the expenses incurred for such assistance do not exceed 50 percent of the fees paid to such investment adviser); or
- B) meet the requirement that 25 percent or more of the fees it incurs for administrative services, printing services, auditing and other accounting services, custodian services, and recurring legal services (not including litigation) are paid to a resident of the same Contracting State as the company for services performed in, or by individual residents of, such State; and
- c) the company may not at any time during a taxable period:
 - i) have more than 10 percent of the value of its assets invested in any one issuer (other than in government securities and bank deposits);
 - ii) hold 10 percent or more of the outstanding voting securities of any one issuer; or
 - iii) make any loans other than to invest in publicly traded debt obligations or in deposits with persons carrying on the banking business or in obligations the interest on which is not taxable to such company under the laws of the other Contracting State; and
- d) the company must be engaged primarily in the business of investing, reinvesting, or trading (other than as a dealer) in any interest (including a futures or forward contract or option) in securities (defined as any "security" described in section 2(a)36 of the Investment Company Act of 1940, as amended) or commodities of a kind customarily dealt in on an organized commodity exchange in transactions of a kind customarily consummated at such place, and must derive at least 90 percent of its gross income for each taxable period from dividends, interest, payments with respect to securities loans, and gains from the sale or other disposition of commodities or securities (as so defined).

For purposes of this paragraph, the failure of the company to satisfy the requirements of subparagraphs 5(a)(ii)(B), 5(a)(ii)(C), 5(a)(ii)(D), 5(c)(i), or 5(c)(ii) (or such other requirements as the competent authorities may mutually agree), by reason of inadvertence or circumstances beyond the control of the company shall be disregarded if, after knowledge or reason to know of the defect, the company effectuates a cure within a reasonable period pursuant to rules mutually agreed to by the competent authorities of the Contracting States. A company described in this paragraph which fails to satisfy the requirement of subparagraph 5(c)(ii) with respect to an issuer shall not be considered described in subparagraph 2(a) of Article 10 (Dividends) with respect to any stock of such issuer. Where a company which is a resident of the Netherlands Antilles (hereinafter referred to as "the parent corporation") directly owns 80 percent or more (by vote and value) of the stock of one or more other companies which are residents of the Netherlands Antilles (hereinafter referred to as "the first-tier subsidiary corporations"), and where any such first-tier subsidiary corporation directly owns 80 percent or more (by vote and value) of the stock of one or more other companies which are residents of the Netherlands Antilles (hereinafter referred to as "the second-tier subsidiary corporations") no member of the group of companies consisting of the parent corporation and the first- and second-tier subsidiary corporations shall be treated as failing to meet any of the requirements of this paragraph if all of such requirements would be met in the event that such group of companies were treated as one company which is a resident of the Netherlands Antilles, provided that none of the shares of any first- or second-tier subsidiary corporation in such group are owned by any person other than the parent corporation, a first-tier subsidiary corporation, or a person acting as an investment adviser to such first- or second-tier subsidiary corporation.

6. The provisions of paragraphs 1 and 4 shall not apply to deny the benefits of paragraph 5 of Article 10 (Dividends) or the benefit of paragraph 5 of Article 24 (Non-discrimination) to a company resident in the other Contracting State if 90 percent or more of such company's gross receipts for the 3-year period ending with the close of its preceding taxable year consist of qualified real property receipts and, at the close of each quarter of such taxable year, the adjusted basis of such company's qualified real property assets equals or exceeds 80 percent of the sum of the adjusted basis of all of its assets. For purposes of this paragraph:

a) the term "qualified real property receipts" shall mean the receipts attributable or incidental to the purchase, sale, development, construction, improvement, lease, rental, holding, or other use or disposition of qualified real property assets, including interest on deferred payments in connection with the disposition of qualified real

property assets, and interest on the temporary investment of reasonable working capital or purchase money for, or disposition proceeds of, qualified real property assets; and

b) the term "qualified real property assets" shall mean any of the following or property incidental thereto:

- i) real property referred to in Article 6 (Income from Real Property) and in the case of real property situated in the United States shall include a United States real property interest (other than an interest in a company);
- ii) any interest (other than an interest solely as a creditor) in any company (whether or not a resident of a Contracting State) which satisfies the conditions of this paragraph; and
- iii) reasonable working capital, liquid assets temporarily held for purchase, or from disposition, of qualified real property assets, and evidence of indebtedness from disposition of qualified real property assets.

For purposes of this paragraph, receipts of, and assets held by, a partnership, estate, or trust shall be treated as being received and held proportionately by its partners or beneficiaries, and this rule shall apply successively up a chain where any partner or beneficiary is a partnership, estate, or trust. A company any of the stock in which is not traded on a designated stock exchange, as defined in clause i) of subparagraph a) of paragraph 5, shall not be eligible for the benefits of this paragraph unless all of the stock of such company is registered in the name of the ultimate beneficial owner or the identity of the ultimate beneficial owner is available to the competent authority of the Contracting State of which the company is resident.

7. The provisions of paragraphs 1 and 4 shall not apply to a pension fund or charitable organization of a Contracting State, provided that such person does not engage in transactions with a principal purpose of directly or indirectly extending benefits under the Convention to persons not resident in the Contracting State of which it is a resident.

8. If one of the Contracting States proposes to deny benefits to a resident of the other Contracting State by reason of this Article, the competent authorities of the Contracting States shall, upon request of the competent authority of the other Contracting State, consult each other.

Article 17

Artistes and Athletes

1. Notwithstanding the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services), income derived by a resident of a Contracting State as an entertainer, such

as a theater, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State, except where the amount of the gross receipts derived by such entertainer or athlete, not including expenses reimbursed to him or borne on his behalf, from such activities does not exceed four hundred United States dollars (\$400) or its equivalent in Netherlands Antilles currency per day, or five thousand United States dollars (\$5,000) or its equivalent in Netherlands Antilles currency for the taxable year concerned.

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

Article 18

Pensions, Annuities, Alimony and Child Support

1. Subject to the provisions of Article 19 (Government Service):
a) pensions and other similar remuneration derived and beneficially owned by a resident of a Contracting State in consideration of past employment shall be taxable only in that State; and

b) social security benefits and other public pensions paid by a Contracting State to a resident of the other Contracting State or a citizen of the United States shall be taxable only in the first-mentioned State.

2. Annuities derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State. The term "annuities" as used in this paragraph means stated sums paid periodically at stated times during life or during a specified or ascertainable number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

3. Alimony paid to a resident of a Contracting State shall be taxable only in that State. The term "alimony" as used in this paragraph means periodic payments made pursuant to a written

separation agreement or a decree of divorce, separate maintenance, or compulsory support, which payments are taxable to the recipient under the laws of the State of which he is a resident.

4. Periodic payments for the support of a minor child made pursuant to a written separation agreement or a decree of divorce, separate maintenance or compulsory support, paid by a resident of a Contracting State to a resident of the other Contracting State, shall be taxable only in the first-mentioned State.

Article 19

Government Service

1. Remuneration, including a pension, paid from the public funds of a Contracting State or a political subdivision or local authority thereof to a national of that State in respect of services rendered in the discharge of functions of a governmental nature shall be taxable only in that State.

2. Notwithstanding paragraph 1, the provisions of Article 14 (Independent Personal Services), Article 15 (Dependent Personal Services) or Article 17 (Artistes and Athletes), as the case may be, shall apply to remuneration paid in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or local authority thereof.

3. For the purposes of this Article, in the case of the Netherlands Antilles:

a) the term "functions of a governmental nature" shall include, and the term "business" shall exclude, postal activities, telecommunications activities, power and water supply activities, and all other activities that have traditionally been part of the public care in the Netherlands Antilles; and

b) the term "public funds" includes funds of a company that is exclusively or almost exclusively owned by the Government of the Netherlands Antilles.

Article 20

Students, Trainees and Teachers

1. Payments received for the purpose of maintenance, education, or training by a student, apprentice, or business trainee 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 for the purpose of his full-time education or training shall not be taxed in that State, provided that such payments arise outside that State.

2. A professor or teacher who visits one of the Contracting States for a period not exceeding two years for the purpose of teaching or engaging in research at a university, college or other recognized educational institution in that Contracting State and who was immediately before that visit a resident of the other Contracting State, shall be exempted from tax by the first-mentioned Contracting State on any remuneration for such teaching or research for a period not exceeding two years from the date he first visits that State for such purpose. This paragraph shall only apply to income from research if such research is undertaken by the professor or teacher in the public interest and not primarily for the benefit of some other private 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 or Article 22 shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from real property as defined in paragraph 2 of Article 6 (Income from Real Property), if the beneficial owner of the 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 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

Article 22

Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a director or managing director (commissaris or directeur) of a company which is a resident of the other Contracting State and which cannot be taken as a deduction by the company but are treated as a distribution of profits may be taxed in that other State, subject to the limitations of Article 10 (Dividends).

Article 23

Relief from Double Taxation

1. In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income:

a) the income tax paid to the Netherlands Antilles by or on behalf of such citizen or resident; and

b) in the case of a United States company owning at least 10 percent of the voting stock of a company which is a resident of the Netherlands Antilles and from which the United States company receives dividends, the income tax paid to the Netherlands Antilles by or on behalf of the distributing company with respect to the profits out of which the dividends are paid.

2. In accordance with the provisions and subject to the limitations of the law of the Netherlands Antilles (as it may be amended from time to time without changing the general principle hereof), the Netherlands Antilles may include in income items of income from sources in the United States, on the condition that the Netherlands Antilles allows a credit against the tax computed of an amount which bears the same ratio to that tax as the total amount of those items from sources in the United States bears to the total taxable income; provided, however, that the credit described in this sentence may be limited to a percentage of the tax computed before such credit so as to have the effect of imposing a minimum tax on income from sources in the United States.

3. For the purposes of allowing relief from double taxation pursuant to this Article, and subject to such source rules in the domestic laws of the Contracting States as apply solely for the purpose of limiting the foreign tax credit, income shall be deemed to arise exclusively as follows:

a) income derived by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention (other than solely by reason of citizenship in accordance with paragraph 3 of Article 1 (General Scope)) shall be deemed to arise in that other State;

b) income derived by a resident of a Contracting State which may not be taxed in the other Contracting State in accordance with the Convention shall be deemed to arise in the first-mentioned State.

The rules of this paragraph shall not apply in determining credits against United States tax for foreign taxes other than the taxes referred to in paragraphs 1b) and 2 of Article 2 (Taxes Covered).

Article 24

Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall apply to persons who are not residents of one or both of the Contracting States. However, for purposes of a Contracting State's tax, a national of that Contracting State who is not a resident of that Contracting State and a national of the other Contracting State who is not a resident of the first-mentioned Contracting State are not in the same circumstances.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably 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.

3. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 7 of Article 11 (Interest), or paragraph 5 of Article 12 (Royalties) apply, interest, royalties, and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable profits of the first-mentioned resident, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable capital of the first-mentioned resident, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

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

5. A Netherlands Antilles corporation shall be entitled to elect,

pursuant to the provisions of section 897(i) of the United States Internal Revenue Code, to be treated as a United States corporation.

6. The provisions of this Article shall not be construed

a) to prevent the United States from imposing an additional tax on the income of or the interest payments allocable to a permanent establishment maintained in the United States by a resident of the Netherlands Antilles; or

b) to require the United States to grant to a company which is a resident of the Netherlands Antilles the same tax relief that it provides to a company which is a resident of the United States with respect to dividends received by it from a company.

7. The provisions of this Article shall, notwithstanding the provisions of Article 2 (Taxes Covered), apply to taxes of every kind and description imposed by a Contracting State or a political subdivision or local authority thereof, but not including customs duties.

Article 25

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or national.

2. If the objection appears to be justified to such competent authority, and if it is not itself able to arrive at a satisfactory solution, then it shall present the case to the competent authority of the other Contracting State, and the competent authorities shall endeavor to resolve the case by mutual agreement, 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 or other procedural limitations in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular the competent authorities of the Contracting States may agree:

a) to the same attribution of income, deductions, credits, or allowances of an enterprise of a Contracting State to its permanent establishment situated in the other Contracting State;

- b) to the same allocation of income, deductions, credits, or allowances between persons;
- c) to the same characterization of particular items of income;
- d) to the same application of source rules with respect to particular items of income;
- e) to a common meaning of a term;
- f) to increases in any specific amounts referred to in the Convention to reflect economic or monetary developments; and
- g) to the application of the provisions of domestic law regarding penalties, fines, and interest in a manner consistent with the purposes of the Convention.

They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

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

5. The competent authorities of each of the Contracting States may prescribe regulations to carry out the purposes of this Convention.

Article 26

Exchange of Information and Administrative Assistance

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting 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 (General Scope).

2. The competent authority of a Contracting State shall endeavor to provide information upon request by the competent authority of the other Contracting State for the purposes referred to in paragraph 1. If the information available in the tax files of the Contracting State is not sufficient to enable compliance with the request, that State shall take all relevant measures, including compulsory measures, to provide the other Contracting State with the information requested.

3. To comply with a request, the competent authority of a Contracting State shall have the authority:

a) to allow representatives of the other Contracting State to enter the territory of the first-mentioned Contracting State to conduct examinations or interviews of persons to obtain information for the purposes referred to in paragraph 1, provided that the subject of the examination or interview consents in writing to the examination or interview, the competent authority of the Contracting State is notified

in advance of the examination or interview, the name of the person to be contacted and the nature of the matters to be discussed or books or records to be examined, and that State at its option may require that its representatives be present at the examination or interview;

b) to obtain and provide to the other Contracting State information from banks and other financial institutions;

c) to compel any person having knowledge or in possession, custody or control of information relevant or material to a request by the other Contracting State to give information or testify under oath or to produce books, papers, records, or other tangible property.

4. If information is requested by a Contracting State pursuant to paragraph 2, the other Contracting State shall obtain the information to which the request relates in the same manner and in the same form as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts, and writings).

5. a) In no case shall the provisions of the preceding paragraphs be construed so as to impose on a Contracting State the obligation:

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

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

iii) 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*).

b) However, restrictions on the exchange of information and administrative assistance set forth in subparagraph a) of this paragraph shall not be applicable by reason of any domestic law or administrative practice relating solely to the confidentiality of the information held by a bank or other financial institution.

c) A Contracting State may, in its discretion, take measures to obtain and transmit to the other Contracting State information which, pursuant to this paragraph, it has no obligation to transmit.

6. Any information received 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) involved in the determination, assessment, collection, and administration of, the

enforcement or prosecution in respect of, or the determination of appeals in respect of, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. The information may be disclosed in public court proceedings or in judicial decisions. Information shall not be disclosed to any third jurisdiction for any purpose without the consent of the Contracting State originally furnishing the information.

7. Each of the Contracting States shall endeavor to collect on behalf of the other Contracting State such amounts as may be necessary to ensure relief granted by the Convention from taxation imposed by that other State does not inure to the benefit of persons not entitled thereto.

8. Paragraph 7 of this Article shall not impose upon either of the Contracting States the obligation to carry out administrative measures which are of a different nature from those used in the collection of its own taxes, or which would be contrary to its sovereignty, security, or public policy.

9. For purposes of this Article, the Convention shall apply, notwithstanding the provisions of Article 2 (Taxes Covered), to taxes of every kind imposed by a Contracting State.

Article 27

Diplomatic Agents and Consular Officers

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.

Article 28

Entry Into Force

1. This Convention shall be subject to ratification in accordance with the applicable procedures of each Contracting State and instruments of ratification shall be exchanged at Washington as soon as possible.

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of the second month next following the date on which the Convention enters into force;

b) in respect of other taxes, for taxable periods beginning on or

after the first day of January next following the date on which the Convention enters into force.

3. Notwithstanding paragraph 2 of this Article, if either of the Contracting States lacks as of the date on which the Convention enters into force any of the authority described in paragraph 3 of Article 26 (Exchange of Information and Administrative Assistance), the Convention shall, solely for purposes of determining under paragraph 2 of this Article the date on which the provisions of paragraphs 5 and 6 of Article 16 (Limitation on Benefits) shall have effect with respect to companies resident in such Contracting State, be considered to enter into force on the date provided in an exchange of notes in which the Contracting States confirm that the first mentioned State has such authority. The Contracting States may, by an exchange of notes occurring upon or after the date on which the Convention enters into force but before the date upon which any of the provisions of the Convention has effect, confirm that both Contracting States had the requisite authority as of the date on which the Convention entered into force.

4. Subject to the provisions of paragraph 5, the Convention between the United States of America and the Kingdom of the Netherlands of April 29, 1948, as extended to the Netherlands Antilles by exchanges of notes at Washington of June 24, 1952, August 7, 1952, September 15, 1955, November 4, 1955 and November 10, 1955, and as amended by the Protocols of June 15, 1955 and October 23, 1963 ("the 1948 Convention") as in effect with the Netherlands Antilles on the date of signature of this Convention is terminated with respect to its application to the Netherlands Antilles. Its provisions shall cease to have effect for taxes for which the provisions of this Convention have effect in accordance with the provisions of paragraph 2.

5. Where any greater relief from tax would have been afforded by the provisions of the 1948 Convention than under this Convention, any such provision of the 1948 Convention shall continue to have effect for a period of 12 months following the date on which the relevant provision of this Convention has effect in accordance with the provisions of subparagraph a) or b) of paragraph 2. Notwithstanding any other provisions of this Convention, including paragraph 1 of Article 1 (General Scope), the benefits of the preceding sentence shall be available to any company organized under the laws of the Netherlands Antilles which was in existence on the date of signature of this Convention and the effective management of which was conducted in the Netherlands as of such date. For purposes of applying any provision of this Convention to such a company during the one-year period after the date on which the relevant benefits of the preceding sentence have ceased to apply, such company shall, if

its effective management continues to be conducted in the Netherlands throughout such period, be treated as a resident of the Netherlands Antilles which is not subject to paragraph 1 of 4 of Article 16 (Limitation on Benefits).

6. Notwithstanding any other provisions of this Article, the provisions of Article VIII of the 1948 Convention shall continue to have effect with respect to interest payments described in section 127(g)(3) of the United States Tax Reform Act of 1984. For purposes of the preceding sentence, the determination of whether a corporation is an applicable CFC shall be made by treating all shareholders of such corporation as United States persons, and obligations issued on or before July 18, 1984 shall be treated as issued before June 22, 1984. Any Netherlands Antillean tax paid with respect to interest described in this paragraph shall be considered to be income taxes for purposes of paragraph 1 of Article 23 (Relief from Double Taxation).

7. Notwithstanding the provisions of paragraph 2(a) of this Article, for purposes of applying section 861(a)(2)(B) of the United States Internal Revenue Code, a Netherlands Antilles corporation existing on July 29, 1983, whose principal class of stock is traded on a stock exchange described in paragraph 3(a) of Article 16 (Limitation on Benefits), shall be treated as organized on the first day of such corporation's second taxable period described in paragraph 2(b) of this Article.

Article 29

Termination

1. This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention at any time after 5 years from the date on which the Convention enters into force, provided that at least 6 months prior notice of termination has been given through diplomatic channels. In such event, the Convention shall cease to have effect:

a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January next following the expiration of the 6 months period;

b) in respect of other taxes, for taxable periods beginning on or after the first day of January next following the expiration of the 6 months period.

2. Notwithstanding paragraph 1, either Contracting State may, at any time after three years from the date on which the Convention enters into force, terminate the applicability of one or more provisions of the Convention other than provisions of Article 28 (Entry Into Force) provided that at least 6 months prior notice of such

termination has been given through diplomatic channels and provided, further, that the competent authority of the first-mentioned Contracting State has given notice in writing to the competent authority of the other Contracting State that there has been a failure to perform the obligations of the other Contracting State under a provision constituting an essential basis for the consent by the first-mentioned State to be bound by the treaty as a whole and such failure to perform has not been remedied after a reasonable period (of not less than three months) for objections and, if requested, consultations. In such event, the provisions specified in the notice of termination shall cease to have effect:

- a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January next following the expiration of such 6 months period, and
- b) in respect of other taxes, for taxable periods beginning on or after the first day of January next following the expiration of such 6 months period.

A termination made pursuant to the provisions of this paragraph shall not affect the applicability of provisions of this Convention other than the provisions specified in the Notice of Termination, nor shall it affect the applicability of such provisions to persons resident in the Contracting State which has made the termination.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Convention.

DONE at Willemstad in duplicate, in the English language, this eighth day of August, 1986.

For the Government of the Kingdom of the Netherlands:

(sd.) LESLIE J. NAVARRO

For the Government of the United States of America:

(sd.) ROBERT E. SORENSEN

D. PARLEMENT

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

De in de in rubriek J hieronder afgedrukte notawisseling vervatte overeenkomst behoeft ingevolge additioneel artikel XXI, eerste lid, onderdeel b, van de Grondwet, juncto artikel 62, tweede lid, van de Grondwet naar de tekst van 1972, alsnog de goedkeuring van de Staten-Generaal.

E. BEKRACHTIGING

Bekrachtiging van het Verdrag is voorzien in artikel 28, eerste lid.

G. INWERKINGTREDING

De bepalingen van het Verdrag zullen ingevolge artikel 28, tweede lid, in werking treden nadat de uitwisseling van de akten van bekrachtiging heeft plaats gevonden.

Wat het Koninkrijk der Nederlanden betreft, zal het Verdrag alleen voor de Nederlandse Antillen gelden.

De in de in rubriek J hieronder afgedrukte notawisseling vervatte overeenkomst is op 8 augustus 1986 in werking getreden.

J. GEGEVENS

Van het op 29 april 1948 te Washington tot stand gekomen Verdrag tussen het Koninkrijk der Nederlanden en de Verenigde Staten van Amerika met betrekking tot belastingen van inkomsten en bepaalde andere belastingen, naar welk Verdrag onder meer in artikel 28, vierde lid, van het onderhavige Verdrag wordt verwezen, is de tekst geplaatst in *Stb. J 80, blz. 4-31*; zie ook, laatstelijk, *Trb. 1966, 183*.

Dat Verdrag is gewijzigd bij Protocollen van:

- 15 juni 1955 (tekst in *Trb. 1955, 124*; zie ook *Trb. 1956, 108*);
- 23 oktober 1963 (tekst in *Trb. 1963, 167*; zie ook *Trb. 1964, 154*).

Bij de ondertekening van het onderhavige Verdrag werden de volgende nota's gewisseld:

Nr. I

REGERING VAN DE NEDERLANDSE ANTILLEN

The Government of the Netherlands Antilles presents its compliments to the Government of the United States of America and has the honour to refer to the Government's attention to the Convention between the Kingdom of the Netherlands in respect of the Netherlands Antilles and the Government of the United States of America for the avoidance of double taxation and the prevention of fiscal evasion with respect to Taxes on Income signed today.

During the course of the negotiations of the Convention, the delegation of the Netherlands Antilles raised several questions regarding the effect of pending tax reform legislation in the United States on certain provisions of the treaty.

Both delegations acknowledged that the negotiations were based on the current tax laws of the two countries. It was noted that aspects of the U.S. tax reform legislation, such as the branch profits tax proposal, may, if enacted, materially affect the balance of benefits reflected in the treaty. However, until final legislation has been enacted, it is not possible to anticipate what effect, if any, such legislation may have. Neither delegation wished to delay conclusion of the treaty pending enactment of the legislation. It was, therefore, agreed that if, after signature of the Convention, legislation is enacted in the United States which materially affects the treaty, the United States and the Netherlands Antilles would reopen negotiations in order to assess the impact of the legislation on the treaty and to negotiate amendments as may be necessary or appropriate to reestablish a balance of benefits.

The Government of the Netherlands Antilles avails itself of the opportunity to assure the Government of the United States of America of its highest esteem and consideration.

Curaçao, august 8, 1986

Nr. II

No. 57

The Consulate General of the United States of America presents its compliments to the Department of Foreign Affairs of the Netherlands Antilles and refers to the communication from the Government of the Netherlands Antilles of this date regarding the convention between the Government of the United States of America and the Government of the Netherlands in respect of the Netherlands Antilles for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed today. The communication contains the following understandings:

During the course of the negotiations of the convention, the Delegation of the Netherlands Antilles raised several questions regarding the effect of pending tax reform legislation in the United States on certain provisions of the treaty.

Both delegations acknowledged that the negotiations were based on current tax laws of the two jurisdictions. It was noted that aspects

of the United States tax reform legislation, such as the branch profits tax proposal, may, if enacted, materially affect the balance of benefits reflected in the treaty. However, until final legislation has been enacted, it is not possible to anticipate what effect, if any, such legislation may have. Neither delegation wished to delay conclusion of the treaty pending enactment of the legislation. It was, therefore, agreed that if, after signature of the convention, legislation is enacted in the United States which materially affects the treaty, the United States and the Netherlands Antilles would reopen negotiations in order to assess the impact of the legislation on the treaty and to negotiate amendments as may be necessary or appropriate to reestablish a balance of benefits.

The Consulate General confirms that the foregoing understandings are in accord with the view of the Government of the United States and are approved by it.

Consulate General of the United States of America

Willemstad, August 8, 1986

Uitgegeven de *vierde* december 1986.

De Minister van Buitenlandse Zaken,

H. VAN DEN BROEK