

# CONVENTION BETWEEN THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BULGARIA AND THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

*Prom. SG. 67/28 Jul 1995*

The Government of the People's Republic of Bulgaria and the Government of the Kingdom of the Netherlands, Confirming their desire to extend and promote economic co-operation to their mutual benefits,

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:

## Chapter one. Scope of the Convention

### Personal Scope

Art. 1

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

### Taxes Covered

Art. 2

1. This Convention shall apply to taxes on income 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 all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the 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 Continental Plat 1965 (the Netherlands Continental Shelf Mining Act of 1965),

- de dividendbelasting (dividend tax),

(hereinafter referred to as "Netherlands tax");

b) in Bulgaria:

- tax on total income,

- tax on income of single males and females, divorced persons and families without children,

- tax on profits,

(hereinafter referred to as "Bulgarian 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 to each other any substantial changes which have

been made in their respective taxation laws.

In case any doubt arises in determining whether such taxes are identical or substantially similar, the competent authorities of the States may consult each other due regard being had to the provisions of Art. 25.

## **Chapter two. Definitions**

### **General Definitions**

#### **Art. 3**

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

a) the term "State" means the Netherlands or Bulgaria, as the context requires; the term "States" means the Netherlands and Bulgaria;

b) the term "the Netherlands" means the part of the Kingdom of the Netherlands that is situated in Europe including the part of the sea-bed and its subsoil under the North Sea, to the extent that that area in accordance with international law has been or may hereafter be designated under Netherlands laws as an area within which the Netherlands may exercise sovereign rights with respect to the exploration and exploitation of the natural resources of the sea-bed or its subsoil;

c) the term "Bulgaria" means the People's Republic of Bulgaria and when used in a geographical sense means the territory over which the People's Republic of Bulgaria exercises its state sovereignty and the continental shelf and exclusive economic zone within which the People's Republic of Bulgaria exercises sovereign rights in accordance with international law;

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, aircraft or road vehicle operated by an enterprise which has its place of effective management in one of the States, except when the ship, aircraft or road vehicle is operated solely between places in the other State;

h) the term "competent authority" means:

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

2. in Bulgaria the Minister of Finance or his duly authorized 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.

### **Resident**

#### **Art. 4**

1. For the purposes of this Convention, the term "resident of one of the States" means:

a) in the case of the Netherlands, any person who, under the laws of the Netherlands, 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 the Netherlands in respect only of income from sources in the Netherlands;

b) in the case of Bulgaria, any individual who, under the laws of Bulgaria, is liable to tax therein by reason of his nationality and who is not a resident of a third State, as well as any person other

than an individual which, under the laws of Bulgaria, is liable to tax therein by reason of the place of its head office or its registration.

2. Where by reason of the provisions of paragraph 1 of this Art. an individual is a resident of both States, then he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests).

If the State in which he has his centre of vital interests cannot be determined, the competent authorities of the States shall settle the question by mutual agreement regard being had to such criterions as his nationality or his habitual abode.

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.

### **Permanent Establishment**

#### **Art. 5**

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 or department, 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 9 months.

4. Notwithstanding the preceding provisions of this Art., 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, for example goods or merchandise that are exhibited at any trade fair or sold after the trade fair is ended;

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) a construction or installation or assembly project carried on by an enterprise of one of the States on account of a contract for the delivery of machinery or equipment from that State into the other State;

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

5. Notwithstanding the provisions of paragraphs 1 and 2, the following types of activities of a resident of a State shall also be deemed not to be carried on through a permanent establishment in the other State:

the maintenance of a fixed place of business solely for the purpose of the facilitation of the

conclusion or the mere signing of contracts concerning loans, the delivery of goods or merchandise or technical services, whether or not these activities are activities of a preparatory or auxiliary character or main activities for that person.

6. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 7 applies - is acting on behalf of an enterprise and has, and habitually exercises, in 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.

7. 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.

8. 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 three. Taxation of Income**

### **Income From Immovable Property**

#### **Art. 6**

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. Ships, boats, aircraft and road vehicles 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.

### **Business Profits**

#### **Art. 7**

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

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

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

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

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

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

### **International Transport**

#### **Art. 8**

1. Profits from the operation of ships, aircraft or road vehicles 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. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

### **Associated Enterprises**

#### **Art. 9**

##### **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.

### **Dividends**

#### **Art. 10**

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:

a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;

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

3. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraph 2.

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

5. The term "dividends" as used in this Art. means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares, 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 and 2 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 Art. 7 or Art. 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 holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

## **Interest**

### **Art. 11**

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 competent authorities of the States shall by mutual agreement settle the mode in which the State in which the interest arises abandons its taxation.

3. The term "interest" as used in this Art. means income from debt-claims of every kind, whether or not secured by mortgage 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 Art..

4. 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 debtclaim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Art. 7 or Art. 14, as the case may be, shall apply.

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 debtclaim 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 Art. 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.

## **Royalties**

### **Art. 12**

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

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

3. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraph 2.

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

The term "royalties" includes also payments of any kind for the use of or the right to use industrial, commercial or scientific equipment, but only to the extent to which such payments are on account of a contract for the transfer of know-how.

5. The provisions of paragraphs 1 and 2 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 Art. 7 or Art. 14, as the case may be, shall apply.

6. 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 Art. 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.

## **Capital Gains**

### **Art. 13**

1. Gains derived by a resident of one of the States from the alienation of immovable property referred to in Art. 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, aircraft or road vehicles operated in international traffic or movable property pertaining to the operation of such ships, aircraft or road vehicles, 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 Art. 8 shall apply.

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 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 under the laws of that State is 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.

### **Professional Services**

#### **Art. 14**

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

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

### **Salaries, Wages and Other Similar Remuneration**

#### **Art. 15**

1. Subject to the provisions of Art.s 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of one of the States in respect of an employment shall be taxable only in that State unless the employment is exercised in the other State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year of that State, and

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

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

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

### **Directors' Fees**

#### **Art. 16**

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

### **Artistes and Athletes**

#### **Art. 17**

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



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

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

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Art., income derived from such activities as defined in paragraph 1 shall be exempt from tax in the State in which these activities are exercised, if the visit of the entertainers, the musicians or the athletes to one of the States is supported wholly or substantially from the public funds of the other State, a political subdivision or a local authority thereof, or if these activities are performed under a cultural or sport agreement or arrangement between the States.

### **Pensions and Social Security Payments**

#### **Art. 18**

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

2. However, where such remuneration is not of a periodical nature and it is paid in consideration of past employment in the other State, it may be taxed in that other State.

3. 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.

### **Government Service**

#### **Art. 19**

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 Art.s 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.

### **Professors and Teachers**

#### **Art. 20**

1. Payments which a professor or teacher who is a resident of one of the States and who is

present in the other State for the purpose of teaching or scientific research for a maximum period of two years in a university, college or other establishment for teaching or scientific research in that other State, receives for such teaching or research, shall be taxable only in the first-mentioned State.

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

### **Students**

#### **Art. 21**

1. 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.

2. Income not exceeding in any taxable year an amount of 7000 guilders or its equivalent in Bulgarian currency, derived by a student 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, in respect of activities exercised in the first-mentioned State, shall not be taxed in the first-mentioned State for a period not exceeding four consecutive years from the date of arrival of such a student in that State.

3. Income not exceeding in any taxable year an amount of 2000 guilders or its equivalent in Bulgarian currency, derived by a 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 training, in respect of activities exercised in the first-mentioned State, shall not be taxed in the first-mentioned State, provided that such activities are in connection with the training of such a business apprentice or are incidental thereto, and the duration of such activities does not exceed an aggregate of 183 days in any taxable year.

### **Other Income**

#### **Art. 22**

1. Items of income of a resident of one of the States, wherever arising, not dealt with in the foregoing Arts 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 Art. 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 Art. 7 or Art. 14, as the case may be, shall apply.

## **Chapter four.**

### **Elimination of Double Taxation**

#### **Elimination of Double Taxation**

##### **Art. 23**

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

be taxed in Bulgaria.

2. However, where a resident of the Netherlands derives items of income which according to Art. 6, Art. 7, paragraph 6 of Art. 10, paragraph 3 of Art. 11, paragraph 5 of Art. 12, paragraphs 1 and 2 of Art. 13, Art. 14, paragraph 1 of Art. 15, Art. 16, paragraph 3 of Art. 18, paragraphs 1 (subparagraph a) and 2 (subparagraph a) of Art. 19 and paragraph 2 of Art. 22 of this Convention may be taxed in Bulgaria and are included in the basis referred to in paragraph 1, the Netherlands shall exempt such items of income by allowing a reduction of its tax. This reduction shall be computed in conformity with the provisions of Netherlands law for the avoidance of double taxation. For that purpose the said items of income shall be deemed to be included in the total amount of the items of income which are exempt from Netherlands tax under those provisions.

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 Art. 10, paragraph 2 of Art. 12, paragraph 5 of Art. 13, Art. 17 and paragraph 2 of Art. 18 of this Convention may be taxed in Bulgaria 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 Bulgaria 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. In Bulgaria double taxation shall be eliminated as follows:

a) where a resident of Bulgaria derives income which, in accordance with the provisions of this Convention, may be taxed in the Netherlands, such income shall be exempt from tax in Bulgaria;

b) however, such income may nevertheless be taken into account in calculating the amount of tax on the remaining income of such resident;

c) notwithstanding the provisions of sub-paragraphs a) and b), where a resident of Bulgaria derives dividends, royalties or capital gains which, in accordance with the provisions of Art.s 10 and 12 and paragraph 5 of Art. 13, may be taxed in the Netherlands, Bulgaria shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in the Netherlands. Such deduction shall not, however, exceed that part of the tax, as computed before the deductions is given, which is attributable to such items of income derived from that other State.

For the purposes of this paragraph in determining the taxes on income paid to the Netherlands, the investment premiums and bonuses and disinvestment payments as meant in the Netherlands Investment Account Law ("Wet investerings-rekening") shall not be taken into account. For the purposes of this paragraph, the taxes referred to in paragraphs 3a) and 4 of Art. 2 shall be considered taxes on income.

## **Chapter five. Special Provisions**

### **Non-discrimination**

#### **Art. 24**

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 Art. 1, also apply to persons who are not residents of one or both of the States.

2. The term "nationals" means:

a) all individuals possessing the nationality of one of the States;

b) all legal persons, partnerships and associations deriving their status as such from the laws in

force in one of the States.

3. 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.

4. Except where the provisions of Art. 9, paragraph 4 of Art. 11, or paragraph 6 of Art. 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.

5. 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.

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

### **Mutual Agreement Procedure**

#### **Art. 25**

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 Art. 24, 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.

### **Exchange of Information**

#### **Art. 26**

1. The competent authorities of the States shall exchange such information as is necessary for carrying out the provisions of this Convention. Any information received by one of the States shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement 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.

2. In no case shall the provisions of paragraph 1 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).

### **Diplomatic Agents and Consular Officers**

#### **Art. 27**

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.

### **Territorial Extension**

#### **Art. 28**

1. This Convention may be extended, either in its entirety or with any necessary modifications, to either or both of the countries of Aruba or the Netherlands Antilles, if the country 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 to which it has been extended under this Art..

## **Chapter six. Final Provisions**

### **Entry Into Force**

#### **Art. 29**

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 following that in which the latter of the notifications has been received.

### **Termination**

#### **Art. 30**

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 authorized thereto, have signed this Convention.

DONE at Sofia this 6th day of July 1990, in duplicate, in the Bulgarian, Netherlands and English languages, the three texts being equally authentic. In case there is any divergence of interpretation between the Bulgarian and Netherlands texts, the English text shall prevail.

FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BULGARIA

[Signature]

FOR THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS

[Signature]

## 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, this day concluded between the Government of the People's Republic of Bulgaria and the Government of the Kingdom of the Netherlands, the undersigned have agreed that the following provisions shall form an integral part of the Convention

### I. Ad Art. 3

It is understood that the term "the Netherlands" shall include the exclusive economic zone within which the Netherlands may exercise sovereign rights in accordance with international law, if the Netherlands, under Netherlands laws, will designate such a zone and will exercise taxation rights therein.

### II. Ad Art.s 5, 7 and 10

It is understood that income derived from economic activities in Bulgaria by a resident of the Netherlands in conformity with the provisions laid down in Art. 101 of Decree No. 56 on Economic Activity of the State Council of the People's Republic of Bulgaria, 1989, shall be taxable in Bulgaria in accordance with the provisions of Art.s 5 and 7 of this Convention. Therefore such income, whether or not transferred to the Netherlands, shall not be regarded as dividends meant in Art. 10 of this Convention.

This provision shall not apply to a participation in a joint stock company or limited liability company, created in accordance with Decree No. 56 on Economic Activity of the State Council of the People's Republic of Bulgaria, 1989.

### III. Ad Art. 6

It is understood that the term "immovable property" in any case shall 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 rights to work, mineral deposits, sources and other natural resources.

### IV. Ad Art. 7

In respect of paragraphs 1 and 2 of Art. 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 Art. 9

a) It is understood that the fact that associated enterprises have concluded arrangements, such as costsharing 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 Art. 9.

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

VI. Ad Art.s 10 and 11

It is understood that in the case of the Netherlands the term dividends shall include income from debt-claims, participating in profits.

VII. Ad Art.s 10, 11 and 12

Where tax has been levied at source in excess of the amount of tax chargeable under the provisions of Art.s 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 Art. 12

Notwithstanding the provisions of paragraph 2 of Art. 12, royalties arising in one of the States and paid to a resident of the other State shall be taxable only in that other State, as long as under the provisions of Netherlands taxation law, the Netherlands does not levy a tax at source on royalties.

IX. Ad Art. 16

It is understood that the term "member of the board of directors" means:

1. in the case of the Netherlands a "bestuurder" or a "commissaris";
2. in the case of Bulgaria a member of a control and managing council.

X. Ad Art. 19

It is understood that the provisions of paragraphs 1 and 2 of Art. 19 shall apply to salaries, wages and other similar remuneration as well as pensions derived by an individual in respect of services rendered to the Bulgarian Tourist Association.

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

DONE at Sofia this 6th day of July, 1990, in duplicate, in the Bulgarian, Netherlands and English languages, the three texts being equally authentic. In case there is any divergence of interpretation between the Bulgarian and Netherlands texts, the English text shall prevail.