

**AGREEMENT BETWEEN THE REPUBLIC OF KENYA AND THE
KINGDOM OF THE NETHERLANDS FOR THE ELIMINATION OF
DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND THE
PREVENTION OF TAX EVASION AND AVOIDANCE**

The Government of the Republic of Kenya

and

The Government of the Kingdom of the Netherlands;

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters, intending to conclude an Agreement for the elimination of double taxation with respect to taxes on income without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third States),

Have agreed as follows:

CHAPTER I

SCOPE OF THE CONVENTION

ARTICLE 1

PERSONS COVERED

1. This Convention shall apply to persons who are residents of one or both of the Contracting States.
2. For the purposes of this Convention, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State but only to the extent that the income is treated, for purposes of taxation by that State, as the income of a resident of that State.
3. In no case shall the provisions of paragraph 2 be construed to affect the right of a Contracting State to tax the residents of that Contracting State.

ARTICLE 2

TAXES COVERED

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Convention shall apply are in particular:
 - a) in the Netherlands:
 - i) the income tax (de inkomstenbelasting);
 - ii) the wages tax (de loonbelasting);
 - iii) the company tax (de vennootschapsbelasting) including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mining Act (de Mijnbouwwet);
 - iv) the dividend tax (de dividendbelasting);
 - v) the withholding tax (de bronbelasting);

(hereinafter referred to as "Netherlands tax");
 - b) in Kenya:

the income tax chargeable in accordance with the provisions of the Income Tax Act.

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

CHAPTER II

DEFINITIONS

ARTICLE 3

GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:
 - a) [the term "Kenya" means all of the territory of Kenya including airspace, internal waters, territorial waters and the seabed and subsoil of the territorial waters, the exclusive economic zone and the continental shelf and the seabed and subsoil within such area which has been or may hereafter be designated under her national law, in accordance with international law, as an area over which Kenya has sovereign rights or jurisdiction for purposes of exploring and exploiting natural resources;]
 - b) [the term "the Netherlands" means the European part of the Kingdom of the Netherlands, including its territorial sea and any area beyond and adjacent to its territorial sea within which the Kingdom of the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights;]
 - c) the terms "a Contracting State" and "the other Contracting State" mean [Kenya or the Kingdom of the Netherlands, in respect of the Netherlands,] as the context requires;
 - d) the term "person" includes an individual, a company and any other body of persons;
 - e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - f) the term "enterprise" applies to the carrying on of any business;
 - g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - h) the term "international traffic" means any transport by a ship or aircraft except when the ship or aircraft is operated solely between places in a Contracting State and the enterprise that operates the ship or aircraft is not an enterprise of that State ;
 - i) the term "competent authority" means:

- i. in the Netherlands, the Minister of Finance or his authorised representative;
- ii. in Kenya, the Cabinet Secretary responsible for Finance or his authorised representative;

k) the term "national", in relation to a Contracting State, means:

- i. any individual possessing the nationality or citizenship of that Contracting State;
and
- ii. any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;

l) the term "business" includes the performance of professional services and of other activities of an independent character;

m) the term "recognised pension fund" of a Contracting State means an entity or arrangement established in that State that is treated as a separate person under the taxation laws of that State and:

- i. that is established and operated exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals and that is regulated as such by that State or one of its political subdivisions or local authorities; or
- ii. that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements referred to in subdivision (i).

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

ARTICLE 4

RESIDENT

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

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

- a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
- b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Convention except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.

ARTICLE 5

PERMANENT ESTABLISHMENT

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

2. The term "permanent establishment" includes especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop;
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
- g) a warehouse, in relation to a person providing storage facilities to others.

3. The term "permanent establishment" also encompasses:

- (a) a building site, a construction, assembly or installation project or any supervisory activity in connection with such site or project, but only where such site, project or activity continues for a period of more than ____;

[For the sole purpose of determining whether the period referred to in this paragraph has been exceeded,

- i. where an enterprise of a Contracting State carries on activities in the other Contracting State at a place that constitutes a building site or construction or installation project and these activities are carried on during one or more periods of time that, in the aggregate, exceed __ days without exceeding __ days, and
- ii. connected activities are carried on at the same building site or construction or installation project during different periods of time, each exceeding __ days, by one or more enterprises closely related to the first-mentioned enterprise,

these different periods of time shall be added to the aggregate period of time during which the first-mentioned enterprise has carried on activities at that building site or construction or installation project.

- (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by an enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the Contracting State for a period or periods

exceeding in the aggregate ___ days in any ___ month period commencing or ending in the fiscal year concerned;]

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

3. [Notwithstanding the preceding paragraphs of this Article, where an enterprise of a Contracting State carries on activities in the other Contracting State:

- a) in connection with the exploration or exploitation of the seabed and its subsoil and their natural resources (offshore activities), or
 - b) of exploration for and exploitation of onshore finite natural resources (including the operation of substantial equipment), and other specialised activities carried on in connection therewith,
- for a period or periods exceeding in the aggregate ___ days in any ___ month period commencing or ending in the fiscal year concerned, the activities carried on in that other State shall be deemed to be carried on through a permanent establishment of the enterprise situated in that other State.]

4. [For the purpose of paragraph 4, the term "offshore activities" shall be deemed not to include:

- a) one or any combination of the activities mentioned in paragraph 7;
- b) towing or anchor handling by ships primarily designed for that purpose and any other activities performed by such ships;
- c) the transport of supplies or personnel by ships or aircraft in international traffic.

5. For the sole purpose of determining the duration of:

- a) a building site or construction or installation project under paragraph 3, where an enterprise of a Contracting State carries on activities in the other Contracting State at a place that constitutes a building site or construction or installation project and these activities are carried on during one or more periods of time that, in the aggregate, exceed ___ days without exceeding ___ months, and connected activities are carried on at the same building site or construction or installation project during different periods of time, each exceeding ___ days, by one or more enterprises closely related to the first-mentioned enterprise; these different periods of time shall be added to the period of time during which the first-mentioned enterprise has carried on activities at that building site or construction or installation project; and

- b) offshore activities under paragraph 4, where an enterprise of a Contracting State carries on offshore activities in the other Contracting State and connected activities are carried on in that State by one or more enterprises closely related to the first-mentioned enterprise, the periods of time during which such connected activities are carried on by those enterprises shall be added to the period of time during which the first-mentioned enterprise has carried on offshore activities in that other Contracting State.]

4. 7. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a 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;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e);

provided that such activity or, in the case of subparagraph f), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

5. 8. Paragraph [4 7] shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and:

- a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of this Article; or
- b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character;

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

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 in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person

- (a) Habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise and these contracts are:
 - (i) in the name of the enterprise, or
 - (ii) for the transfer of ownership of, or for the granting of the right to use property owned by that enterprise or that the enterprise has a right to use or,
 - (iii) for the provision of services by that enterprise unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business (other than a fixed place of business to which paragraph 4.1 would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of that enterprise;
- (c) habitually secures orders in the first-mentioned State, wholly or almost wholly for the enterprise itself.

7. Paragraph 6 shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first-mentioned State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.

8. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.]

9. [Notwithstanding the provisions of paragraphs 1, 2 and 4, where a person - other than an agent of an independent status to whom paragraph 10 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 7 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

10. 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.]

9. 11. 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.

10. 12. For the purposes of this Article, a person or an enterprise is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person or an enterprise shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than ___ per cent of the beneficial interest in the other (or, in the case of a company, more than ___ per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person or enterprise possesses directly or indirectly more than ___ per cent of the beneficial interest (or, in the case of a company, more than ___ per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise or in the two enterprises.

CHAPTER III

TAXATION OF INCOME

ARTICLE 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

ARTICLE 7

BUSINESS PROFITS

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

- (a) that permanent establishment;
- (b) business activities carried on in that other State of the same or similar kind or connected to those effected through that permanent establishment.]

[the profits that are attributable to the permanent establishment in accordance with the provisions of paragraph 2 may be taxed in that other State.]

2. [For the purposes of this Article and Article 21, the profits that are attributable in each Contracting State to the permanent establishment referred to in paragraph 1 are the profits it might be expected to make, in particular in its dealings with other parts of the enterprise, if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the enterprise.]

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

3. [Where, in accordance with paragraph 2, a Contracting State adjusts the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States and taxes accordingly profits of the enterprise that have been charged to tax in the other State, the other State shall, to the extent necessary to eliminate double taxation on these profits, make an appropriate adjustment if it agrees with the adjustment made by the first-mentioned State; if the other Contracting State does not so agree, the Contracting States shall eliminate any double taxation resulting therefrom by mutual agreement.]

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

the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices. Nothing in this paragraph shall require a Contracting State to allow the deduction of any expenditure which, by reason of its nature, is not allowed as a deduction under the taxation laws of that State.

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

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

ARTICLE 8

SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise of a Contracting State from the operation of [ships or aircraft aircrafts] in international traffic shall be taxable only in that [Contracting] State.
2. [Profits of an enterprise of a Contracting State from the operation of ships in international traffic shall be taxable only in that State. However, profits from the operation of ships in international traffic in the other Contracting state may also be taxed in, that other State, provided that such profits are derived from operations in that other Contracting State. The tax so charged shall not exceed __ percent of the tax otherwise imposed by that other Contracting State.]
3. 2. The provisions of [paragraphs 1 and 2 paragraph 1] shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9

ASSOCIATED ENTERPRISES

1. Where

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

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

3. [The provisions of paragraph 2 shall not apply where judicial, administrative or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or willful default.]

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, dividends paid by a company which is a resident of a Contracting State may also be taxed in that State 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) ____ of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least ____ of the capital of the company paying the dividends throughout a ____ day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividend);
 - (b) ____ per cent of the gross amount of the dividends in all other cases.
3. [Notwithstanding the provisions of paragraph 2, such dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is a recognised pension fund of the other Contracting State.]
4. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of the limitations [of paragraphs 2 and 3.] The provisions [of paragraphs 2 and 3] shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
3. 6. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.
4. 7. The provisions of paragraphs 1,[2, 3 and 2 9,] shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

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

5. [Notwithstanding any other provision of this Agreement, where a company which is a resident of a Contracting State has a permanent establishment in the other Contracting State, such other State may apply the tax on repatriated income and according to the laws of that State, however the rate of such tax shall not exceed ___ per cent.]

9. [Notwithstanding the provisions of paragraphs 1, 2, and 8, dividends paid by a company which under the laws of a Contracting State is a resident of that State, to an individual who is a resident of the other Contracting State and who upon ceasing to be a resident of the first-mentioned State is taxed on the appreciation of capital as meant in paragraph 5 of Article 13, may also be taxed in that State in accordance with the laws of that State, but only insofar as the revenue claim on the appreciation of capital is still outstanding.]

ARTICLE 11

INTEREST

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

2. [However, interest arising in a Contracting State may also be taxed in that State 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 ___ percent of the gross amount of the interest.]

3. [Notwithstanding the provisions of paragraph 2, interest arising in one of the Contracting States shall be exempted from tax in that State if:

- a) the payer of the interest is the Government of that State, a political subdivision or a local authority thereof; or
- b) the interest is paid to the Government of the other Contracting state, a political subdivision or a local authority thereof, or to institutions or bodies (including financial institutions) wholly owned by that other State or subdivision or authority, or the Central Bank of that other State; or
- c) the interest is paid in respect of a loan granted by a bank, any other financial institution; or
- d) the interest is paid in respect of a debt-claim or of a loan directly or indirectly guaranteed or insured or subsidised by a Contracting State or by any other person sponsored or directly or indirectly controlled by a Contracting State;
- e) the interest is paid to a recognised pension; or
- f) the interest is paid in connection with the sale on credit of any industrial, commercial or scientific equipment.

4. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of paragraph 1.]

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

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

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

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

ARTICLE 12

ROYALTIES

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

2. However, royalties arising in a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed ___ per cent of the gross amount of the royalties. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of paragraph 1 and 2.

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

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

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

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

[ARTICLE 13

TECHNICAL FEES

1. Fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, notwithstanding the provisions of Article 14 and subject to the provisions of Articles 8, 16 and 17, fees for technical services arising in a Contracting State may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the fees is a resident of the other Contracting State, the tax so charged shall not exceed ___ per cent the gross amount of the fees.
3. The term "fees for technical services" as used in this Article means any payment in consideration for any service of a managerial, technical or consultancy nature, unless the payment is made:
 - a) to an employee of the person making the payment;
 - b) for teaching in an educational institution or for teaching by an educational institution; or
 - c) by an individual for services for the personal use of an individual.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services arise through a permanent establishment situated in that other State, or performs in the other Contracting State independent personal services from a fixed base situated in that other State, and the fees for technical services are effectively connected with:
 - a) such permanent establishment or fixed base, or
 - b) business activities referred to in (c) of paragraph 1 of Article 7.In such cases the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. For the purposes of this Article, subject to paragraph 6, fees for technical services shall be deemed to arise in a Contracting State if the payer is a resident of that State or if the person paying the fees, whether that person 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 obligation to pay the fees was incurred, and such fees are borne by the permanent establishment or fixed base.
6. For the purposes of this Article, fees for technical services shall be deemed not to arise in a Contracting State if the payer is a resident of that State and carries on business in the other Contracting State through a permanent establishment situated in that other State or performs independent personal services through a fixed base situated in that other State and such fees are borne by that permanent establishment or fixed base.

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

ARTICLE [14 13]

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) may be taxed in that other State.
3. Gains that an enterprise of a Contracting State that operates ships or aircraft in international traffic derives from the alienation of such ships or aircraft, or of movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.
4. [Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the ___ days preceding the alienation, these shares or comparable interests derived more than ___ per cent of their value directly or indirectly from immovable property, as defined in Article 6, situated in that other State.
5. Gains, other than those to which paragraph 4 applies, derived by a resident of a Contracting State from the alienation of shares of a company which is a resident of the other Contracting State, may be taxed in that other Contracting State if the alienator, at any time during the ___ month period preceding such alienation, held directly or indirectly at least ___ per cent of the capital of that company.]
6. 4. Gains from the alienation of any property other than that referred to in paragraphs [1, 2 and 3, 4 and 5] shall be taxable only in the Contracting State of which the alienator is a resident.
5. [Where an individual has been a resident of a Contracting State and has become a resident of the other Contracting State, the provisions of paragraph 4 shall not prevent the first-mentioned State from taxing under its domestic law the capital appreciation of shares, profit sharing certificates, call options and usufruct on shares and profit sharing certificates, in and debt-claims on a company for the period of residency of that individual in the first-mentioned State. In such case, the appreciation of capital taxed in the first-mentioned State shall not be included in the tax base when determining the appreciation of capital by the other State.]

ARTICLE [15 14]

INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles [16, 18 and 19 15, 17 and 18,] salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate ___ days in any ___ month period commencing or ending in the fiscal year concerned; and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment, as a member of the regular complement of a ship or aircraft, that is exercised aboard a ship or aircraft operated in international traffic, other than aboard a ship or aircraft operated solely within the other Contracting State, shall be taxable only in the first - mentioned State.

ARTICLE 16 15

DIRECTORS' FEES

1. Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.
2. For the purpose of the provisions of paragraph 1, the term "member of the board of directors" includes any person who is charged with the general management of the company and any person who is charged with the supervision thereof.

ARTICLE 17 16

ENTERTAINERS AND SPORTSPERSONS

1. Notwithstanding the provisions of Article [14,] income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio, or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State. [, except where the gross amount of such income derived by that resident from these activities exercised during a taxation year of the other Contracting State does not exceed ____ euro or its equivalent in ____ at the beginning of that taxation year.]
2. Where income in respect of personal activities exercised by an entertainer or a sportsperson acting as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of [Articles 7 and 15 Article 14], be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
3. [Where a resident of a Contracting State derives income referred to in paragraph 1 or 2 and such income is taxable in the other Contracting State on a gross basis, that person may within six months after the end of the taxation year of the other Contracting State in which the personal activities are exercised request that other State in writing that the income be taxable on a net basis in that other State. Such request shall be allowed by that other State. In determining the taxable income of such resident in the other State, there shall be allowed as deductions those expenses deductible under the domestic laws of the other State which are incurred for the purposes of the activities exercised in the other State and which are available to a resident of the other State exercising the same or similar activities under the same or similar conditions.]
4. The provisions of paragraphs 1, 2 [and 3] shall not apply to income derived from activities performed in a Contracting State by entertainers or sportspersons if the visit to that State is wholly or mainly supported by public funds of one or both of the Contracting States or political subdivisions or local authorities thereof. In such a case, the income shall be taxable only in the Contracting State of which the entertainer or the sportsperson is a resident.

ARTICLE 18 17

PENSIONS, [AND ANNUITIES AND SOCIAL SECURITY PAYMENTS]

1. [Subject to the provisions of paragraph 2 of Article 19,] Pensions and other similar remuneration, [and as well as] annuities, arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned State.
2. Pensions paid and other payments made under [the provisions of the social security legislation a public scheme which is part of the social security system] of a Contracting State to a resident of the other Contracting State may be taxed in the first-mentioned State.
3. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.
5. [The provisions of this Article shall also apply to a lump sum payment in lieu of a pension or an other similar remuneration or an annuity.]

ARTICLE 19 18

GOVERNMENT SERVICE

1. [Subject to the provisions of Article 17,] salaries, wages and other similar remuneration, [other than a pension,] paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

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

i) is a national of that State; or

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

2. [Any pension paid by, or out of funds created by, a Contracting State or a political subdivision thereof to an individual in respect of services rendered to that State or subdivision shall be taxable only in that State.

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

3. 3. The provisions of Articles [15, 16, 17 and 18, 14, 15, and 17,] shall apply to salaries, wages, [pensions] and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 20 19

STUDENTS

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

**[ARTICLE 21
PROFESSORS AND TEACHERS**

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

2. The provisions of paragraph 1 shall not apply to income from research if such activities are undertaken by the individual not in the public interest but primarily for the private benefit of some person or persons.]

ARTICLE 22 20

OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.
3. [Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of the Agreement and arising in the other Contracting State may also be taxed in that other State.]

CHAPTER IV

METHODS FOR ELIMINATION OF DOUBLE TAXATION

ARTICLE 23 21

[METHODS FOR]ELIMINATION OF DOUBLE TAXATION

1. [Double taxation shall be avoided in the following manner:

(a) In the case of Kenya, where a resident of Kenya receives income derived from sources within, which in accordance with the provisions of this Convention may be taxed in both Contracting States, then Kenya shall allow as a deduction from the tax on the income of that person an amount equal to the tax paid in Such a deduction, however, shall not exceed that part of the Kenyan tax as computed before the deduction is given, which is appropriate to the income derived from

(b) In the case of

2. Where, in accordance with any provision of this Convention, income derived by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

3. For purposes of paragraph 1, the term income tax paid shall be deemed to include the amount of tax which would have been paid in _____ but for an exemption or reduction granted in respect of active income under any tax incentive.]

1. [The Netherlands may include in the basis upon which taxes are imposed on its residents, the items of income which according to the provisions of this Convention may be taxed in In such cases, however, the Netherlands shall allow a reduction of or a deduction from the Netherlands tax according to the provisions of paragraphs 2, 3, 4, 5 and 6.

2. Where a resident of the Netherlands derives items of income which according to paragraphs 1, 3 and 4 of Article 6, paragraph 1 of Article 7, paragraphs 1 and 3 of Article 8, paragraph 7 of Article 10, paragraph 4 of Article 11, paragraph 4 of Article 12, paragraphs 1, 2 and 3 of Article 13, paragraph 1 of Article 14, paragraphs 1 and 2 of Article 17, paragraph 1 of Article 18 and paragraph 2 of Article 20 of this Convention may be taxed in ... , and are included in the basis referred to in paragraph 1, the Netherlands shall exempt such items of income by allowing a reduction of its tax. This reduction shall be computed in conformity with the provisions of the Netherlands law for the elimination of double taxation. For that purpose the said items of income shall be deemed to be included in the amount of the items of income which are exempt from Netherlands tax under those provisions.

3. The provisions of paragraph 2 shall not apply to items of income derived by a resident of the Netherlands where applies the provisions of this Convention to exempt such items of income from tax or applies the provisions of paragraph 2 of Article 10 to such items of income. In such case, the provisions of paragraph 4 shall apply accordingly.

4. Notwithstanding the provisions of paragraph 2, the Netherlands shall allow a deduction from the Netherlands tax for the tax paid in ... on items of income which according to paragraph 1 of Article 7, paragraph 7 of Article 10, paragraph 4 of Article 11, paragraph 4 of Article 12 and paragraph 2 of Article 20 of this Convention may be taxed in ... , to the extent that these items of income are included in the basis referred to in paragraph 1, insofar as the Netherlands under the provisions of the Netherlands law for the elimination of double taxation allows a reduction of the Netherlands tax for the tax levied in another country on such items of income. For the computation of this reduction the provisions of paragraph 5 of this Article shall apply accordingly.

5. Where a resident of the Netherlands derives items of income which according to paragraphs 2 and 9 of Article 10, paragraph 5 of Article 13, paragraph 1 of Article 15, paragraphs 1 and 2 of Article 16 and paragraph 5 of Article 17 of this Convention may be taxed in ..., shall allow a deduction from its tax 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 ... on these items of income, but shall, in case the provisions of the Netherlands law for the elimination of double taxation provide so, not exceed the amount of the deduction which would be allowed if the items of income so included were the sole items for which the Netherlands gives a reduction under the provisions of the Netherlands law for the elimination of double taxation.

6. The provisions of paragraph 5 shall not restrict allowance now or hereafter accorded by the provisions of the Netherlands law for the elimination of double taxation, but only as far as the calculation of the amount of the reduction of Netherlands tax is concerned with respect to the aggregation of income from more than one jurisdiction and the carry forward of the tax paid in ... on the said items of income to subsequent years.

7. In ..., double taxation shall be eliminated as follows:]

CHAPTER V

SPECIAL PROVISIONS

ARTICLE 24 22

NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. Stateless persons who are residents of a Contracting State shall not be subjected in either Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of the State concerned in the same circumstances, in particular with respect to residence, are or may be subjected.
2. 3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. 4. Except where the provisions of paragraph 1 of Article 9, paragraph [6 5 of] Article 11, [or] paragraph [6 5] of Article 12, [or paragraph 7 of Article 13,] apply, interest, royalties, [technical fees] and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
4. 5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
6. [Contributions paid by, or on behalf of, an individual who exercises employment or self-employment in a Contracting State to a pension scheme, plan or other similar arrangement that is recognised for tax

purposes in the other Contracting State shall be treated in the same way for tax purposes in the first-mentioned State as a contribution paid to a pension scheme, plan or other similar arrangement that is recognised for tax purposes in that first-mentioned State, provided that

- a) such individual was contributing to such pension scheme, plan or other similar arrangement before he became a resident of the first-mentioned State; and
- b) the competent authority of the first-mentioned State considers that such pension scheme, plan or other similar arrangement generally corresponds to a pension scheme, plan or other similar arrangement recognised for tax purposes by that State.

7. For the purpose of the provisions of paragraph 6, the term "pension scheme, plan or other similar arrangement" includes a pension scheme, plan or other similar arrangement created under the social security legislation of a Contracting State.]

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

ARTICLE 25 23

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 Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if the case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.
5. [Where,
 - a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Agreement; and
 - b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the date when all the information required by the competent authorities in order to address the case has been provided to both competent authorities;

any unresolved issue arising from the case shall be submitted to arbitration if the person so requests in writing. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent

authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.]

ARTICLE 26 24

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

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

3. [The Contracting States may supply to an arbitration board, established under the provisions of paragraph 5 of Article 23, such information as is necessary for carrying out the arbitration procedure. The members of the arbitration board shall be subject to the limitations on disclosure described in paragraph 2 of this Article with respect to any information so released.]

3. 4. In no case shall the provisions of [paragraphs 1 and 2 the previous paragraphs] be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).

4. 5. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph [3 4] but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. 6. In no case shall the provisions of paragraph [3 4] be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

ARTICLE 27 25

ASSISTANCE IN THE COLLECTION OF TAXES

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.
2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.
3. [When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.]
3. [The provisions of this Article shall apply only to a revenue claim that forms the subject of an instrument permitting enforcement in the requesting State and, unless otherwise agreed between the competent authorities, that is not contested. However, where the claim relates to a liability to tax of a person as a non-resident of the requesting State, this Article shall only apply, unless otherwise agreed between the competent authorities, where the claim may no longer be contested. The revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that requested State.]
4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

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

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

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

- a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection; or
- b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection;

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to carry out measures which would be contrary to public policy (*ordre public*);
- c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

ARTICLE 28 26

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

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

ARTICLE 29 27

ENTITLEMENT TO BENEFITS

1. [Except as otherwise provided in this Article, a resident of a Contracting State shall not be entitled to a benefit that would otherwise be accorded by this Convention (other than a benefit under paragraph 3 of Article 4, paragraph 2 of Article 9 or Article 25) unless such resident is a "qualified person", as defined in paragraph 2, at the time that the benefit would be accorded.
2. A resident of a Contracting State shall be a qualified person at a time when a benefit would otherwise be accorded by the Convention if, at that time, the resident is:
 - (a) an individual;
 - (b) that Contracting State, or a political subdivision or local authority thereof, [the central bank of that Contracting State,] or an agency or instrumentality of that State, political subdivision or local authority;
 - (c) a company or other entity, if, throughout the taxable period that includes that time, the principal class of its shares (and any disproportionate class of shares) is regularly traded on one or more recognised stock exchanges, and either:
 - (i) its principal class of shares is primarily traded on one or more recognised stock exchanges located in the Contracting State of which the company or entity is a resident; or
 - (ii) the company's or entity's primary place of management and control is in the Contracting State of which it is a resident;
 - (d) a company, if:
 - (i) throughout the taxable period that includes that time, at least ___ per cent of the aggregate vote and value of the shares (and at least ___ per cent of the aggregate vote and value of any disproportionate class of shares) in the company is owned directly or indirectly by ___ or fewer companies or entities entitled to benefits under subparagraph (c) of this paragraph, provided that, in the case of indirect ownership, each intermediate owner is a resident of the Contracting State from which a benefit under this Convention is being sought or is a qualifying intermediate owner; and
 - (ii) with respect to benefits under this Convention other than under Article 10, less than 50 per cent of the company's gross income, and less than ___ per cent of the tested group's gross income, for the taxable period that includes that time, is paid or accrued, directly or indirectly, in the form of payments that are deductible in that taxable period for purposes of the taxes covered by this Convention in the company's Contracting State of residence (but not including arm's length payments in the ordinary course of business for services or tangible property, and in the case of a tested group, not including intra-group transactions) to persons that are not residents of either

Contracting State entitled to the benefits of this Convention under subparagraph (a), (b), (c) or (e);

(e) a person, other than an individual, that is

- (i) a voluntary grouping of individuals or associations, not operated for profit or for other commercial purposes but which have organized themselves nationally or internationally for the benefit of the public at large and for the promotion of social welfare, charity or research in the areas of health, relief and education; or
- (ii) a recognised pension fund;

(f) a person other than an individual, if

- (i) at that time and on at least half the days of a ___ month period that includes that time, persons who are residents of that Contracting State and that are entitled to the benefits of this Convention under subparagraph (a), (b), (c) or (e) own, directly or indirectly, shares representing at least ___ per cent of the aggregate vote and value (and at least ___ per cent of the aggregate vote and value of any disproportionate class of shares) of the shares in the person, provided that, in the case of indirect ownership, each intermediate owner is a qualifying intermediate owner, and
- (ii) less than ___ per cent of the person's gross income, and less than ___ per cent of the tested group's gross income, for the taxable period that includes that time, is paid or accrued, directly or indirectly, in the form of payments that are deductible for purposes of the taxes covered by this Convention in the person's Contracting State of residence (but not including arm's length payments in the ordinary course of business for services or tangible property, and in the case of a tested group, not including intra-group transactions), to persons that are not residents of either Contracting State entitled to the benefits of this Convention under subparagraph (a), (b), (c) or (e) of this paragraph; or]

(g) [collective investment vehicles]

3. [(a) A resident of a Contracting State shall be entitled to benefits under this Convention with respect to an item of income derived from the other Contracting State, regardless of whether the resident is a qualified person, if the resident is engaged in the active conduct of a business in the first-mentioned State and the income derived from the other State emanates from, or is incidental to, that business. For purposes of this Article, the term "active conduct of a business" shall not include the following activities or any combination thereof:

- (i) operating as a holding company;
- (ii) providing overall supervision or administration of a group of companies;
- (iii) providing group financing (including cash pooling); or
- (iv) making or managing investments, unless these activities are carried on by a bank [list financial institutions similar to banks that the Contracting States agree to treat as such], insurance enterprise or registered securities dealer in the ordinary course of its business as such.]

3. [(a) A resident of a Contracting State shall be entitled to benefits to this Agreement with respect to an item of income derived from the other Contracting State, regardless of whether the resident is a qualified person, if the resident is engaged in the active conduct of a business in the first-mentioned Contracting State, and the income derived from the other Contracting State emanates from, or is incidental to, that business. For purposes of this Article, the term "active conduct of a business" shall not include the following activities or any combination thereof:

- i) operating as a holding company;
- ii) providing group financing (including cash pooling), unless provided by a company performing the main treasury functions within the group;
- iii) making or managing investments, unless these activities are carried on by a bank, insurance enterprise or registered securities dealer in the ordinary course of its business as such.

A holding company or a company holding intangible property shall, however, be considered to be engaged in the active conduct of a business if the company has the human and material resources to actively provide overall supervision of a group of companies.]

- (b) [If a resident of a Contracting State derives an item of income from a business activity conducted by that resident in the other Contracting State, or derives an item of income arising in the other State from a connected person, the conditions described in subparagraph a) shall be considered to be satisfied with respect to such item only if the business activity carried on by the resident in the first-mentioned State to which the item is related is substantial in relation to the same or complementary business activity carried on by the resident or such connected person in the other Contracting State. Whether a business activity is substantial for the purposes of this paragraph shall be determined based on all the facts and circumstances.
- (c) For purposes of applying this paragraph, activities conducted by connected persons with respect to a resident of a Contracting State shall be deemed to be conducted by such resident.

4. A resident of a Contracting State that is not a qualified person shall also be entitled to a benefit that would otherwise be accorded by this Agreement with respect to an item of income if, on at least ___ of the days of any ___ month period that includes the time when the benefit otherwise would be accorded, persons that are equivalent beneficiaries own, directly or indirectly, at least ___ per cent of the beneficial interests of the resident.

5. A company that is a resident of a Contracting State that functions as a headquarters company for a multinational corporate group consisting of such company and its direct and indirect subsidiaries shall be entitled to benefits under this Convention with respect to dividends and interest paid by members of its multinational corporate group, regardless of whether the resident is a qualified person. A company shall be considered a headquarters company for this purpose only if:

- (a) such company's primary place of management and control is in the Contracting State of which it is a resident;
- (b) the multinational corporate group consists of companies resident of, and engaged in the active conduct of a business in, at least four States, and the businesses carried on in each of the

four States (or four groupings of States) generate at least ___ per cent of the gross income of the group;

- (c) the businesses of the multinational corporate group that are carried on in any one State other than the Contracting State of residence of such company generate less than ___ per cent of the gross income of the group;
- (d) no more than ___ per cent of such company's gross income is derived from the other Contracting State;
- (e) such company is subject to the same income taxation rules in its Contracting State of residence as persons described in paragraph 3 of this Article; and
- (f) less than ___ per cent of such company's gross income, and less than ___ per cent of the tested group's gross income, is paid or accrued, directly or indirectly, in the form of payments that are deductible for purposes of the taxes covered by this Convention in the company's Contracting State of residence (but not including arm's length payments in the ordinary course of business for services or tangible property or payments in respect of financial obligations to a bank that is not a connected person with respect to such company, and in the case of a tested group, not including intra-group transactions) to persons that are not residents of either Contracting State entitled to the benefits of this Convention under subparagraph (a), (b), (c) or (e) of paragraph 2.

If the requirements of subparagraph (b), (c) or (d) of this paragraph are not fulfilled for the relevant taxable period, they shall be deemed to be fulfilled if the required ratios are met when averaging the gross income of the preceding four taxable periods.

6. If a resident of a Contracting State is neither a qualified person pursuant to the provisions of paragraph 2 of this Article, nor entitled to benefits under paragraph 3, 4 or 5, the competent authority of the Contracting State in which benefits are denied under the previous provisions of this Article may, nevertheless, grant the benefits of this Convention, or benefits with respect to a specific item of income or capital, taking into account the object and purpose of this Convention, but only if such resident demonstrates to the satisfaction of such competent authority that neither its establishment, acquisition or maintenance, nor the conduct of its operations, had as one of its principal purposes the obtaining of benefits under this Convention. The competent authority of the Contracting State to which a request has been made, under this paragraph, by a resident of the other State, shall consult with the competent authority of that other State before either granting or denying the request.

7. For the purposes of this and the previous paragraphs of this Article:

- (a) the term "recognised stock exchange" means:
 - (i) [list of stock exchanges agreed to at the time of signature]; and
 - (ii) any other stock exchange agreed upon by the competent authorities of the Contracting States;
- (b) with respect to entities that are not companies, the term "shares" means interests that are comparable to shares;

- (c) the term "principal class of shares" means the ordinary or common shares of the company or entity, provided that such class of shares represents the majority of the aggregate vote and value of the company or entity. If no single class of ordinary or common shares represents the majority of the aggregate vote and value of the company or entity, the "principal class of shares" are those classes that in the aggregate represent a majority of the aggregate vote and value;
- (d) two persons shall be "connected persons" if one owns, directly or indirectly, at least ___ per cent of the beneficial interest in the other (or, in the case of a company, at least ___ per cent of the aggregate vote and value of the company's shares) or another person owns, directly or indirectly, at least ___ per cent of the beneficial interest (or, in the case of a company, at least ___ per cent of the aggregate vote and value of the company's shares) in each person. In any case, a person shall be connected to another if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons.
- (e) the term "equivalent beneficiary" means:
- (i) a resident of any State, provided that:
 - (A) the resident is entitled to all the benefits of a comprehensive convention for the avoidance of double taxation between that State and the Contracting State from which the benefits of this Convention are sought, under provisions substantially similar to subparagraph (a), (b), (c) or (e) of paragraph 2 or, when the benefit being sought is with respect to interest or dividends paid by a member of the resident's multinational corporate group, the resident is entitled to benefits under provisions substantially similar to paragraph 5 of this Article in such convention, provided that, if such convention does not contain a detailed limitation on benefits article, such convention shall be applied as if the provisions of subparagraphs (a), (b), (c) and (e) of paragraph 2 (including the definitions relevant to the application of the tests in such subparagraphs) were contained in such convention; and
 - (B) (1) with respect to income referred to in Article 10, 11, 12 or 12A if the resident had received such income directly, the resident would be entitled under such Convention, a provision of domestic law or any international agreement, to a rate of tax with respect to such income for which benefits are being sought under this Convention that is less than or equal to the rate applicable under this Convention. Regarding a company seeking, under paragraph 4, the benefits of Article 10 with respect to dividends, for purposes of this subclause:
 - (I) if the resident is an individual, and the company is engaged in the active conduct of a business in its Contracting State of residence that is substantial in relation, and similar or complementary, to the business that generated the earnings from which the dividend is paid, such individual shall be treated as if he or she were a company. Activities conducted by a person that is a connected person with respect to the company seeking

- benefits shall be deemed to be conducted by such company. Whether a business activity is substantial shall be determined based on all the facts and circumstances; and
- (II) if the resident is a company (including an individual treated as a company), to determine whether the resident is entitled to a rate of tax that is less than or equal to the rate applicable under this Convention, the resident's indirect holding of the capital of the company paying the dividends shall be treated as a direct holding; or
- (2) with respect to an item of income referred to in Article 7, 13 or 21 of this Convention, the resident is entitled to benefits under such Convention that are at least as favourable as the benefits that are being sought under this Convention; and
- (C) notwithstanding that a resident may satisfy the requirements of clauses (A) and (B) of this subdivision, where the item of income has been derived through an entity that is treated as fiscally transparent under the laws of the Contracting State of residence of the company seeking benefits, if the item of income would not be treated as the income of the resident under a provision analogous to paragraph 2 of Article 1 had the resident, and not the company seeking benefits under paragraph 4 of this Article, itself owned the entity through which the income was derived by the company, such resident shall not be considered an equivalent beneficiary with respect to the item of income;
- (ii) a resident of the same Contracting State as the company seeking benefits under paragraph 4 of this Article that is entitled to all the benefits of this Convention by reason of subparagraph (a), (b), (c) or (e) of paragraph 2 or, when the benefit being sought is with respect to interest or dividends paid by a member of the resident's multinational corporate group, the resident is entitled to benefits under paragraph 5, provided that, in the case of a resident described in paragraph 5, if the resident had received such interest or dividends directly, the resident would be entitled to a rate of tax with respect to such income that is less than or equal to the rate applicable under this Convention to the company seeking benefits under paragraph 4; or
 - (iii) a resident of the Contracting State from which the benefits of this Convention are sought that is entitled to all the benefits of this Convention by reason of subparagraph (a), (b), (c) or (e) of paragraph 2, provided that all such residents' ownership of the aggregate vote and value of the shares (and any disproportionate class of shares) of the company seeking benefits under paragraph 4 does not exceed 25 per cent of the total vote and value of the shares (and any disproportionate class of shares) of the company;
- (f) the term "disproportionate class of shares" means any class of shares of a company or entity resident in one of the Contracting States that entitles the shareholder to disproportionately

- higher participation, through dividends, redemption payments or otherwise, in the earnings generated in the other Contracting State by particular assets or activities of the company;
- (g) a company's or entity's "primary place of management and control" is in the Contracting State of which it is a resident only if:
- (i) the executive officers and senior management employees of the company or entity exercise day-to-day responsibility for more of the strategic, financial and operational policy decision making for the company or entity and its direct and indirect subsidiaries, and the staff of such persons conduct more of the day-to-day activities necessary for preparing and making those decisions, in that Contracting State than in any other State; and
 - (ii) such executive officers and senior management employees exercise day-to-day responsibility for more of the strategic, financial and operational policy decision-making for the company or entity and its direct and indirect subsidiaries, and the staff of such persons conduct more of the day-to-day activities necessary for preparing and making those decisions, than the officers or employees of any other company or entity;
- (h) the term "qualifying intermediate owner" means an intermediate owner that is either:
- (i) a resident of a State that has in effect with the Contracting State from which a benefit under this Convention is being sought a comprehensive convention for the avoidance of double taxation; or
 - (ii) a resident of the same Contracting State as the company applying the test under subparagraph (d) or (f) of paragraph 2 or paragraph 4 to determine whether it is eligible for benefits under the Convention;
- (i) the term "tested group" means the resident of a Contracting State that is applying the test under subparagraph (d) or (f) of paragraph 2 or under paragraph 4 or 5 to determine whether it is eligible for benefits under the Convention (the "tested resident"), and any company or permanent establishment that:
- (i) participates as a member with the tested resident in a tax consolidation, fiscal unity or similar regime that requires members of the group to share profits or losses; or
 - (ii) shares losses with the tested resident pursuant to a group relief or other loss sharing regime in the relevant taxable period; and
- (j) the term "gross income" means gross receipts as determined in the person's Contracting State of residence for the taxable period that includes the time when the benefit would be accorded, except that where a person is engaged in a business that includes the manufacture, production or sale of goods, "gross income" means such gross receipts reduced by the cost of goods sold, and where a person is engaged in a business of providing non-financial services, "gross income" means such gross receipts reduced by the direct costs of generating such receipts, provided that:
- (i) except when relevant for determining benefits under Article 10 of this Convention, gross income shall not include the portion of any dividends that are effectively exempt

from tax in the person's Contracting State of residence, whether through deductions or otherwise; and

- (ii) except with respect to the portion of any dividend that is taxable, a tested group's gross income shall not take into account transactions between companies within the tested group.]

8. (a) 3. Where

- (i) a) an enterprise of a Contracting State derives [an item of] income from the other Contracting State and the first-mentioned State treats such [item of] income as attributable to a permanent establishment of the enterprise situated in a third jurisdiction, ;[and]
- (ii) b) the profits attributable to that permanent establishment are exempt from tax in the first-mentioned State, ;

the benefits of this Convention shall not apply to any item of income on which the tax in the third jurisdiction is less than [the lower of [rate to be determined bilaterally] of the amount of that item of income and] ___ per cent of the tax that would be imposed in the first-mentioned State on that item of income if that permanent establishment were situated in the first-mentioned State. In such a case any [item of] income to which the provisions of this paragraph apply shall remain taxable according to the domestic law of the other State, notwithstanding any other provisions of the Convention.

- (b) 4. The [preceding] provisions of [this] paragraph [3] shall not apply if the [item] income derived from the other State emanates from, or is incidental to, the active conduct of a business carried on through the permanent establishment (other than the business of making, managing or simply holding investments for the enterprise's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance enterprise or registered securities dealer, respectively).

- (c) 5. [If benefits Where a benefit] under this Convention [are is] denied pursuant to the [preceding] provisions of paragraph [3] with respect to an item of income derived by a resident of a Contracting State, the competent authority of the other Contracting State may, nevertheless, grant [these benefits this benefit] with respect to that item of income if, in response to a request by such resident, such competent authority determines that granting such [benefits benefit] is justified in light of the reasons such resident did not satisfy the requirements of this paragraph (such as the existence of losses). The competent authority of [the a] Contracting State [to which a request has been made under the preceding sentence] shall consult with the

competent authority of the other Contracting State before [denying a benefit under paragraph 3 or] either granting or denying the request [made under this paragraph.]

9. [Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention.]

1. [Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention. The competent authority of a Contracting State shall consult with the competent authority of the other Contracting State before denying a benefit under this paragraph.

2. Where a benefit under this Convention is denied to a person under paragraph 1, the competent authority of the Contracting State that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income, if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted in the absence of the transaction or arrangement referred to in paragraph 1. The competent authority of the Contracting State to which the request has been made will consult with the competent authority of the other State before rejecting a request made under this paragraph by a resident of that other State.]

[Article 28

TERRITORIAL EXTENSION

1. This Convention may be extended, either in its entirety or with any necessary modifications, to any part of the Kingdom of the Netherlands that is not situated in Europe, if the part of the Kingdom of the Netherlands concerned imposes taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and shall be subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Kingdom of the Netherlands and ... in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures.
2. Unless otherwise agreed, the termination of this Convention shall not also terminate this Convention for any part of the Kingdom of the Netherlands to which this Convention has been extended under this Article.]

CHAPTER VI

FINAL PROVISIONS

ARTICLE 30 29

ENTRY INTO FORCE

1. [Each of the Contracting States shall notify the other, through the diplomatic channel, the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of receipt of the later of these notifications.
2. The provisions of the Agreement shall apply:
 - (a) in Kenya;
 - (i) with regard to taxes withheld at source, in respect to amounts paid or credited on or after the first day of January next following the date upon which this Agreement enters into force; and
 - (ii) with regard to other taxes, in respect of taxable years beginning on or after the first day of January next following the date upon which this Agreement enters into force.
 - (b) in _____
3. Notwithstanding the provisions of paragraph 2, the provisions of Articles 25 and 26 shall have effect from the date of entry into force of this Agreement without regard to the date on which the taxes are levied or the taxable year to which the taxes relate.]

[This Convention shall enter into force on the last day of the month following the month in which the later of the notifications has been received in which the respective Contracting States have notified each other in writing that their formalities constitutionally required have been complied with, and its provisions shall have effect for taxable years and periods beginning, and taxable events occurring, on or after the first day of January in the calendar year following that in which the Convention has entered into force.]

ARTICLE 31 30

TERMINATION

1. This Agreement shall remain in force until terminated by a Contracting State. [Either A] Contracting State may terminate the Agreement, [through diplomatic channels,] by giving notice of termination [through diplomatic channels to the other Contracting State at least six months before the end of any calendar year beginning after expiry of five years from the date of entry into force of the Agreement.

In such event, the Agreement shall cease to have effect:

(a) in the case of Kenya:

(i) with regard to taxes withheld at source, in respect of amounts paid or credited after the end of year of income in which the notice of termination is given; and

(ii) with regard to other taxes, in respect of years of income beginning after the end of year of income in which the notice of termination is given; and

(b) in the case of _____.]

2. [In such event the Convention shall cease to have effect for taxable years and periods beginning, and taxable events occurring, after the end of the calendar year in which the notice of termination has been given if the notice has been given in the first six months of a calendar year. If a notice has been given in the last six months of a calendar year, the Convention shall cease to have effect for taxable years and periods beginning, and taxable events occurring, after the end of the calendar year following the calendar year in which the notice of the termination has been given.

3. Notice of termination shall be regarded as having been given by a Contracting State on the date of receipt of such notice by the other Contracting State.]

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

DONE in duplicate at this day of, in duplicate, in the English language.

For the Republic of Kenya:

For the Kingdom of the Netherlands

**[PROTOCOL TO THE AGREEMENT BETWEEN THE KINGDOM OF THE NETHERLANDS AND
THE REPUBLIC OF KENYA FOR THE ELIMINATION OF DOUBLE TAXATION WITH RESPECT
TO TAXES ON INCOME AND THE PREVENTION OF TAX EVASION AND AVOIDANCE**

With respect to the Agreement concluded between the Kingdom of the Netherlands and the Republic of Kenya for the elimination of double taxation with respect to taxes on income and the prevention of tax evasion and avoidance, the undersigned have agreed that the following provisions shall form an integral part of the Convention.

I. GENERAL

It is understood that the provisions of this Agreement which are identical or in substance similar to the provisions of the OECD Model Tax Convention On Income and On Capital shall be interpreted in accordance with the OECD Commentary thereon at the moment of the application of this Agreement.

II. AD ARTICLE 1

1. Notwithstanding the provisions of Article 1 and Article 22, the benefits of Articles 10, 11, 12, 13, 20 and 21 and the corresponding Articles of this Protocol shall not apply to:

- a) a person who is a Tax Exempt Investment Institution (Vrijgestelde Beleggingsinstelling) for the purposes of the company tax of the Netherlands;
- b) [special regime of ...].

2. The competent authorities of the Contracting States shall by mutual agreement decide to which extent a resident of a Contracting State that is subject to any other special regime shall not be entitled to the benefits of this Agreement.]

III. AD ARTICLE 4

1. It is understood that a person who is liable to tax under the laws of the Netherlands, with respect to a person other than an individual, is a person who is a resident of the Netherlands under the Corporation Tax Act 1969 (Wet op de vennootschapbelasting 1969), irrespective of exemptions or reduced tax rates under conditions described in or based on the Corporation Tax Act 1969.

2. It is understood that a person is "liable to tax" in Kenya where that person is subjected to the tax laws in force in Kenya even if, according to those laws, all or part of its income is exempted from tax.

[III. AD ARTICLES 5, 6, 7 AND 13

It is understood that rights to the exploration and exploitation of natural resources shall be regarded as immovable property located in the Contracting State to whose territorial sea and any area beyond and adjacent to its territorial sea within which that State, in accordance with international law, exercises jurisdiction or sovereign rights, including the seabed and subsoil thereof, these rights apply, and that these rights are regarded as assets of a permanent establishment in that State. Furthermore, it is understood that the aforementioned rights include rights to interests in, or benefits from assets that arise from, that exploration or exploitation.

IV. AD ARTICLE 10

The provisions of paragraph 3 of Article 10 shall not apply to dividends paid by or to a person who is a Fiscal Investment Institution (Fiscale Beleggingsinstelling) for the purposes of the company tax of the Netherlands or by or to a person who is [...] for the purpose of the [...] tax of [...], respectively.

V. AD ARTICLES 10 AND 13

It is understood that income received in connection with the (partial) liquidation of a company or a purchase of own shares by a company is treated as income from shares.

VI. AD ARTICLES 24 and 25

The provisions of Article 24 and Article 25 shall apply accordingly to the income related regulations of the Netherlands.

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

DONE at this day of, in duplicate, in the English language.

For the Kingdom of the Netherlands

For the Republic of Kenya]

