SYNTHESISED TEXT OF

THE MULTILATERAL AGREEMENT TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING

AND

THE CONVENTION BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TOT TAXES ON INCOME AND ON CAPITAL

General disclaimer on this Synthesised text document

This document presents the synthesised text for the application of the Convention between the Kingdom of the Netherlands and the the Socialist Federal Republic of Yugoslavia for the avoidance of double taxation with respect to taxes on income and on capital, and Protocol signed on 22 February 1982 (the "Convention"), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the "MLI") signed by the Netherlands and Serbia on 7 June 2017.

The document was prepared on the basis of the MLI position of the Netherlands submitted to the Depositary upon acceptance on 29 March 2019 and of the MLI position of Serbia submitted to the Depositary upon ratification on 5 June 2018. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the Convention.

The authentic legal texts of the Convention and the MLI remain the only legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Convention are included in boxes throughout the text of this document in the context of the relevant provisions of the Convention. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the OECD Model Tax Convention (as updated on 21 November 2017).

Changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Convention (such as "Covered Tax Agreement" and "Convention", "Contracting Jurisdictions" and "States"), to ease the comprehension of the provisions of the MLI. The changes in terminology are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI. Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Convention: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

In all cases, references made to the provisions of the Convention or to the Convention must be understood as referring to the Convention as modified by the provisions of the MLI, provided such provisions of the MLI have taken effect.

References

- Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (provides the authentic legal texts of the MLI).
- Convention between the Kingdom of the Netherlands and the Socialist Federal Republic of Yugoslavia for the avoidance of double taxation with respect to taxes on income and on capital
- Signatories and parties to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (provides the MLI position of the Netherlands submitted to the Depositary upon acceptance on 29 March 2019 and the MLI position of Serbia submitted to the Depositary upon ratification on 5 June 2018).

Entry into Effect of the MLI Provisions

The provisions of the MLI applicable to this Convention do not take effect on the same dates as the original provisions of the Convention. Each of the provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by the Netherlands and Serbia in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval:

29 March 2019 for the Netherlands and 5 June 2018 for Serbia.

Entry into force of the MLI:

1 July 2019 for the Netherlands and 1 October 2018 for Serbia.

Entry into effect of the MLI provisions:

In accordance with paragraph 1 of Article 35 of the MLI, the provisions of the MLI (other than Article 16 (Mutual Agreement Procedure)) have effect with respect to the application of this Convention:

a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2020; and

b) with respect to all other taxes levied by each State, for taxes levied with respect to taxable periods beginning on or after 1 January 2020.

In accordance with paragraph 4 of Article 35 of the MLI, Article 16 of the MLI (Mutual Agreement Procedure) has effect with respect to this Convention for a case presented to the competent authority of a State on or after 1 July 2019, except for cases that were not eligible to be presented as of that date under the Convention prior to its modification by the MLI, without regard to the taxable period to which the case relates.

Convention between the Kingdom of the Netherlands and the Socialist Federal Republic of Yugoslavia for the avoidance of double taxation with respect to taxes on income and on capital

The Kingdom of the Netherlands

and

the Socialist Federal Republic of Yugoslavia,

Desiring to conclude a convention for the avoidance of double taxation with respect to taxes on income and on capital,

The following paragraph 1 and paragraph 3 of Article 6 of the MLI replace the text referring to an intent to eliminate double taxation in the preamble of this Convention

ARTICLE 6 OF THE MLI – PURPOSE OF A COVERED TAX AGREEMENT

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters,

Intending to eliminate double taxation with respect to the taxes covered by this Convention 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 the Convention for the indirect benefit of residents of third jurisdictions),

Have agreed as follows:

Article 1. Personal Scope

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

Article 2. Taxes covered

1. This Convention shall apply to taxes on income and on capital imposed on behalf of each of the States or of its political subdivisions or local authorities, irrespective of the manner in which they are levied. This Convention shall also apply to the contributions levied in Yugoslavia, except for the contributions for social security.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises as well as taxes on capital appreciation. For the purposes of this Convention the term “taxes” includes also the contributions referred to in paragraph 1 of this Article.

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

a) in the case of the Netherlands:

- de inkomstenbelasting (income tax),
- de loonbelasting (wages tax),
- de vennootschapsbelasting (company tax),
- de dividendbelasting (dividend tax),
- de vermogenbelasting (capital tax),

(hereinafter referred to as “Netherlands tax”);

b) in the case of Yugoslavia:

- porez i doprinosi iz dohotka organizacija udruženog rada (the tax and contributions on income of organizations of associated labour),
- porez i doprinosi iz ličnog dohotka iz radnog odnosa (the tax and contributions on personal income derived from dependent personal services),
- porez i doprinosi iz ličnog dohotka od poljoprivredne delatnosti (the tax and contributions on personal income derived from agricultural activity),

- porez i doprinosi iz ličnog dohotka od samostalnog obavljanja privrednih i neprivrednih delatnosti (the tax and contributions on personal income derived from independent economic and non-economic activities),
- porez i doprinosi iz ličnog dohotka od autorskih prava, patenata i tehničkih unapredjenja (the tax and contributions on personal income derived from copyrights, patents and technical improvements),
- porez na prihod od imovine i imovinskih prava (the tax on revenue derived from capital and capital rights),
- porez na imovinu (the tax on capital),
- porez iz ukupnog prihoda gradjana (the tax on total revenue of citizens),
- porez na dobit stranih lica ostvarenu ulaganjem u domaću organizaciju udruženog rada za svrhe zajedničkog poslovanja (the tax on profits of foreign persons derived from investments in a domestic organization of associated labour for the purposes of joint business operations),
- porez na dobit stranih lica ostvarenu izvodjenjem investicionih radova (the tax on profits of foreign persons derived from investment projects),
- porez na prihod stranih lica ostvaren od prevoza putnika i robe (the tax on revenue of foreign persons derived from passenger and cargo transport),

(hereinafter referred to as “Yugoslav tax”).

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

Article 3. General Definitions

1. For the purposes of this Convention:

a) the term “State” means the Netherlands or Yugoslavia, as the context requires; the term “States” means the Netherlands and Yugoslavia;
b) the term “the Netherlands” comprises the part of the Kingdom of the Netherlands that is situated in Europe and the part of the seabed and its subsoil under the North Sea, over which the Kingdom of the Netherlands has sovereign rights in accordance with international law;
c) the term “Yugoslavia” means the territory of the Socialist Federal Republic of Yugoslavia including any area outside the territorial sea of Yugoslavia which has been or may hereafter be designated under the laws of Yugoslavia and in accordance with international law, as an area within which the rights of Yugoslavia to the seabed and subsoil and their natural resources may be exercised;
d) the term “person” means:
(1) in the case of the Netherlands, an individual, a company and any other body of persons;
(2) in the case of Yugoslavia, an individual and any legal person;
e) the term “company” means:
(1) in the case of the Netherlands, any body corporate or any other entity which is treated as a body corporate for tax purposes;
(2) in the case of Yugoslavia, an organization of associated labour and any other legal person subject to tax;
f) the terms “enterprise of one of the States” and “enterprise of the other State” mean, as the context requires, in the case of the Netherlands an enterprise carried on by a resident of the Netherlands, and in the case of Yugoslavia an organization of associated labour and any other self-managed organization and community, working people who individually perform activities independently and an enterprise created outside the territory of Yugoslavia and carried on by a resident of Yugoslavia; these terms do not include the activities mentioned in Article 14 of this Convention;
g) the term “national” means any individual possessing the nationality of the Netherlands or Yugoslavia, respectively;
h) the term “fixed base” means a fixed place through which independent personal services are exercised;
i) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in one of the States, except when the ship or aircraft is operated solely between places in the other State;
j) the term “competent authority” means:
(1) in the Netherlands the Minister of Finance or his duly authorized representative;
(2) in Yugoslavia the Federal Secretariat for Finance or its authorized representative.

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

Article 4. Fiscal Domicile

1. For the purposes of this Convention, the term “resident of one of the States” means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

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

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

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

The following paragraph 1 of Article 4 of the MLI replace paragraph 3 of Article 4 of this Convention:

ARTICLE 4 OF THE MLI – DUAL RESIDENT ENTITIES

Where by reason of the provisions of the Convention a person other than an individual is a resident of both States, the competent authorities of the States shall endeavour to determine by mutual agreement the 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 the Convention except to the extent and in such manner as may be agreed upon by the competent authorities of the 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, and
f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

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

The following paragraph 1 of Article 14 of the MLI applies and supersedes the provisions of this Convention

ARTICLE 14 OF THE MLI – SPLITTING-UP OF CONTRACTS

For the sole purpose of determining whether the period referred to in paragraph 3 of Article 5 of the Convention has been exceeded:

a) where an enterprise of a State carries on activities in the other State at a place that constitutes a building site, construction or installation project and these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days without exceeding the period referred to in paragraph 3 of article 5; and

b) where connected activities are carried on in that other State at the same building site or construction or installation project during different periods of time, each exceeding 30 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.

4. Notwithstanding the provisions of paragraphs 1, 2 and 3 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 for collecting information, for the enterprise;
e) the maintenance of a fixed place of business solely for the purpose of advertising, supply of information, scientific research or similar activities which have a preparatory or auxiliary character, for the enterprise;
f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

The following paragraph 2 of Article 13 of the MLI applies to paragraph 4 of Article 5 of this Convention:

ARTICLE 13 OF THE MLI – ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH THE SPECIFIC ACTIVITY EXEMPTIONS (*Option A*)

Notwithstanding Article 5 of the Convention, the term “permanent establishment” shall be deemed not to include:

a) the activities specifically listed in paragraph 4 of Article 5 of this Convention as activities deemed not to constitute a permanent establishment, whether or not that exception from permanent establishment status is contingent on the activity being of a preparatory or auxiliary character;

b) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in subparagraph a);

c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and b),

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

The following paragraph 4 of Article 13 of the MLI applies to paragraph 4 of Article 5 of this Convention as modified by paragraph 2 of Article 13 of the MLI:

Paragraph 4 of Article 5 of the Convention, as modified by paragraph 2 of Article 13 of the MLI, 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 State and:

a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of Article 5 of the Convention; 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.

5. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, where a person – other than an agent of an independent status to whom paragraph 6 of this Article applies – is acting on behalf of an enterprise and

has, and habitually exercises, in one of the States an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 of this Article which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

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

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

The following paragraph 1 of Article 15 of the MLI applies to this Convention:

ARTICLE 15 OF THE MLI – DEFINITION OF A PERSON CLOSELY RELATED TO AN ENTERPRISE

For the purposes of Article 5 of the Convention, a person 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 shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 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 possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 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.

Article 6. Income from immovable property

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

2. The term "immovable property" shall have the meaning which it has under the law of the State in which the property in question is situated. Ships, boats and aircraft shall not be regarded as immovable property.

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

Article 7. Business profits

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

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

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

4. The profits to be attributed to a permanent establishment shall be determined on the basis of separate business books kept by the permanent establishment. If such business books do not constitute an adequate basis for the purpose of determining the profits of the permanent establishment, then such profits may be determined on the basis of an apportionment of the total profits of the enterprise to its various parts; the

method of apportionment adopted shall, however, be such, that the result shall be in accordance with the principles embodied in this Article.

If necessary the competent authorities of the States shall endeavour to agree on the method for apportioning the profits of the enterprise.

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

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

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

8. The profits derived in Yugoslavia by a resident of the Netherlands in respect of his participation in joint business operations with a Yugoslav enterprise may be taxed in Yugoslavia. The profits shall be determined in accordance with the principles laid down in paragraphs 2 to 7 of this Article.

Article 8. Shipping, inland waterways transport and air transport

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

2. Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the State in which the place of effective management of the enterprise is situated.

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

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

Article 9. Associated enterprises

Where

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

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

The following paragraph 1 of Article 17 of the MLI applies and supersedes the provisions of this Convention:

ARTICLE 17 OF THE MLI – CORRESPONDING ADJUSTMENTS

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

Article 10. Dividends

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

2. However, such dividends may be taxed in the State of which the company paying the dividends is a resident, and according to the law of that State, but the tax so charged shall not exceed:

   a) 5 per cent of the gross amount of the dividends if the recipient is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;
   b) 15 per cent of the gross amount of the dividends, in all other cases.

The following paragraph 1 of Article 8 of the MLI applies to subparagraph a) of paragraph 2 of Article 10 of this Convention:

ARTICLE 8 OF THE MLI – DIVIDEND TRANSFER TRANSACTIONS

Subparagraph a) of paragraph 2 of Article 10 of this Convention shall apply only if the ownership conditions described in those provisions are met throughout a 365 day period that includes the day of the payment of the dividends (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 dividends).

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

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

5. The term “dividends” as used in this Article means, in respect of the Netherlands, income form shares, or other rights 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 taxation law of that State. The term does not include the profits derived in Yugoslavia by a resident of the Netherlands in respect of his participation in joint business operations with a Yugoslav enterprise.

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

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

Article 11. Interest

1. Interest arising in one of the States and paid to a resident of the other State shall be taxable only in that other State.

2. The term “interest” as used in this Article means income from government securities, bonds or debentures, whether or not secured by mortgage, but not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

3. The provisions of paragraph 1 of this Article shall not apply if the recipient of the interest, being a resident of one of the States, carries on business in the other State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed

base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14 of this Convention, as the case may be, shall apply.

4. Interest shall be deemed to arise in one of the States when the payer is that State itself, a political subdivision, a local authority or a resident of that State.

5. Notwithstanding the provisions of paragraph 4 of this Article the interest shall be deemed to arise in the State in which the payer of the interest has a permanent establishment or a fixed base with which the indebtedness on which the interest is paid is effectively connected and which bears the interest, whether or not the payer of the interest is a resident of one of the States.

6. Where, by reason of a special relationship between the payer and the recipient 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each State, due regard being had to the other provisions of this Convention.

Article 12. Royalties

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

2. However, such royalties may be taxed in the State in which they arise, and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

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

4. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, and films and tapes for radio or television broadcasting, any patent, trade mark, 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 of scientific experience.

5. The provisions of paragraphs 1 and 2 of this Article shall not apply if the recipient of the royalties, being a resident of one of the States, carries on business in the other State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14 of this Convention, as the case may be, shall apply.

6. Royalties shall be deemed to arise in one of the States when the payer is that State itself, a political subdivision, a local authority or a resident of that State.

7. Notwithstanding the provisions of paragraph 6 of this Article the royalties shall be deemed to arise in the State in which the payer of the royalties has a permanent establishment or a fixed base with which the liability to pay the royalties was incurred and which bears the royalties, whether or not the payer of the royalties is a resident of one of the States.

8. Where, by reason of a special relationship between the payer and the recipient 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 recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each State, due regard being had to the other provisions of this Convention.

Article 13. Capital gains

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

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of one of the States has in the other State or of movable property

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

3. Notwithstanding the provisions of paragraph 2 of this Article, gains from the alienation of ships and aircraft operated in international traffic, boats engaged in inland waterways transport, or movable property pertaining to the operation of such ships, aircraft or boats, shall be taxable only in the State in which the place of effective management of the enterprise is situated. For the purposes of this paragraph the provisions of paragraph 3 of Article 8 of this Convention shall apply.

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

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

Article 14. Independent personal services

1. Income derived by an individual who is a resident of one of the States in respect of his professional services or other independent activities of a similar character may be taxed in that State. Except as provided in paragraph 2 of this Article, such income shall be exempt from tax in the other State.

2. Income derived by an individual who is a resident of one of the States in respect of his professional services or other independent activities of a similar character in the other State may be taxed in that other State, if the individual maintains a fixed base in that other State for a period or periods aggregating 183 days or more in the calendar year, and the income is attributable to such fixed base.

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

Article 15. Dependent personal services

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

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

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and
b) the remuneration is paid by, or on behalf of, a person who is not a resident of the other State, and
c) the remuneration is not borne by a permanent establishment or a fixed base which that person has in the other State.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic, or aboard a boat engaged in inland waterways transport, may be taxed in the State in which the place of effective management of the enterprise is situated.

4.

a) Notwithstanding the provisions of paragraph 1 of this Article, salaries, wages and other similar remuneration, paid by one of the States or a political subdivision or a local authority thereof to an individual may be taxed in that State;
b) However, such salaries, wages and remuneration shall be taxable only in the other State if the activities are exercised in that other State and the recipient is a resident of that other State who:
   (1) is a national of that other State; or
   (2) did not become a resident of that other State solely for the purpose of exercising the activities.

5. Notwithstanding the provisions of paragraph 4 of this Article the provisions of paragraphs 1, 2 and 3 of this Article shall apply to salaries, wages and other similar remuneration in respect of activities exercised in connection with a business carried on by one of the States or a political subdivision or a local authority thereof.

Article 16. Directors' fees and remuneration derived from work on joint business boards

1. Remuneration and other payments derived by a resident of the Netherlands in his capacity as a member of a joint business board of a company which is a resident of Yugoslavia may be taxed in Yugoslavia.

2. Remuneration and other payments derived by a resident of Yugoslavia in his capacity as a “bestuurder” or a “commissaris” of a company which is a resident of the Netherlands may be taxed in the Netherlands.

Article 17. Artistes and athletes

1. Notwithstanding the provisions of Articles 14 and 15 of this Convention, income derived by theatre, motion picture, radio or television artistes, musicians and other entertainers, and by athletes, from their personal activities as such may be taxed in the State in which these activities are exercised.

2. Where income in respect of personal activities as such exercised by an entertainer or athlete, referred to in paragraph 1 of this Article, accrues not to that entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15 of this Convention, be taxed in the State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income derived by an entertainer or athlete referred to in paragraph 1 of this Article, who is a resident of one of the States shall be taxable only in that State if the activities are exercised in the other State within the framework of a cultural or sports exchange programme granted by both States.

Article 18. Pensions

1. Pensions and other similar remuneration paid to an individual who is a resident of one of the States in consideration of past employment shall be taxable only in the State of which that individual is a resident.

2.
   a) Notwithstanding the provisions of paragraph 1 of this Article pensions and other similar remuneration paid by one of the States or a political subdivision or a local authority out of the budget or special funds thereof to an individual may be taxed in that State;
   b) However, such pensions and remuneration shall be taxable only in the other State if the recipient is a national of and a resident of that other State.

3. Notwithstanding the provisions of paragraph 2 of this Article, the provisions of paragraph 1 of this Article shall apply to pensions and other similar remuneration in respect of activities exercised in connection with a business carried on by one of the States or a political subdivision or a local authority thereof.

4. Pensions and other similar payments paid to an individual under the public social security scheme of the Netherlands may be taxed in that State.

Article 19. Professors, teachers and researchers

1. Payments which an individual who is a resident of one of the States and who is present in the other State for the purpose of teaching or scientific research for a maximum period of two years in a university, college or other establishment for teaching or scientific research in that other State, receives for such teaching or research, shall be taxable only in the first-mentioned State.

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

Article 20. Students

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

2. Income, not exceeding in any taxable year an amount of 5000 guilders or its equivalent in Yugoslav currency, derived by a student, or apprentice or business trainee, who is or was immediately before visiting one of the States a resident of the other State and who is present in the first-mentioned State solely for the purpose of his education or training, in respect of activities exercised in the first-mentioned State, shall not be taxed in the first-mentioned State for a period not exceeding four consecutive years from the date of his arrival in that State.

Article 21. Other income

1. Items of income of a resident of one of the States, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 of this Article, shall not apply to income, other than income from immovable property referred to in Article 6 of this Convention, if the recipient of such income, being a resident of one of the States, carries on business in the other State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14 of this Convention, as the case may be, shall apply.

Article 22. Capital

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

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

3. Notwithstanding the provisions of paragraph 2 of this Article, ships and aircraft operated in international traffic and boats engaged in inland waterways transport, and movable property pertaining to the operation of such ships, aircraft and boats, shall be taxable only in the State in which the place of effective management of the enterprise is situated. For the purposes of this paragraph the provisions of paragraph 3 of Article 8 of this Convention shall apply.

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

Article 23. Elimination of double taxation

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

2. However, where a resident of the Netherlands derives items of income or capital which according to Articles 6, 7, 10 (paragraph 6), 11 (paragraph 3), 12 (paragraph 5), 13 (paragraphs 1 and 2), 14 (paragraph 2), 15 (paragraphs 1 and 4), 16 (paragraph 1), 18 (paragraph 2), 21 (paragraph 2) and 22 (paragraphs 1 and 2) of this Convention may be taxed in Yugoslavia and are included in the basis referred to in paragraph 1, the Netherlands shall exempt such items by allowing a reduction of its tax. This reduction shall be computed in conformity with the provisions of Netherlands law for the avoidance of double taxation. For that purpose the said items of income or capital shall be deemed to be included in the total amount of the items of income or capital which are exempt from Netherlands tax under those provisions. The exemption provided for in the preceding provisions of this paragraph also applies to profits derived by a resident of the Netherlands from his participation in joint business operations in Yugoslavia and does not affect the tax incentives given under Yugoslav laws to encourage foreign investments in Yugoslavia.

3. Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for the items of income which according to Articles 10 (paragraph 2), 12 (paragraph 2), 15 (paragraph 3) and 17 (paragraphs 1 and 2) of this Convention may be taxed in Yugoslavia 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 Yugoslavia on these items of income, but shall not exceed the amount of the reduction which would be allowed if the items of income so included would be the sole items of income which are exempt from Netherlands tax under the provisions of Netherlands law for the avoidance of double taxation.

4.

a) Where a resident of Yugoslavia derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the Netherlands, Yugoslavia shall, except in the case referred to in paragraph 5 of Article 13 and subject to the provisions under b), exempt such income or capital from tax but may, in calculating tax on the remaining income or capital of that person, apply the rate of tax which would have been applicable if the exempted income or capital had not been so exempted.
b) Where a resident of Yugoslavia derives income which, in accordance with the provisions of Articles 10 and 12 may be taxed in the Netherlands, Yugoslavia shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in the Netherlands. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is appropriate to the income derived from the Netherlands.

5. Where a resident of one of the States derives gains which may be taxed in the other State in accordance with paragraph 5 of Article 13, that other State shall allow a deduction from its tax on such gains to an amount equal to the tax levied in the first-mentioned State on the said gains.

Article 24. Non-discrimination

1. The nationals of one of the States, whether they are residents of that State or not, shall not be subjected in the other State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. The same rule shall apply to any legal person deriving its status as such from the laws in force in one of the States.

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

3. Except where the provisions of Article 9, paragraph 6 of Article 11, or paragraph 8 of Article 12, of this Convention, apply, interest, royalties and other disbursements paid by an enterprise of one of the States to a resident of the other State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of one of the States to a resident of the other State shall for the purpose of determining the taxable capital of such enterprise be deductible as if they had been contracted to a resident of the first-mentioned State.

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

Article 25. Mutual agreement procedure

1. Where a resident of one of the States considers that the actions of one or both of the States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the State of which he is a resident or, if his case comes under paragraph 1 of Article 24 of this Convention, to that of the State of which he is a national or a legal person. This case must be presented within five years from the first notification of the action giving rise to taxation not in accordance with the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other State, with a view to the avoidance of taxation not in accordance with this Convention.

The following second sentence of paragraph 2 of Article 16 of the MLI applies to this Convention:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the States.

3. The competent authorities of the States shall endeavour to resolve by mutual agreement any difficulties or

doubts arising as to the interpretation or application of this Convention. They may also consult together for the elimination of double taxation in cases not provided for in this Convention.

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

Article 26. Exchange of information

1. The competent authorities of the State shall exchange such information (being information which such authorities have in proper order at their disposal) as is necessary for the carrying out of this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of this Convention.

2. In no case shall the provisions of paragraph 1 of this Article be construed so as to impose on the competent authority of one of the States the obligation:

a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other State;
b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other State;
c) to supply information which would disclose:
   (1) in the case of the Netherlands, any business, trade, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public);
   (2) in the case of Yugoslavia, any business or official secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

Article 27. Diplomatic and consular officials

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

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

The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Convention:

ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE
(*Principal purposes test provision*)

Notwithstanding any provisions of the Convention, a benefit under the Convention shall not be granted in respect of an item of income and on 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 the Convention.

Article 28. Entry into force

This Convention shall enter into force on the thirtieth day after the latter of the dates on which the respective States have notified each other in writing that the procedures for its entering into force constitutionally required in their respective States have been complied with and its provisions shall have effect:

a) In Yugoslavia:
   in respect of taxes for any fiscal year beginning on or after the first day of January in the calendar year following that in which the latter of the notifications has been received;
b) In the Netherlands:
   in respect of taxes for taxable years and periods beginning on or after the first day of January in the calendar year following that in which the latter of the notification has been received.

Article 29. Termination

This Convention shall remain in force undefinitely but either of the States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other State, through diplomatic channels, written notice of termination and, in such event, this Convention shall cease to have effect:

a) In Yugoslavia:
   in respect of taxes for any fiscal year beginning on or after the first day of January in the calendar year following that in which the notice of termination is given;
b) In the Netherlands:
   in respect of taxes for taxable years and periods beginning on or after the first day of January in the calendar year following that in which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Convention.

DONE at Beograd, this twenty second day of February 1982, in two originals, each in the Netherlands, Serbo-Croatian and English languages, the three texts being equally authentic. In case there is any divergence of interpretation between the Netherlands and Serbo-Croatian texts, the English text shall prevail.

For the Kingdom

of the Netherlands,

(sd.) M.P.S. VAN BERCKEL

(sd.) A. P. J. M. M. VAN DER STEE

For the Socialist

Federal Republic

of Yugoslavia,

(sd.) PETAR KOSTIĆ

Protocol

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

I. Ad Article 4

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

II. Ad Article 4

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

III. Ad Article 6

It is understood that, in the case of the Netherlands, the term "immovable property" shall also include the rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources.

IV. Ad Article 8

It is understood that the provisions of Article 8 of the Convention also apply to taxes which are levied on the basis of the gross receipts in respect of the carriage of passengers and cargo in international traffic.

V. Ad Articles 10 and 12

Where tax has been levied at source in excess of the amount of tax chargeable under the provisions of Articles 10 or 12, applications for the restitution of the excess amount of tax have to be lodged with the competent authority of the State having levied the tax, within a period of five years after the expiration of the calendar year in which the tax has been levied.

VI. Ad Article 11

The provisions of Article 11 are based on the fact, that under the taxation legislation of the Netherlands and of Yugoslavia as in force on the date of signature of the Convention, none of the States levies a withholding tax on interest arising in that State and paid to a resident of the other State. Both States undertake to enter into negotiations on a reviewal of the said provisions as soon as one of the States has expressed in writing, through diplomatic channels, to the other State its wish thereto in light of the fact that a withholding tax on interest has been introduced.

VII. Ad Article 15

It is understood that the provisions of paragraph 4 of Article 15 of the Convention shall apply to salaries, wages and other similar remuneration derived by an individual in respect of his activities in the Joint Economic Representation of Yugoslavia or the Tourist Federation of Yugoslavia.

VIII. Ad Article 16

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

IX. Ad Article 18

It is understood that the provisions of paragraph 2 of Article 18 of the Convention shall apply to pensions and other similar remuneration derived by an individual in respect of his activities in the Joint Economic Representation of Yugoslavia or the Tourist Federation of Yugoslavia.

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

DONE at Beograd, this twenty second day of February 1982 in two originals, each in the Netherlands, Serbo-Croatian and English languages, the three texts being equally authentic. In case there is any divergence of interpretation between the Netherlands and Serbo-Croatian texts, the English text shall prevail.

For the Kingdom

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(sd.) PETAR KOSTIĆ