

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2019 Nr. 95

A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden en Ierland tot het vermijden van dubbele belasting met betrekking tot belastingen naar het inkomen en vermogenswinsten en het voorkomen van het ontduiken en ontwijken van belasting
(met Protocol);
Dublin, 13 juni 2019*

Voor een overzicht van de verdragsgegevens, zie verdragsnummer 012626 in de Verdragenbank.

B. TEKST

Convention between the Kingdom of the Netherlands and Ireland for the elimination of double taxation with respect to taxes on income and capital gains and the prevention of tax evasion and avoidance

The Government of the Kingdom of the Netherlands

and

the Government of Ireland,

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

Intending to conclude a new Convention for the elimination of double taxation with respect to taxes on income and capital gains 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 Convention 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 the 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 the purposes of taxation by that Contracting State, as the income of a resident of that Contracting State. In no case shall the provisions of this paragraph be construed to affect a Contracting State's right to tax the residents of that Contracting State.

Article 2

Taxes covered

1. This Convention shall apply to taxes on income and capital gains 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 and capital gains 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 case of the Netherlands:
 - (i) the income tax (de inkomstenbelasting);
 - (ii) the wages tax (de loonbelasting);
 - (iii) the corporation 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); and
 - (iv) the dividend tax (de dividendbelasting);
(hereinafter referred to as "Netherlands tax");
 - b) in the case of Ireland:
 - (i) the income tax;
 - (ii) the universal social charge;
 - (iii) the corporation tax; and
 - (iv) the capital gains tax;
(hereinafter referred to as "Irish 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 terms "a Contracting State" and "the other Contracting State" mean the Kingdom of the Netherlands with respect to the Netherlands, or Ireland, as the context requires and the term "Contracting States" means the Kingdom of the Netherlands with respect to the Netherlands, and Ireland;
 - 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 term "Ireland" includes any area outside the territorial waters of Ireland which has been or may hereafter be designated, under the laws of Ireland concerning the Exclusive Economic Zone and the Continental Shelf, as an area within which Ireland may exercise such sovereign rights and jurisdiction as are in conformity with international law;
 - d) the term "person" includes an individual, a company and any other body of persons;
 - e) the term "company" means any body corporate or any entity 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 operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - i) the term "competent authority" means:
 - (i) in the case of the Netherlands, the Minister of Finance or his authorised representative;
 - (ii) in the case of Ireland, the Revenue Commissioners or their authorised representative;
 - j) the term "national" means:
 - (i) in the case of the Netherlands, any individual possessing the nationality of the Kingdom of the Netherlands and any legal person, partnership or association deriving its status as such from the laws in force in the Netherlands;

- (ii) in the case of Ireland, any individual possessing citizenship of Ireland and any legal person, partnership or association deriving its status as such from the laws in force in Ireland;
- k) the term “business” includes the performance of professional services and of other activities of an independent character;
- l) the term “pension fund” means any company, plan, scheme, fund, trust or arrangement established in a Contracting State which is:
 - (i) generally exempt from taxes on income in that State; and
 - (ii) operated exclusively (in the case of a pension fund resident in Ireland), or exclusively or almost exclusively (in the case of a pension fund resident in the Netherlands), to administer or provide pensions or retirement benefits.

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 his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. 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; and
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

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

4. Notwithstanding the provisions of paragraphs 1 and 2, an enterprise of a Contracting State which carries on activities in connection with the exploration or exploitation of the sea bed and subsoil and their natural

resources situated in the territorial sea, and any area beyond and adjacent to the territorial sea within which the other Contracting State, in accordance with international law, may exercise 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 30 days in any twelve month period.

5. For the purposes of paragraph 4, offshore activities shall be deemed not to include:

- a) one or any combination of the activities to which paragraph 7 applies;
- 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.

6. For the sole purpose of determining:

- a) whether the twelve month period referred to in paragraph 3 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 30 days without exceeding twelve months, and
 - ii) connected activities are carried on 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;
- b) the duration of the 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 by one or more enterprises closely related to the first-mentioned enterprise and those activities of the first-mentioned enterprise and the closely related enterprise(s) are in the aggregate carried on by those enterprises for a period of at least 30 days, each enterprise shall be deemed to carry on its activities for a period of at least 30 days in any twelve month period.

7. Notwithstanding the provisions of paragraphs 1, 2 and 3, the term "permanent establishment" shall be deemed not to include:

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

8. Paragraph 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.

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.

11. For the purposes of this Article, 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.

12. 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.

CHAPTER III

TAXATION OF INCOME AND CAPITAL GAINS

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. 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 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.

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.

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

Article 8

Shipping and air transport

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State.
2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated enterprises

1. Where
 - a) an enterprise of 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.

Article 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.
3. Notwithstanding the provisions of paragraph 2, the Contracting State of which the company is a resident shall exempt from tax dividends paid by that company, if the beneficial owner of the dividends is:
 - a) a company (other than a partnership) which is a resident of the other Contracting State and holds directly at least 10 per cent of the capital of the company paying the dividends 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 dividend);
or
 - b) a pension fund.
4. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of paragraphs 2 and 3.
5. 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.
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.

7. The provisions of paragraphs 1, 2, 3 and 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.

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 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 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.

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 6 of Article 13, may also be taxed in that State in accordance with the laws of that State, but only for a period of ten years after emigration of the individual and insofar as the assessment on the appreciation of capital is still outstanding.

Article 11

Interest

1. Interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

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

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of 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.

4. 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 beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

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

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of 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.

4. 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 benefi-

ial 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

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 derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.
4. Gains derived by a resident of a Contracting State from the alienation of shares in a company, other than shares which are traded on a stock exchange, or other comparable interests, deriving at any time during the 365 days preceding the alienation more than 75 per cent of their value directly or indirectly from immovable property situated in the other Contracting State, other than immovable property in which that company or the holders of those interests carry on their business, may be taxed in that other Contracting State. However, such gains shall be taxable only in the first-mentioned State where:
 - a) the resident owned less than 50 per cent of the shares or other comparable interests prior to the first alienation;
 - b) the gains are derived in the course of a corporate reorganization, amalgamation, division or similar transaction; or
 - c) the resident is a pension fund, provided that the gains are not derived from the carrying on of a business, directly or indirectly by that pension fund.
5. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting State of which the alienator is a resident.
6. Where an individual was a resident of a Contracting State and has become a resident of the other Contracting State, paragraph 5 shall not prevent the first-mentioned State from taxing under its domestic law an amount that is effectively determined by reference to 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 residence of that individual in the first-mentioned State. In such case, the appreciation of capital by reference to which the amount was taxed in the first-mentioned State shall not be included in the determination of the subsequent appreciation of capital by the other State.

Article 14

Income from employment

1. Subject to the provisions of Articles 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 183 days in any twelve 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 exercised aboard a ship or aircraft operated in international traffic, shall be taxable only in that State.

Article 15

Directors' fees

Directors' fees and other remuneration 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.

Article 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 that resident's personal activities as such exercised in the other Contracting State, may be taxed in that other State.

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 Article 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived by a resident of a Contracting State from activities exercised in the other Contracting State, if the visit to that other State is wholly or mainly supported by public funds of one or both of the Contracting States or political subdivisions or local authorities thereof, or takes place under a cultural agreement or arrangement between the Governments of the Contracting States. In such case, the income shall be taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

Article 17

Pensions, annuities and social security payments

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration, as well as annuities, derived by a resident of a Contracting State shall be taxable only in that State. Any pension and other payment under the provisions of a social security system of a Contracting State (social security pension) to a resident of the other Contracting State shall be taxable only in that other State.

2. Notwithstanding the provisions of paragraph 1, pensions or other similar remuneration, as well as annuities or social security pensions, including pensions and other similar remuneration referred to in paragraph 2, subparagraph b), of Article 18, arising in a Contracting State may also be taxed in that State, in accordance with the laws of that State, if the aggregate gross amount of the pensions and other similar remuneration, annuities and social security pensions, including pensions and other similar remuneration referred to in paragraph 2 of Article 18, exceeds in the fiscal year concerned the sum of 25,000 Euro.

3. Notwithstanding the provisions of paragraphs 1 and 2, if the pension, other similar remuneration, annuity or social security pension is not periodic in nature, this income may also be taxed in the Contracting State in which it arises.

4. A pension or other similar remuneration or annuity shall be deemed to arise in a Contracting State insofar as the contributions or payments associated with that pension or other similar remuneration or annuity, or the entitlements received from them, qualified for relief from tax in that State. The transfer of a pension, other similar remuneration or annuity from a pension fund or an insurance company in a Contracting State to a pension fund or insurance company in another State shall not restrict in any way the taxing rights of the first-mentioned State under this Article.

5. For the purposes of this Article the term "annuity" means:

- a) in the case of annuities arising in the Netherlands, an annuity as mentioned in the Netherlands Income Tax Act 2001 ("Wet inkomstenbelasting 2001"), or any subsequent identical or substantially similar laws or regulations replacing this Act, the benefits of which are part of taxable income from employment and dwellings ("belastbaar inkomen uit werk en woning");
- b) in the case of annuities arising in Ireland, 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 where such consideration qualified for relief from tax in Ireland.

6. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraph 2. They shall also decide on the information to be submitted by the resident of a Contracting State for the purpose of the proper application of the Convention in the other Contracting State, in particular so that it can be established whether the condition referred to in paragraph 2 has been met.

Article 18

Government service

1. a) Salaries, wages and other similar remuneration 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 in the discharge of functions of a governmental nature shall be taxable only in that State.
b) 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 State solely for the purpose of rendering the services.
2. a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created 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 in the discharge of functions of a governmental nature shall be taxable only in that State.
b) However, subject to paragraph 2 of Article 17, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. The provisions of Articles 14, 15, and 16 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 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 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.

CHAPTER IV

ELIMINATION OF DOUBLE TAXATION

Article 21

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 which, according to the provisions of this Convention, may be taxed or shall be taxable only in Ireland.
2. However, 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, paragraph 7 of Article 10, paragraph 3 of Article 11, paragraph 3 of Article 12, paragraphs 1, 2 and 4 of Article 13, paragraph 1 of Article 14, paragraph 2 of Article 17, paragraphs 1, subparagraph a), and 2, subparagraph a), of Article 18, and paragraph 2 of Article 20 of the Convention and Article III of the Protocol to the Convention may be taxed or shall be taxable only in Ireland 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. Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for the items of income which according to paragraphs 2 and 9 of Article 10, paragraph 6 of Article 13, the provisions of Article 15, paragraphs 1 and 2 of Article 16 and paragraph 3 of Article 17 of the Convention may be taxed in Ireland 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 Ireland on these items of income, but shall, in case the provisions of the Netherlands law for the elimination of double taxation so provide 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 deduction under the provisions of the Netherlands law for the avoidance of double taxation. This paragraph 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 deduction from 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 Ireland on the said items of income to subsequent years.

4. Notwithstanding the provisions of paragraph 2, the Netherlands shall allow a deduction from the Netherlands tax for the tax paid in Ireland on items of income which according to paragraph 1 of Article 7, paragraph 7 of Article 10, paragraph 3 of Article 11, paragraph 3 of Article 12, paragraph 4 of Article 13 and paragraph 2 of Article 20 of the Convention may be taxed in Ireland to the extent that these items 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 deduction from the Netherlands tax of the tax levied in another jurisdiction on such items of income. For the computation of this deduction the provisions of paragraph 3 of this Article shall apply accordingly.

5. The provisions of paragraph 2 shall not apply to items of income derived by a resident of a Contracting State where the other Contracting State applies the provisions of this Convention to exempt such income from tax.

6. In Ireland, subject to the provisions of the laws of Ireland regarding the allowance as a credit against Irish tax of tax payable in a territory outside Ireland (which shall not affect the general principle hereof), double taxation shall be eliminated as follows:

- a) Netherlands tax payable under the laws of the Netherlands and in accordance with the Convention, whether directly or by deduction, on profits, income or gains from sources within the Netherlands (excluding, in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Irish tax computed by reference to the same profits, income or gains by reference to which Netherlands tax is computed;
- b) in the case of a dividend paid by a company which is a resident of the Netherlands to a company which is a resident of Ireland and which controls directly or indirectly 5 per cent or more of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Netherlands tax creditable under the provisions of subparagraph (a)) Netherlands tax payable by the company in respect of the profits out of which such dividend is paid.

7. For the purposes of paragraph 6 profits, income and capital gains owned by a resident of Ireland which may be taxed or shall be taxable only in the Netherlands in accordance with the Convention shall be deemed to be derived from sources in the Netherlands.

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

CHAPTER V

SPECIAL PROVISIONS

Article 22

Entitlement to benefits

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 transac-

tion 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.

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.

3. The competent authority of a Contracting State shall consult with the competent authority of the other Contracting State before denying a benefit under paragraph 1 or rejecting a request made under paragraph 2.

4. Where, under any provision of the Convention, income is or gains are wholly or partly relieved from tax in a Contracting State and, under the laws in force in the other Contracting State, an individual, in respect of the said income or gains, is subject to tax by reference to the amount thereof which is remitted to or received in that other State, and not by reference to the full amount thereof, then the relief to be allowed under the Convention in the first-mentioned State shall apply only to so much of the income or gains as is remitted to or received in that other State.

Article 23

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.

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.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 4 of Article 11, or paragraph 4 of Article 12, apply, interest, royalties 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.

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 fund 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 fund that is recognised for tax purposes in that first-mentioned State, provided that:

- a) such individual was contributing to such pension fund before he became a resident of the first-mentioned State; and
- b) the competent authority of the first-mentioned State agrees that the pension fund generally corresponds to a pension fund recognised for tax purposes by that State.

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

Article 24

Mutual agreement procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Convention, that person may, irrespective of the remedies provided by the domestic law of those States, present the case to the competent authority of either Contracting State. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the 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 Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 25

Arbitration

1. Where,
 - a) under paragraph 1 of Article 24, a person has presented a case to a 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 Convention, and
 - b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 of Article 24 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 issues arising from the case shall be submitted to arbitration if the person so requests in writing. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision or the competent authorities agree on a different resolution of all unresolved issues arising from the case within 90 days after the decision has been communicated to them, the arbitration 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 may by mutual agreement settle the mode of application of this Article.
2. Where a competent authority has suspended the mutual agreement procedure referred to in paragraph 1 because a case with respect to one or more of the same issues is pending before a court or administrative tribunal, the period provided in subparagraph b) of paragraph 1 will stop running until either a final decision has been rendered by the court or administrative tribunal or the case has been suspended or withdrawn. Also, where a person who presented a case and a competent authority have agreed to suspend the mutual agreement procedure, the period provided in subparagraph b) of paragraph 1 will stop running until the suspension has been lifted.
3. Where both competent authorities agree that a person directly affected by the case has failed to provide in a timely manner any additional material information requested by either competent authority after the start of the two year period referred to in subparagraph b) of paragraph 1, the period provided in that subparagraph shall be extended for an amount of time equal to the period beginning on the date by which the information was requested and ending on the date on which that information was provided.
4. If, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the Contracting States, a decision concerning the issue is rendered by a court or administrative tribunal of either State, the arbitration process shall terminate.
5. Prior to the beginning of arbitration proceedings, the competent authorities of the Contracting States shall ensure that each person that presented the case and their advisors agree in writing not to disclose to any other person any information received during the course of the arbitration proceedings from either competent authority or the arbitration panel. The mutual agreement procedure under paragraph 1 of Article 24 and the arbitration proceedings related to the case shall terminate if, at any time after a request for arbitration has

been made and before the arbitration panel has delivered its decision to the competent authorities, a person that presented the case or one of that person's advisors materially breaches that agreement.

6. For the purposes of paragraph 1:

- a) the mutual agreement that implements the arbitration decision on the case shall be considered not to be accepted by a person directly affected by the case if any person directly affected by the case does not, within 60 days after the date on which notification of the mutual agreement is sent to the person, withdraw all issues resolved in the mutual agreement implementing the arbitration decision from consideration by any court or administrative tribunal or otherwise terminate any pending court or administrative proceedings with respect to such issues in a manner consistent with that mutual agreement; and
- b) the decision shall not be binding on the Contracting States if:
 - (i) a final decision of the courts of one of the Contracting States holds that the arbitration decision is invalid. In such a case, the request for arbitration under paragraph 1 shall be considered not to have been made, and the arbitration process shall be considered not to have taken place (except for the purposes of paragraphs 12, 13 and 16). In such a case, a new request for arbitration may be made, unless the competent authorities agree that such a new request should not be permitted, within 90 days after the decision of the court; or
 - (ii) a person directly affected by the case pursues litigation in any court or administrative tribunal concerning the issues that were resolved in the mutual agreement implementing the arbitration decision.

7. A request that unresolved issues arising from a mutual agreement case be submitted to arbitration pursuant to paragraph 1 (the "request for arbitration") shall be made in writing and sent to one or both of the competent authorities. The request shall contain sufficient information to identify the case. The request shall also be accompanied by a written statement by each of the persons who either made the request or is directly affected by the case that no decision on the same issues has already been rendered by a court or administrative tribunal. Within 10 days after the receipt of the request, a competent authority who received it without any indication that it was also sent to the other competent authority shall send a copy of that request and the accompanying statements to the other competent authority.

8. A request for arbitration may only be made after 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 (hereinafter referred to as the "start date"). For this purpose, the information required by the competent authorities in order to address the case shall include:

- a) identity of the taxpayer(s) covered in the request for the mutual agreement procedure;
- b) the basis for the request;
- c) facts of the case;
- d) analysis of the issue(s) requested to be resolved by mutual agreement;
- e) whether the request was also submitted to the competent authority of the other Contracting State;
- f) whether the request was also submitted to another authority in accordance with a bilateral or multilateral convention that provides for a mechanism to resolve the issue(s) that fall within the scope of the case;
- g) a statement confirming that all information and documentation provided in the request is accurate and that the taxpayer will assist the competent authority in its resolution of the issue(s) presented in the request by furnishing any other information or documentation required by the competent authority in a timely manner; and
- h) whether the issue(s) involved was (were) dealt with previously.

9. The following rules shall apply in order to determine the start date:

- a) The competent authority that received the initial request for a mutual agreement procedure under paragraph 1 of Article 24 shall, within 60 days after receiving the request:
 - (i) send a notification to the person who presented the case that it has received the request; and
 - (ii) send a notification of that request, along with a copy of the request, to the competent authority of the other Contracting State.
- b) Within 90 days after receiving the request for a mutual agreement procedure (or a copy thereof from the competent authority of the other Contracting State), each competent authority shall either:
 - (i) notify the person who has presented the case and the other competent authority that it has received the information necessary to undertake substantive consideration of the case; or
 - (ii) request additional information from that person for that purpose.
- c) Where pursuant to subdivision (ii) of subparagraph b) above, one or both of the competent authorities have requested from the person who presented the case additional information necessary to undertake substantive consideration of the case, the competent authority that requested the additional information shall, within 90 days after receiving the additional information from that person, notify that person and the other competent authority either:
 - (i) that it has received the requested information; or
 - (ii) that some of the requested information is still missing.
- d) Where neither competent authority has requested additional information pursuant to subdivision (ii) of subparagraph b) above, the start date shall be the earlier of:

- (i) the date on which both competent authorities have notified the person who presented the case pursuant to subdivision (i) of subparagraph b) above; and
 - (ii) the date that is 90 days after the notification to the competent authority of the other Contracting State pursuant to subdivision (ii) of subparagraph a) above.
- e) Where additional information has been requested pursuant to subdivision (ii) of subparagraph b) above, the start date shall be the earlier of:
- (i) the latest date on which the competent authorities that requested additional information have notified the person who presented the case and the other competent authority pursuant to subdivision (i) of subparagraph c) above; and
 - (ii) the date that is 90 days after both competent authorities have received all information requested by either competent authority from the person who presented the case.

If, however, one or both of the competent authorities send the notification referred to in subdivision (ii) of subparagraph c) above, such notification shall be treated as a request for additional information under subdivision (ii) of subparagraph b) above.

10. The following rules shall govern the selection and appointment of arbitrators:

- a) The arbitration panel shall consist of three individual arbitrators with expertise or experience in international tax matters. Each arbitrator appointed to the arbitration panel must be impartial and independent of the competent authorities, tax administrations, and ministries of finance of the Contracting States and of all persons directly affected by the case (as well as their advisors) at the time of accepting an appointment, maintain his or her impartiality and independence throughout the proceedings, and avoid any conduct for a reasonable period of time thereafter which may damage the appearance of impartiality and independence of the arbitrators with respect to the proceedings.
- b) Within 60 days after the request for arbitration (or a copy thereof) has been received by both competent authorities, the competent authorities shall each appoint one arbitrator. Within 60 days of the later of the appointments, the arbitrators so appointed will appoint a third arbitrator who will function as Chair. The Chair shall not be a national or resident of either Contracting State.
- c) If any appointment is not made within the required time period, the arbitrator(s) not yet appointed shall be appointed by the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development who is not a national of either Contracting State within 10 days after receiving a request to that effect from the person who made the request for arbitration. The same procedure shall apply with the necessary adaptations if for any reason it is necessary to replace an arbitrator after the arbitration process has begun.
- d) An arbitrator will be considered to have been appointed when a letter confirming that appointment and signed by both the arbitrator and the person or persons who have the power to appoint that arbitrator has been communicated to both competent authorities.

11. Except to the extent that the competent authorities of the Contracting States mutually agree on different rules, the following rules shall apply with respect to an arbitration proceeding pursuant to this Article:

- a) Within 60 days after the appointment of the Chair of the arbitration panel (unless, before the end of that period, the competent authorities agree on a different period), the competent authority of each Contracting State shall submit to each arbitrator and to the other competent authority a proposed resolution which addresses all unresolved issue(s) in the case (taking into account all agreements previously reached in that case between the competent authorities). The proposed resolution shall be limited to a disposition of specific monetary amounts (for example, of income) or, where specified, the maximum amount of tax that may be charged pursuant to the provisions of the Convention, for each adjustment or similar issue in the case. In a case in which the competent authorities of the Contracting States have been unable to reach agreement on an issue regarding the conditions for application of a provision of the Convention (hereinafter referred to as a "threshold question"), such as whether an individual is a resident or whether a permanent establishment exists, the competent authorities may submit alternative proposed resolutions with respect to issues the determination of which is contingent on resolution of such threshold questions.
- b) The competent authority of each Contracting State may also submit to the arbitrators and to the other competent authority, within the period of time provided for in subparagraph a), a supporting position paper for consideration by the arbitrators.
- c) Each competent authority may also submit to the arbitrators and to the other competent authority, within 120 days after the appointment of the Chair of the arbitration panel, a reply submission with respect to the proposed resolution and supporting position paper submitted by the other competent authority.
- d) As far as possible, the arbitrators will use tele- and videoconferencing to communicate between themselves and with both competent authorities. If a face-to-face meeting involving additional costs is necessary, the Chair will contact the competent authorities who will decide when and where the meeting should be held and will communicate that information to the arbitrators.
- e) The arbitration panel shall select as its decision one of the proposed resolutions for the case submitted by the competent authorities with respect to each issue and any threshold questions, and shall not include a rationale or any other explanation of the decision. The arbitration decision will be adopted by a simple majority of the arbitrators. Unless the competent authorities agree otherwise, the arbitration decision shall be delivered to the competent authorities of the Contracting States in writing within 60 days after the

reception by the arbitrators of the last reply submission or, if no reply submission has been submitted, within 150 days after the appointment of the Chair of the arbitration panel. The arbitration decision shall have no precedential value.

12. For the sole purposes of the application of the provisions of Articles 26 and 27 of the Convention, the provisions of this Article and the domestic laws of the Contracting States, concerning the communication and confidentiality of the information, as well as administrative assistance, related to the case that results in the arbitration process, each arbitrator and a maximum of three staff per arbitrator (and prospective arbitrators solely to the extent necessary to verify their ability to fulfil the requirements of arbitrators) shall be designated as authorised representatives of the competent authority that has appointed that arbitrator or, if that arbitrator has not been appointed by a competent authority, of both competent authorities.

13. In designating a person as its authorised representative pursuant to paragraph 12, the competent authority of a Contracting State shall ensure that the person agrees in writing to treat any information relating to the arbitration proceeding consistently with the confidentiality requirements of the Convention and of the applicable laws of that Contracting State.

14. In the event that the decision has not been communicated to the competent authorities within the period provided for in subparagraph e) of paragraph 11, or within any other period agreed to by the competent authorities, the competent authorities may agree to appoint new arbitrators in accordance with paragraph 10. The date of such agreement shall, for the purposes of the subsequent application of paragraph 10, be deemed to be the date when the request for arbitration has been received by both competent authorities.

15. Where, at any time after a request for arbitration has been made and before the arbitrators have delivered a decision to the competent authorities, the competent authorities notify in writing the arbitrators:

- a) that they have solved all the unresolved issues that were subject to arbitration; or
 - b) that the person who presented the case has withdrawn the request for arbitration or the request for a mutual agreement procedure;
- no arbitration decision shall be provided and the mutual agreement procedure shall be considered to have been completed.

16. Unless agreed otherwise by the competent authorities:

- a) each competent authority and the person who requested the arbitration will bear the costs related to his own participation in the arbitration proceedings (including travel costs and costs related to the preparation and presentation of his views);
- b) each competent authority will bear the remuneration of the arbitrator appointed exclusively by that competent authority, or appointed by the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development that is not a national of either Contracting State because of the failure of that competent authority to appoint that arbitrator, together with that arbitrator's travel, telecommunication and secretariat costs;
- c) the remuneration of the Chair of the arbitration panel and that Chair's travel, telecommunication and secretariat costs will be borne in equal shares by the two competent authorities;
- d) other costs related to any meetings of the arbitration panel will be borne by the competent authority that hosts that meeting;
- e) costs related to expenses that both competent authorities have agreed to incur, will be borne in equal shares by the two competent authorities.

17. Notwithstanding paragraph 1, a case may not be submitted to arbitration if:

- a) the case is connected with actions for which the taxpayer or a related person (or a person acting for either the taxpayer or a related person) has been found guilty by a court or has incurred substantial penalties for tax fraud, evasion, or avoidance;
- b) the case involves the application of Ireland's domestic anti-avoidance rules contained in sections 811 and 811A of the Taxes Consolidation Act 1997. Any subsequent provisions replacing, amending or updating these anti-avoidance rules would also be comprehended. Ireland shall notify the Netherlands through diplomatic channels of any such subsequent provisions;
- c) the issue falls within the scope of a case with respect to which an arbitration panel or similar body has previously been set up in accordance with a bilateral or multilateral convention that provides for mandatory binding arbitration of unresolved issues arising from a mutual agreement procedure case.

18. The competent authorities shall implement the arbitration decision within 180 days of the communication of the decision to them by reaching a mutual agreement on the case that led to the arbitration.

Article 26

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 Convention 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 Convention. The exchange of information is not restricted by Articles 1 and 2.

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 release to an arbitration panel, established under the provisions of paragraph 10 of Article 25, such information as is necessary for carrying out the arbitration procedure. The members of the arbitration panel shall be subject to the limitations on disclosure described in paragraph 2 of this Article with respect to any information so released.

4. In no case shall the provisions of 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).

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 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.

6. In no case shall the provisions of paragraph 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

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 Convention 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. The provisions of this Article shall apply only to a revenue claim that forms the subject of an instrument permitting enforcement in the applicant 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 applicant 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 other 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. 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

Members of diplomatic missions and consular posts

1. Nothing in this Convention 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.
2. For the purposes of the Convention, an individual who is a member of a diplomatic mission or consular post of a Contracting State in the other Contracting 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 subjected therein to the same obligations in respect of taxes on income as are residents of that State.
3. The Convention shall not apply to international organisations, organs and officials thereof and members of a diplomatic mission or consular post of a third State, being present in a Contracting State, if they are not subjected therein to the same obligations in respect of taxes on income as are residents of that State.

Article 29

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 which is not situated in Europe and 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 in notes to be exchanged through diplomatic channels.
2. Unless otherwise agreed, the termination of this Convention shall not also terminate the Convention for any part of the Kingdom of the Netherlands to which it has been extended under this Article.

CHAPTER VI
FINAL PROVISIONS

Article 30

Entry into force

1. This Convention shall enter into force on the last day of the month following the month in which the later of the notifications in which the respective Governments have notified each other in writing that the formalities constitutionally required in their respective States have been complied with, has been received. Its provisions shall have effect:

a) in the Netherlands:

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 enters into force;

b) in Ireland:

(i) as respects income tax, the universal social charge and capital gains tax, for any year of assessment beginning on or after the first day of January in the calendar year following that in which the Convention enters into force;

(ii) as respects corporation tax, for any financial year beginning on or after the first day of January in the calendar year following that in which the Convention enters into force.

2. The Convention between the Government of Ireland and the Government of the Kingdom of the Netherlands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital signed at The Hague on 11 February, 1969 (hereinafter referred to as "the 1969 Convention"), shall cease to have effect from the dates on which this Convention becomes effective in accordance with paragraph 1 of this Article.

3. Notwithstanding the provisions of paragraph 2, where any person entitled to benefits under the 1969 Convention would have been entitled to greater benefits than under this Convention, the 1969 Convention shall, at the election of such person, continue to have effect in its entirety with respect to such person for a period of 12 months from the date on which the provisions of this Convention would otherwise have effect in accordance with the provisions of paragraph 1 of this Article.

4. Notwithstanding the provisions of paragraphs 2 and 3, where prior to the date on which this Convention comes into effect, a resident of one of the Contracting States derives pensions or other similar remuneration, including pensions and similar remuneration referred to in paragraph 1 of Article 18 of the 1969 Convention, or annuities arising in the other State, or pensions or other payments under the social security legislation of the other State, and who continues after that date to derive such pensions, remuneration, annuities or social security payments, the provisions of Articles 17, 18, 19 and 20 of the 1969 Convention shall remain applicable after the date of the entry into force of this Convention, unless the person receiving the pension, remuneration, annuity or social security payment elects for application of the provisions of this Convention. Such election has to be made to the tax authorities of both States within two years from the date this Convention comes into effect and is irrevocable.

Article 31

Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention at any time after five years from the date on which the Convention enters into force provided that at least six months prior written notice of termination has been received through diplomatic channels.

In such event the Convention shall cease to have effect:

a) in the Netherlands:

for taxable years and periods beginning, and taxable events occurring, on or after the first day of January following the date on which the period specified in the said notice of termination expires;

b) in Ireland:

(i) as respects income tax, the universal social charge and capital gains tax, for any year of assessment beginning on or after the first day of January following the date on which the period specified in the said notice of termination expires;

(ii) as respects corporation tax, for any financial year beginning on or after the first day of January fol-

lowing the date on which the period specified in the said notice of termination expires.

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

DONE in duplicate at Dublin this 13th day of June 2019, in the English language.

For the Government of the Kingdom of the Netherlands,

STEF BLOK

For the Government of Ireland,

PATRICK O'DONOVAN

Protocol to the Convention between the Kingdom of the Netherlands and Ireland for the elimination of double taxation with respect to taxes on income and capital gains and the prevention of tax evasion and avoidance

On signing the Convention between the Kingdom of the Netherlands and Ireland for the elimination of double taxation with respect to taxes on income and capital gains and the prevention of tax evasion and avoidance the signatories have agreed that the following provisions shall form an integral part of the Convention:

I ARF, AMRF and PRSA

Taking account of tax-relief given for contributions or premiums paid in respect of retirement benefit schemes, retirement annuity contracts or other pension products in accordance with Part 30 of the Taxes Consolidation Act 1997 of Ireland (referred to in this paragraph as "the Act"), and the exemption from tax of income and gains accruing to a fund (referred to in this paragraph as a "pension fund") created by such contributions or premiums,

- a) distributions for the purposes of section 784A of the Act from an Approved Retirement Fund (within the meaning of the section) or from an Approved Minimum Retirement Fund (within the meaning of section 784C of that Act) that was created by the transfer of accrued rights or assets from a pension fund, and
- b) in relation to a Personal Retirement Savings Account (PRSA) within the meaning of section 787A of the Act, the amount or value of any assets that a PRSA administrator (within the meaning of the section) makes available to, or pays to, a contributor (within the meaning of that section) or to any other person,

shall be taxable only in Ireland.

II Ad Article 1 and Article 4

Notwithstanding the provisions of Article 1, a person who is a tax exempt investment institution (Vrijgestelde Beleggingsinstelling) for the purposes of the corporation tax of the Netherlands shall not be entitled to the benefits of this Convention.

III Common Contractual Funds and closed Funds for Joint Account

It is understood that a Common Contractual Fund (CCF) established in Ireland and a closed fund for mutual account "besloten fonds voor gemene rekening" (closed FGR) established in the Netherlands shall respectively be regarded neither as a resident of Ireland nor of the Netherlands and shall be treated as fiscally transparent for the purposes of granting tax treaty benefits.

IV Ad Article 2

It is understood that in the case of Ireland the corporation tax includes profit resource rent tax and petroleum production tax.

V Ad paragraph 1 of Article 4

It is understood that in the case of an individual living aboard a ship "any other criterion of a similar nature" shall include the home harbour of that ship.

VI Ad Article 5

It is understood that offshore activities include activities in connection with wind farms.

VII Ad Articles 5, 6, 7 and 13

It is understood that

- a) rights to the exploration and exploitation of natural resources; and
- b) shares (or comparable instruments) deriving more than 50 per cent of their value directly or indirectly from such rights,

shall be regarded as immovable property situated in the Contracting State to whose territorial sea, and any area beyond and adjacent to the 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.

VIII Ad Articles 6, 10, 11, 12 and 13

1. Income and gains from collective investment through a common contractual fund (CCF), closed fund for mutual account "besloten fonds voor gemene rekening" (closed FGR) or umbrella fund consisting of several CCFs or closed FGRs, are allocated to the investors that invest through the CCF, closed FGR or umbrella fund in proportion to their participations in the fund.
2. A CCF or closed FGR which is established in a Contracting State and which receives income or gains arising from the other Contracting State may itself, represented by its fund manager or its depository, in lieu of and instead of the investors in the CCF or closed FGR, claim the benefits of an agreement for the avoidance of double taxation, to which the other State is a party and which is specifically applicable to any of the investors concerned, on behalf of those investors in the CCF or closed FGR.
Such claims may be subject to enquiry and, where requested, a fund manager or depository shall provide relevant information, which may include a schedule of investors and allocated income or gains relevant to a claim, as well as the particular agreements for the avoidance of double taxation under which an application for benefits is made by the CCF or FGR.
3. Notwithstanding the provision of paragraph 2, a CCF or closed FGR may not claim treaty benefits on behalf of an investor in the CCF or closed FGR if the investor has itself made a claim for benefits in respect of the same income or gains.

IX Ad Article 9

It is understood that the fact that associated enterprises have concluded arrangements, such as cost sharing arrangements or general services agreements, for or based on the allocation of executive, general administrative, technical and commercial expenses, research and development expenses and other similar expenses, is not in itself a condition as meant in paragraph 1 of Article 9.

X Ad Article 10

The provisions of paragraph 3 of Article 10 shall not apply to a person who is a fiscal investment institution (Fiscale Beleggingsinstelling) for the purposes of the corporation tax of the Netherlands.

XI Ad Articles 10, 11 and 12

Applications for relief at source or the refund of the excess amount of tax have to be lodged in conformity with the laws and regulations of the Contracting State levying or having levied the tax.

XII Ad Articles 10 and 13

It is understood that, in the case of the Netherlands, income received in connection with a liquidation of a company or a purchase by a company of its own shares or other rights, as referred to in paragraph 6 of Article 10, is treated as dividends.

XIII Ad Article 15

It is understood that, where a company is a resident of the Netherlands, the term "member of the board of directors" includes both a "bestuurder" and a "commissaris". The terms "bestuurder" and "commissaris" mean respectively persons who are charged with the general management of the company and persons who are charged with the supervision thereof.

XIV Ad Article 27

The provisions of Article 27 shall apply accordingly to assistance in the collection of the income-related regulations under the laws of the Netherlands by the tax authorities of the Netherlands concerned with the imple-

mentation, administration or enforcement of these income-related regulations after consultation and agreement between the competent authorities of the Kingdom of the Netherlands and Ireland by notes to be exchanged through diplomatic channels. This provision shall not have effect until the date specified in the exchange of diplomatic notes.

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

DONE in duplicate at Dublin this 13th day of June 2019, in the English language.

For the Government of the Kingdom of the Netherlands,

STEF BLOK

For the Government of Ireland,

PATRICK O'DONOVAN

D. PARLEMENT

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

G. INWERKINGTREDING

De bepalingen van het Verdrag, met Protocol, zullen ingevolge artikel 30, eerste lid, in werking treden op de laatste dag van de maand die volgt op de maand waarin de laatste van de kennisgevingen is ontvangen waarin de onderscheiden regeringen elkaar schriftelijk ervan in kennis hebben gesteld dat de in hun onderscheiden staten grondwettelijk vereiste formaliteiten zijn vervuld.

Uitgegeven de *eenentwintigste* juni 2019.

De Minister van Buitenlandse Zaken,

S.A. BLOK