

# Russia

Agreement between the government of the Kingdom of the Netherlands and the government of the Russian Federation for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on property

Done at Moscow, 16 December 1996

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## Article 1. Personal scope

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

## Article 2. Taxes covered

1. This Agreement shall apply to taxes on income and on property, imposed in a Contracting State, irrespective on behalf of which authorities in that State or of the manner in which they are levied.
2. There shall be regarded as taxes on income and on property all taxes imposed on total income, on total property, or on elements of income or of property, including taxes on gains from the alienation of movable or immovable property, as well as taxes on the total amounts of wages or salaries.
3. The existing taxes to which the Agreement shall apply are in particular:
  - a. in the Netherlands:
    - i. income tax (de inkomstenbelasting),
    - ii. wages tax (de loonbelasting),
    - iii. company tax (de vennootschapsbelasting) including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mining Act of 1810 (de Mijnwet 1810) with respect to concessions issued from 1967, or pursuant to the Netherlands Continental Shelf Mining Act of 1965 (de Mijnwet Continentaal Plat 1965),
    - iv. dividend tax (de dividendbelasting),
    - v. property tax (de vermogensbelasting) (hereinafter referred to as 'Netherlands tax');
  - b. in the Russian Federation, the taxes on income, profits and property imposed in accordance with the following laws of the Russian Federation:
    - i. 'On tax on profits of enterprises and organisations',
    - ii. 'On the income tax on individuals',
    - iii. 'On tax on property of enterprises', and
    - iv. 'On taxes on property of physical persons' (hereinafter referred to as 'Russian tax').
4. The Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

## Article 3. Some general definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
  - a. the terms 'a Contracting State' and 'the other Contracting State' mean the Kingdom of the Netherlands (the Netherlands) or the Russian Federation (Russia), as the context requires; the term 'Contracting States' means the Kingdom of the Netherlands (the Netherlands) and the Russian Federation (Russia);
  - b. 'the Netherlands' means the part of the Kingdom of the Netherlands that is situated in Europe as well as its exclusive economic zone as defined in its legislation subject to the 1982 UN Law of the Sea Convention;

- c. 'the Russian Federation' means its territory as well as its exclusive economic zone and continental shelf as defined in its legislation subject to the 1982 UN Law of the Sea Convention;
  - 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, association or organisation which is treated as a body corporate or legal entity for tax purposes;
  - f. the terms 'enterprise of a Contracting State' and 'enterprise of the other Contracting State' mean respectively entrepreneurial activities carried on by a resident of a Contracting State and entrepreneurial activities carried on by a resident of the other Contracting State;
  - g. 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;
  - h. the term 'nationals' means:
    - i. in relation to the Netherlands, any individual possessing the nationality of the Netherlands;
    - ii. in relation to the Russian Federation, any individual possessing its citizenship;
  - i. the term 'competent authority' means:
    - i. in the Netherlands the Minister of Finance or his duly authorised representative;
    - ii. in Russia the Ministry of Finance or its authorised representative.
2. As regards the application of the Agreement by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State relating to the taxes which are the subject of this Agreement.

#### **Article 4. Resident**

1. For the purposes of this Agreement, 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, place of registration or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or property situated therein.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
  - a. he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
  - b. if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
  - c. if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
  - d. if each State considers him to be its national or if he is a national 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, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

#### **Article 5. Permanent establishment**

1. For the purposes of this Agreement, the term 'permanent establishment' means a fixed place of business through which the activities of an enterprise of one State are wholly or partly carried on in the other Contracting State.
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 preceding provisions of this Article, the term 'permanent establishment' shall be deemed not to include:
- a. the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
  - b. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - c. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - d. the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, of collecting information or disseminating information or of marketing of a preparatory or auxiliary character, for the enterprise;
  - e. the facilitation of the conclusion (including of the mere signing) of contracts concerning loans, concerning the delivery of goods or merchandise or concerning technical services;
  - f. 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;
  - g. the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (f), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

#### **Article 6. Income from 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, boats 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 and to income from immovable property used for the performance of independent personal services.

#### **Article 7. Business profits**

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to

make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

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

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

5. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary, due regard being had to the provisions of Article 26.

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

#### **Article 8. Profits from international traffic**

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State of which the enterprise deriving such profits is a resident.

2. For the purposes of this Article, profits derived from the operation in international traffic of ships and aircraft include profits derived from the rental on a bareboat basis of ships and aircraft if operated in international traffic and from the rental of containers and related equipment if such rental profits are incidental to the profits described in paragraph 1.

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

#### **Article 9. Adjustments to profits**

1. Where

a. an enterprise of a Contracting State participates directly or indirectly in the management, control or property of an enterprise of the other Contracting State, or

b. the same persons participate directly or indirectly in the management, control or property 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 without 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. It is understood, however, that the fact that associated enterprises have concluded arrangements, such as costsharing arrangements or general services agreements, for or based on the allocation of executive, general administrative, technical and commercial expenses, research and development expenses and other similar expenses, is not in itself a condition as meant in the preceding sentence.

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 Agreement 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 recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

- a. 5 per cent of the gross amount of the dividends if the beneficial owner of the dividends is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends and has invested in it at least 75,000 ECU or its equivalent in the national currencies of the Contracting States;
  - b. 15 per cent of the gross amount of the dividends in all other cases.
3. The provisions of paragraph 2 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
4. The term 'dividends' as used in this Article means income from shares, or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.
5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
6. 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 or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

#### **Article 11. Interest**

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if such resident is the beneficial owner of the interest.
2. The term 'interest' as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and in particular income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this 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, or performs in that other State independent personal services from a fixed base situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
4. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority thereof or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
5. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

#### **Article 12. Royalties**

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if such resident is the beneficial owner of the royalties.
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 cinematograph

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, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

4. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority thereof or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

### **Article 13. Gains from the alienation of property**

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

3. Gains derived by a resident 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 the Contracting State of which the alienator is a resident.

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

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

### **Article 14. Income from independent personal services**

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

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

### **Article 15. Income from employment**

1. Subject to the provisions of Articles 16, 18, 19 and 20, 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 or a fixed base which the employer has in the other State.

3. Notwithstanding the provisions of paragraphs 1 and 2, 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 the employment is exercised in connection with a building site or construction or installation project and the activities connected with such site or project are deemed not to be carried on through a permanent establishment according to the provisions of paragraph 3 of Article 5.

4. 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 16. Directors' fees**

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

#### **Article 17. Income of artistes and sportsmen**

1. Notwithstanding the provisions of Articles 14 and 15, 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 sportsman, from his 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 sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

#### **Article 18. Pensions, annuities and social security payments**

1. Subject to the provisions of paragraph 4 of this Article, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment and any annuity shall be taxable only in that State.

2. However, where such remuneration is not of a periodical nature and it is paid in consideration of past employment in the other Contracting State, or where instead of the right to annuities a lump sum is paid, this remuneration or this lump sum may be taxed in the Contracting State where it arises.

3. Any pension and other payments paid out under the provisions of a social security system of a Contracting State to a resident of the other Contracting State may be taxed in the first-mentioned State.

4. a. Any pension paid by, or out of funds created by, a Contracting State or a local authority thereof to an individual in respect of services rendered to that State or authority may be taxed in that State.

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

#### **Article 19. Income from government service**

1. a. Remuneration, other than a pension, paid by a Contracting State or a local authority thereof to an individual in respect of services rendered to that State or authority may be taxed in that State.

- b. However, such 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. The provisions of Articles 15 and 16 and paragraph 1 of Article 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof.

#### **Article 20. Payments to students, apprentices, researchers, teachers and professors**

1. Payments received by a student, an apprentice, a researcher, a teacher or a professor 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, researching and teaching, and assigned for the purpose of their maintenance and education shall not be taxed in that first-mentioned State provided that such payments arise from sources in the other State.
2. With respect to students paragraph 1 shall apply for a maximum period of five years. With respect to apprentices, researchers, teachers and professors paragraph 1 shall apply for a maximum period of two years.

#### **Article 21. Other income**

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement 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, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

#### **Article 22. Property**

1. Immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
2. 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 or movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.
3. Ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft, owned by a resident of a Contracting State shall be taxable only in that State.
4. All other elements of property of a resident of a Contracting State shall be taxable only in that State.

#### **Article 23. Methods of elimination of double taxation**

1. The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed the items of income or property which, according to the provisions of this Agreement, may be taxed in Russia.
2. However, where a resident of the Netherlands derives items of income which according to Article 6, Article 7, paragraph 5 of Article 10, paragraph 3 of Article 11, paragraph 3 of Article 12, paragraphs 1 and 2 of Article 13, Article 14, paragraph 1 of Article 15, paragraph 3 and paragraph 4 (sub-paragraph (a) of Article 18, paragraph 1 (sub-paragraph (a) of Article 19 and paragraph 2 of Article 21 of this Agreement may be taxed in Russia and are included in the basis referred to in paragraph 1, the Netherlands shall exempt such items of income by allowing a reduction of its tax. This reduction shall be computed in conformity with the provisions of Netherlands law for the avoidance of double taxation. For that purpose the said items of income

shall be deemed to be included in the total amount of the items of income which are exempt from Netherlands tax under those provisions.

3. Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for the items of income or property which according to paragraph 2 of Article 10, paragraph 5 of Article 13, Article 16, Article 17, paragraph 2 of Article 18 and Article 22 of this Agreement may be taxed in Russia 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 Russia on these items of income or property, but shall not exceed the amount of the reduction which would be allowed if the items of income or property so included were the sole items of income or property which are exempt from Netherlands tax under the provisions of Netherlands law for the avoidance of double taxation.

4. In the case of Russia double taxation is eliminated as follows:

where a resident of Russia derives income or owns property which, in accordance with the provisions of this Agreement, may be taxed in the Netherlands, the amount of tax on that income or property payable in the Netherlands, may be credited against the tax imposed on this resident of Russia. The amount of credit, however, shall not exceed the amount of the tax on that income or property computed in accordance with the taxation laws and regulations of Russia.

For the purposes of this paragraph, the taxes referred to in paragraphs 3(a) and 4 of Article 2, other than the property tax, shall be considered taxes on income.

#### **Article 24. Offshore activities**

1. The provisions of this Article shall apply notwithstanding any other provisions of this Agreement. However, this Article shall not apply where offshore activities of a person constitute for that person a permanent establishment under the provisions of Article 5 or a fixed base under the provisions of Article 14.

2. In this Article the term 'offshore activities' means activities which are carried on offshore in connection with the exploration or exploitation of the sea bed and its sub-soil and their natural resources, situated in a Contracting State.

3. An enterprise of a Contracting State which carries on offshore activities in the other Contracting State shall, subject to paragraph 4 of this Article, be deemed to be carrying on, in respect of those activities, business in that other State through a permanent establishment situated therein, unless the offshore activities in question are carried on in the other State for a period or periods not exceeding in the aggregate 30 days in any period of twelve months.

For the purposes of this paragraph:

- a. where an enterprise carrying on offshore activities in the other Contracting State is associated with another enterprise and that other enterprise continues, as part of the same project, the same offshore activities that are or were being carried on by the first-mentioned enterprise, and the afore-mentioned activities carried on by both enterprises – when added together – exceed a period of 30 days, then each enterprise shall be deemed to be carrying on its activities for a period exceeding 30 days in a twelve months-period;
- b. an enterprise shall be regarded as associated with another enterprise if one holds directly or indirectly at least one third of the property of the other enterprise or if a person holds directly or indirectly at least one third of the property of both enterprises.

4. However, for the purposes of paragraph 3 of this Article the term 'offshore activities' shall be deemed not to include:

- a. one or any combination of the activities mentioned in paragraph 4 of Article 5;
- b. towing or anchor handling by ships primarily designed for that purpose and any other activities performed by such ships;
- c. the transport of supplies or personnel by ships or aircraft in international traffic.

5. A resident of a Contracting State who carries on offshore activities in the other Contracting State, which consist of professional services or other activities of an independent character, shall be deemed to be performing those activities from a fixed base in the other Contracting State if the offshore activities in question last for a continuous period of 30 days or more.

6. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment connected with offshore activities carried on through a permanent establishment in the other Contracting State may, to the extent that the employment is exercised offshore in that other State, be taxed in that other State.

7. Where documentary evidence is produced that tax has been paid in Russia on the items of income which may be taxed in Russia according to Article 7 and Article 14 in connection with respectively paragraph 3 and

paragraph 5 of this Article, and to paragraph 6 of this Article, the Netherlands shall allow a reduction of its tax which shall be computed in conformity with the rules laid down in paragraph 2 of Article 23.

#### **Article 25. Non-discrimination**

1. Nationals of a Contracting State shall not be subjected in the other contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 5 of Article 11, or paragraph 5 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. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable property of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.
4. Enterprises of a Contracting State, the property of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description, except indirect taxes.

#### **Article 26. Mutual agreement procedure**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.
5. If after the procedures of paragraph 1 to 4 any dispute arising as to the interpretation or application of the Agreement in a particular case cannot be resolved by the competent authorities of the Contracting States in a mutual agreement procedure, the case may, if both competent authorities agree be resolved through an arbitration board created by the competent authorities and supplemented by independent persons and according to internationally accepted arbitration procedures. These procedures shall by mutual agreement be established between the competent authorities of both Contracting States. The decision of the arbitration board shall be binding on both Contracting States and the taxpayer or taxpayers involved with respect to that case.

This paragraph will only apply after the competent authorities of both Contracting States have established the above-mentioned procedures.

The Contracting States may release to the arbitration board, established under the provisions of this paragraph, such information as is necessary for carrying out the arbitration procedure. Such release of information shall be subject to the provisions of Articles 27 and 29.

#### **Article 27. Exchange of information**

The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as confidential in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. 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.

#### **Article 28. Assistance in recovery**

1. The States agree to lend each other assistance and support with a view to the collection, in accordance with their respective laws or administrative practice, of the taxes to which this Agreement shall apply and of any increases, surcharges, overdue payments, interests and costs pertaining to the said taxes.
2. At the request of the applicant State the requested State shall recover tax claims of the first-mentioned State in accordance with the law and administrative practice for the recovery of its own tax claims. However, such claims do not enjoy any priority in the requested State and cannot be recovered by imprisonment for debt of the debtor. The requested State is not obliged to take any executory measures which are not provided for in the laws of the applicant State.
3. The provisions of paragraph 2 shall apply only to tax claims which form the subject of an instrument permitting their enforcement in the applicant State and, unless otherwise agreed between the competent authorities, which are not contested. However, where the claim relates to a liability to tax of a person as a non-resident of the applicant State, paragraph 2 shall only apply, unless otherwise agreed between the competent authorities, where the claim may no longer be contested.
4. The requested State shall not be obliged to accede to the request:
  - a. if the applicant State has not pursued all means available in its own territory, except where recourse to such means would give rise to disproportionate difficulty;
  - b. if and insofar as it considers the tax claim to be contrary to the provisions of this Agreement or of any other agreement to which both of the States are parties.
5. The instrument permitting enforcement in the applicant State shall, where appropriate and in accordance with the provisions in force in the requested State, be accepted, recognised, supplemented or replaced as soon as possible after the date of the receipt of the request for assistance by an instrument permitting enforcement in the requested State.
6. The competent authorities of the States shall by common agreement prescribe rules concerning the application of this Article.

#### **Article 29. Limitation of Articles 27 and 28**

In no case shall the provisions of Articles 27 and 28 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.

## **Article 30. Entry into force**

1. This Agreement shall enter into force on the thirtieth day after the latter of the dates on which the respective Governments have notified each other in writing that the formalities legally required in their respective States have been complied with, and its provisions shall have effect for taxable years and periods beginning on or after the first day of January in the calendar year following that in which the Agreement has entered into force.

2. As regards relations between the Netherlands and the Russian Federation, the Convention between the Government of the Kingdom of the Netherlands and the Government of the Union of Soviet Socialist Republics for the avoidance of double taxation with respect to taxes on income and on property, signed at Moscow on November 21, 1986, shall terminate upon the entry into force of this Agreement. However, the provisions of the Convention shall continue to have effect for taxable years and periods which are expired before the time at which the provisions of this Agreement shall be effective.

## **Article 31. Termination**

This Agreement shall remain in force until terminated by one of the Contracting States. Either State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the expiration of a period of five years from the date of its entry into force. In such event the Agreement shall cease to have effect for taxable years and periods beginning after the end of the calendar year in which the notice of termination has been given.

DONE at Moscow, on 16 December 1996, in duplicate, in the Dutch, Russian and English languages, the three texts being equally authentic. In case there is any divergence of interpretation between the Dutch and Russian texts, the English text shall be operative.

## **Protocol**

### **I. Ad Articles 1 and 4**

It is understood that for the purposes of this Agreement

- i. in the case of the Netherlands, the State or a local authority thereof as well as a pension fund or charitable organisation recognised as such in a Contracting State and of which the income is generally exempt from tax in that State, and
- ii. in the case of Russia, central and local authorities, shall be regarded as a resident of that State. As recognised pension fund of a Contracting State shall be regarded any pension fund recognised and controlled according to statutory provisions of that State.

### **II. Ad Articles 5, 6, 7, 13, 23 and 24**

It is understood that exploration and exploitation rights of natural resources shall be regarded as immovable property situated in the Contracting State the sea bed and sub-soil of which they are related to, and that these rights shall be deemed to pertain to the property of a permanent establishment in that State.

Furthermore, it is understood that the aforementioned rights include rights to interests in, or to the benefits of, assets to be produced by such exploration or exploitation.

### **III. Ad Article 7**

In respect of paragraphs 1 and 2 of Article 7, where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount of income of the enterprise, but shall be determined only on the basis of that portion of the income of

the enterprise that is attributable to the actual activity of the permanent establishment in respect of such sales or business. Specifically, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits attributable to such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract that is effectively carried out by the permanent establishment in the Contracting State where the permanent establishment is situated, if the data on expenses and costs incurred for the purposes of the above-mentioned activities of the permanent establishment are provided by the taxpayer to the tax authorities.

#### **IV. Ad Articles 7, 14 and 25**

It is understood that in the case of interest, wages and salaries paid by an enterprise of a Contracting State the capital of which is wholly or partly owned or controlled, directly or indirectly, by residents of the other Contracting State, such interest, wages and salaries shall be deductible in computing the taxable profits of such enterprise, unless the interest, wages and salaries relate to profits which are exempt from tax. The foregoing sentence shall apply accordingly to interest, wages and salaries when computing the taxable profits of a permanent establishment.

#### **V. Ad Articles 10 and 11**

It is understood that in the case of the Netherlands the term dividends includes income from profit sharing bonds.

#### **VI. Ad Article 10**

It is understood that for establishing whether the condition of a minimum investment of 75,000 ECU is met, the value of the investment at the moment of making this investment will be taken into account, as well as any investments made or withdrawn thereafter.

#### **VII. Ad Article 10**

The term 'dividends' as used in paragraph 4 of Article 10 shall include remittances out of Russia of profits derived by a resident of the Netherlands from his investment as a participant in a joint venture with Russian and foreign investment that is treated as a body corporate or legal entity for tax purposes.

#### **VIII. Ad Articles 10, 11 and 12**

Each Contracting State shall endeavour to establish procedures to enable taxpayers to receive income dealt with under Articles 11 and 12 without the imposition of withholding taxes where the Agreement provides for taxation in the State of residence only. Where the agreement provides for taxation in the State where the income arises each State shall endeavour to establish procedures to enable taxpayers to receive income under deduction of tax at the rate provided for in the Agreement.

Where tax has been levied at source at a rate in excess of that provided for under the terms of the Agreement, applications for the refund of the excess amount of tax have to be lodged with the competent authority of the State having levied the tax, within a period of two years after the expiration of the calendar year in which the tax has been levied. Where a claim is made by a taxpayer for a refund as meant in the foregoing sentence tax withheld at source in a Contracting State at the rate in excess of that provided for under the terms of the Agreement will be refunded in a timely manner.

#### **IX. Ad Articles 11, 12 and 19**

It is understood that the term 'a local authority thereof' includes also: in the case of Russia, the respective authorities of the subjects of the Russian Federation.

#### **X. Ad Article 15**

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

#### **XI. Ad Article 18**

As long as Russia cannot under its national legislation exercise the taxation right provided for under paragraph 1 of Article 18, the provisions of this paragraph shall, for the time being, not be operative concerning pensions received by a resident of Russia in connection with an employment formerly exercised in the Netherlands. With respect to such pensions the provisions of the Netherlands national legislation will continue to apply. As soon as the competent authority of Russia informs the competent authority of the Netherlands that Russia can exercise under its national legislation the taxation right provided for under paragraph 1, this protocol provision will cease to apply.

#### **XII. Ad Article 21**

It is understood that the provisions of this Agreement are not applicable to taxes levied on prizes of lotteries, gambling and games of chance received by individuals.

#### **XIII. Ad Article 23**

It is understood that for the computation of the reduction mentioned in paragraph 3 of Article 23, the items of property referred to in paragraph 1 of Article 22 shall be taken into account for the value thereof reduced by the value of the debts secured by mortgage on that property and the items of property referred to in paragraph 2 of Article 22 shall be taken into account for the value thereof reduced by the value of the debts pertaining to the permanent establishment or fixed base.

#### **XIV. Ad Article 24**

It is understood that the provisions of Article 24 will only be effective when the competent authorities of the Contracting States have agreed upon by mutual agreement in writing that this Article will be operative.

DONE at Moscow, on 16 December 1996, in duplicate, in the Dutch, Russian and English languages, the three texts being equally authentic. In case there is any divergence of interpretation between the Dutch and Russian texts, the English text shall be operative.