

# SYNTHESISED TEXT OF THE MLI AND THE CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SLOVENIA 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

## General disclaimer on the Synthesised text document

This document presents the synthesised text for the application of the Convention between the Government of the Republic of Slovenia 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 signed on 30 June 2004 (the “Convention”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the Republic of Slovenia and by the Kingdom of the Netherlands on 7 June 2017 (the “MLI”).

The document was prepared on the basis of the MLI position of the Republic of Slovenia submitted to the Depository upon ratification on 22 March 2018 and of the MLI position the Kingdom of the Netherlands submitted to the Depository upon acceptance on 29 March 2019. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the Convention.

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

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

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made to parts of provisions of the MLI that describe existing provisions of the Convention: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

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

### References

The authentic legal texts of the MLI and the Convention can be found in the Republic of Slovenia in the Official Journal of the Republic of Slovenia, nos. 4/05-MP and 2/18-MP (<https://www.uradni-list.si>).

The MLI position of the Republic of Slovenia submitted to the Depository upon ratification on 22 March 2018 and the MLI position of the Kingdom of the Netherlands submitted to the Depository upon acceptance on 29 March 2019 can be found [on the MLI Depository \(OECD\) webpage](#).

## **Disclaimer on the entry into effect of the provisions of the MLI**

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

Dates of the deposit of instruments of ratification, acceptance or approval: 22 March 2018 for the Republic of Slovenia and 29 March 2019 for the Kingdom of the Netherlands.

Entry into force of the MLI: 1 July 2018 for the Republic of Slovenia and 1 July 2019 for the Kingdom of the Netherlands.

Unless it is stated otherwise elsewhere in this document, the provisions of the MLI have effect with respect to the Convention:

- with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2020;
- with respect to all other taxes levied by each Contracting State, for taxes levied with respect to taxable periods beginning on or after 1 January 2020.

## CONVENTION

### BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SLOVENIA 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

The Government of the Republic of Slovenia

and

The Government of the Kingdom of the Netherlands,

**[REPLACED by paragraph 1 and paragraph 3 of Article 6 of the MLI]** [Desiring that a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income be concluded by both States,]

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

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

Intending to eliminate double taxation with respect to the taxes covered by *this Convention* without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in *the Convention* for the indirect benefit of residents of third jurisdictions),

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

Have agreed as follows:

#### CHAPTER I

#### SCOPE OF THE CONVENTION

##### Article 1

#### PERSONS COVERED

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

##### Article 2

#### TAXES COVERED

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

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

a) in the Netherlands:

(i) de inkomstenbelasting (income tax);

(ii) de loonbelasting (wages tax);

(iii) de vennootschapsbelasting (company tax) including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mijnwet 1810 (the Mining Act of 1810) with respect to concessions issued from 1967, or pursuant to the Mijnwet Continentaal Plat 1965 (the Netherlands Continental Shelf Mining Act of 1965),

(iv) de dividendbelasting (dividend tax);

(hereinafter referred to as »Netherlands tax«);

b) in Slovenia:

(i) davek od dobička pravnih oseb (the tax on income of legal persons);

(ii) dohodnina (the tax on income of individuals);

(iii) posebni davek na bilančno vsoto bank in hranilnic (the tax on banks and savings banks);

(hereinafter referred to as »Slovenian 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 respective 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« means the Kingdom of the Netherlands (the Netherlands) or the Republic of Slovenia (Slovenia), as the context requires;
- b) the term »the Netherlands« means the part of the Kingdom of the Netherlands that is situated in Europe, including its territorial sea, and any area beyond the territorial sea within which the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights with respect to the sea bed, its sub-soil and its superjacent waters, and their natural resources;
- c) the term “Slovenia” means the Republic of Slovenia and, when used in a geographical sense, the territory of Slovenia including the sea area, sea-bed and sub-soil adjacent to the territorial sea, over which Slovenia may exercise its sovereign rights and jurisdiction in accordance with its domestic legislation and 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 that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- i) the term »national« means:
  - (i) any individual possessing the nationality of a Contracting State;
  - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
- j) the term »competent authority« means:
  - (i) in the Netherlands: the Minister of Finance or his authorized representative;
  - (ii) in Slovenia: the Ministry of Finance of the Republic of Slovenia or its authorized representative;
- k) the term “business” includes the performance of professional services and of other activities of an independent character.

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, 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. **[REPLACED by paragraph 1 of Article 4 of the MLI]** [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 only of the State in which its place of effective management is situated.]

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

#### ARTICLE 4 OF THE MLI – DUAL RESIDENT ENTITIES

Where by reason of the provisions of *the Convention* a person other than an individual is a resident of both *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 *the 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, assembly or installation project or a supervisory activity connected therewith, constitutes a permanent establishment only if such site, project or activity lasts more than twelve months.

4. **[MODIFIED by paragraph 2 of Article 13 of the MLI]** [Notwithstanding the preceding provisions of this Article, the term »permanent establishment« shall be deemed not to include:

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity 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.]

*The following paragraph 2 of Article 13 of the MLI modifies paragraph 4 of Article 5 of this Convention:*

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

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

- a) the activities specifically listed in *paragraph 4 of Article 5 of the Convention* as activities

deemed not to constitute a permanent establishment, whether or not that exception from permanent establishment status is contingent on the activity being of a preparatory or auxiliary character;

- b) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in subparagraph a);
- c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and b),

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

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

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

*Paragraph 4 of Article 5 of the Convention, as modified by paragraph 2 of Article 13 of the MLI shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same 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 *Article 5 of the Convention*; or
- b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

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

5. Notwithstanding the provisions of paragraphs 1 and 2, 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. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of an independent status within the meaning of this paragraph.



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.

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

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

For the purposes of the provisions of *Article 5 of the Convention*, a person is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise.

CHAPTER III

TAXATION OF INCOME

Article 6

INCOME FROM IMMOVABLE PROPERTY

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

2. The term »immovable property« shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, 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.

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. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

## Article 8

### SHIPPING AND AIR TRANSPORT

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.
3. 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 if such rental profits are an occasional source of income.

4. 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 if that other State considers the adjustment justified. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the 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:

(a) **[MODIFIED by paragraph 1 of Article 8 of the MLI]** [5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds at least 10 percent of the capital of the company paying the dividends;]

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

#### ARTICLE 8 OF THE MLI – DIVIDEND TRANSFER TRANSACTIONS

*Subparagraph (a) of paragraph 2 of Article 10 of the Convention shall apply only if the ownership conditions described in those provisions are met throughout a 365 day period that includes the day of the payment of the dividends (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividends).*

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

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

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

5. The term »dividends« as used in this 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.

6. The provisions of paragraphs 1, 2 and 8 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.

7. 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.

8. Notwithstanding the provisions of paragraphs 1, 2 and 7, dividends paid by a company whose capital is divided into shares and which under the laws of a State is a resident of that State, to an individual who is a resident of the other State may be taxed in the first-mentioned State in accordance with the laws of that State if that individual — either alone or with his or her spouse — or one of their relations by blood or marriage in the direct line directly or indirectly holds at least 5 per cent of the issued capital of a particular class of shares in that company. This provision shall apply only if the individual to whom the dividend is paid has been a resident of the first-mentioned State in the course of the last ten years preceding the year in which the dividend is paid and provided that, at the time he became a resident of the other State, the above-mentioned conditions regarding share ownership in the said company were satisfied.

In cases where, under the domestic laws of the first-mentioned State, an assessment has been issued to the individual to whom the dividend is paid in respect of the alienation of the aforesaid shares deemed to have taken place at the time of his emigration from the first-mentioned State, the above shall apply only as long as part of the assessment is still outstanding.

## Article 11

### INTEREST

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

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other State, the tax so charged shall not exceed 5 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in one of the Contracting States and paid to a resident of the other Contracting State who is the beneficial owner thereof shall be taxable only in that other Contracting State, if one of the following requirements is fulfilled:

- (i) the payer or the recipient of the interest is the Government of a Contracting State itself, a public body, a political subdivision, an administrative – territorial unit or a local authority thereof or the Central Bank of a Contracting State;
- (ii) the interest is paid in respect of a loan granted, approved, guaranteed or insured by the Government of a Contracting State, the Central Bank of a Contracting State, or any agency (including a financial institution) owned or controlled by the Government of a Contracting State;
- (iii) the interest is paid in respect of a loan granted by a bank or any similar financial institution (excluding an insurance company).

4. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of the limitations of paragraphs 2 and 3.

5. 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.

6. The provisions of paragraph 1, 2 and 3 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.

7. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection

with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

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

## Article 12

### ROYALTIES

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

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

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

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

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

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

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

## Article 13

### 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 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 in which the place of effective management of the enterprise is situated. If the place of effective management of a shipping enterprise is aboard a ship then, for the purposes of this paragraph, it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

4. **[MODIFIED by paragraph 1 of Article 9 of the MLI]** [Where a resident of a Contracting State owns more than 25 per cent of the shares or other rights in a company, which is situated in the other Contracting State (other than a company of which the shares are quoted on a stock exchange) and the property of such company consists for more than 75 percent of immovable property referred to in Article 6 which is situated in that other State or of rights connected with such immovable property, any gain derived by such resident from the alienation of shares or other rights in that company, may be taxed in that other State. For the purposes of this provision, immovable property pertaining to the industrial, commercial or agricultural operation of such company or to the performance of its independent personal services shall not be taken into account. The provision of this paragraph shall not apply if such gain is derived in the course of a corporate reorganisation, amalgamation, division or similar transaction.]

*The following paragraph 1 of Article 9 of the MLI applies to paragraph 4 of Article 13 of this Convention:*

#### ARTICLE 9 OF THE MLI – CAPITAL GAINS FROM ALIENATION OF SHARES OR INTERESTS OF ENTITIES DERIVING THEIR VALUE PRINCIPALLY FROM IMMOVABLE PROPERTY

*Paragraph 4 of Article 13 of the Convention:*

- a) shall apply if the relevant value threshold is met at any time during the 365 days preceding the alienation; and
- b) shall apply to shares or comparable interests, such as interests in a partnership or trust (to the extent that such shares or interests are not already covered) in addition to any shares or rights already covered by the provisions of *the Convention*.

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. Notwithstanding the provisions of paragraph 5, a Contracting State may, in accordance with its own laws, including the interpretation of the term »alienation«, levy tax on gains derived by an individual who is a resident of the other Contracting State from the alienation of shares in, »jouissance« rights or debt claims on a company whose capital is divided into shares and which, under the laws of the first-mentioned Contracting State, is a resident of that State, and from the alienation of part of the rights attached to the said shares, »jouissance« shares or debt claims, if that individual — either alone or with his or her spouse — or one of their relations by blood or marriage in the direct line directly or indirectly holds at least 5 per cent of the issued capital of a particular class of shares in that company. This provision shall apply only if the individual who derives the gains has been a resident of the first-mentioned State in the course of the last ten years preceding the year in which the gains are derived and provided that, at the time he became a resident of the other Contracting State, the above-mentioned conditions regarding share ownership in the said company were satisfied.

In cases where, under the domestic laws of the first-mentioned State, an assessment has been issued to the individual in respect of the alienation of the aforesaid shares deemed to have taken place at the time of his emigration from the first-mentioned State, the above shall apply only in so far as part of the assessment is still outstanding.

#### Article 14

##### INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 15, 16, 17, 18 and 19, 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 in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

#### Article 15

##### 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 or any other similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

## Article 16

### ARTISTES AND SPORTSPERSONS

1. Notwithstanding the provisions of Article 14, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

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

3. 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 supported wholly or mainly by public funds of the first-mentioned State, a political subdivision or a local authority thereof, or takes place under a cultural agreement 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 paid to a resident of a Contracting State in consideration of past employment, as well as annuities paid to a resident of a Contracting State, shall be taxable only in that State. Any pension and other payment paid out under the provisions of a social security system of a Contracting State to a resident of the other Contracting State shall be taxable only in that other State.

2. Notwithstanding the provisions of paragraph 1, a pension or other similar remuneration, annuity, or any pension and other payment paid out under the provisions of a social security system of a Contracting State, may also be taxed in the Contracting State from which it is derived, in accordance with the laws of that State:

- (a) if and in so far as the entitlement to this pension or other similar remuneration or annuity in the Contracting State from which it is derived is exempt from tax, or the contributions associated with the pension or other similar remuneration or annuity made to the pension scheme or insurance company were deducted in the past when calculating taxable income in that State or qualified for other tax relief in that State; and
- (b) if and in so far as this pension or other similar remuneration or annuity is in the Contracting State of which the recipient thereof is a resident not taxed at the generally

applicable rate for income derived from employment, or less than 90 per cent of the gross amount of the pension or other similar remuneration or annuity is taxed; and

- (c) if the total gross amount of the pensions and other similar remuneration and annuities, and any pension and other payment paid out under the provisions of a social security system of a Contracting State, in any calendar year exceeds the sum of 15.000 Euro.

3. Notwithstanding the provisions of paragraphs 1 and 2, if this pension or other similar remuneration is not periodic in nature, is paid in respect of past employment in the other Contracting State and is paid out before the date on which the pension commences, or if a lump-sum payment is made in lieu of the right to an annuity before the date on which the annuity commences, the payment or this lump-sum may also be taxed in the Contracting State from which it is derived.

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

5. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraph 2. They shall also decide what details the resident of a Contracting State must submit 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 conditions referred in subparagraphs (a), (b) and (c) of paragraph 2 have been met.

6. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

7. Whether and to what extent a pension or similar remuneration falls under this Article or under Article 18, is determined by the nature of the past employment, as private or governmental, during which the entitlement to that part of the pension or similar remuneration was built up.

## Article 18

### GOVERNMENT SERVICE

- 1. a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority may be taxed 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) Any pension 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 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.
3. The provisions of Articles 14, 15, 16, and 17 shall apply to salaries, wages and other similar remuneration and to pensions 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

### PROFESSORS AND RESEARCHERS

1. A resident of the Contracting State who, at the invitation of a university, college, school or other similar institution, situated in the other Contracting State and recognised by the Government of that other Contracting State, is temporarily present in that other Contracting State solely for the purpose of teaching, or engaging in research, or both, at the educational institution shall, for a period not exceeding two years in that other Contracting State, be exempt from tax in that other Contracting State on his remuneration for such teaching or research.
2. No exemption shall be granted under paragraph 1 with respect to any remuneration for research if such research is undertaken not in the public interest but for the private benefit of a specific person or persons.

#### Article 20

### STUDENTS

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

#### Article 21

### 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 22  
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 in Slovenia.

2. **[MODIFIED by paragraph 2 of Article 5 of the MLI]** [However, where a resident of the Netherlands derives items of income which according to Article 6, Article 7, paragraph 6 of Article 10, paragraph 6 of Article 11, paragraph 5 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, paragraph 2 of Article 21 of this Convention may be taxed in Slovenia 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 amount of the items of income which are exempt from Netherlands tax under those provisions.]

*The following paragraph 2 of Article 5 of the MLI applies to paragraph 2 of Article 22 of this Convention with respect to the residents of the Kingdom of the Netherlands:*

ARTICLE 5 OF THE MLI – APPLICATION OF METHODS FOR ELIMINATION OF DOUBLE  
TAXATION (Option A)

*Paragraph 2 of Article 22 of the Convention shall not apply where Slovenia applies the provisions of the Convention to exempt income derived by a resident of the Netherlands from tax or to limit the rate at which such income may be taxed. In the latter case, the Netherlands shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Slovenia. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income which may be taxed in Slovenia.*

3. Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for the items of income which according to paragraph 2 of Article 10, paragraph 2 of Article 11, paragraph 2 of Article 12, paragraph 6 of Article 13, Article 15, Article 16 and paragraph 3 of Article 17 of this Convention may be taxed in Slovenia 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 Slovenia on these items of income, but shall, in case the provisions of the Netherlands law for the avoidance of double taxation provides so, not exceed the amount of the reduction which would be allowed if the items of income so included were the sole items

of income which are exempt from Netherlands tax under the provisions of Netherlands law for the avoidance of double taxation.

This paragraph shall not restrict allowance now or hereafter accorded by the provisions of the Netherlands law for the avoidance of double taxation, but only as far as the calculation of the amount of the reduction of Netherlands tax is concerned with respect to the aggregation of income from more than one country.

4. Notwithstanding the provisions of paragraph 2, the Netherlands shall allow a deduction from the Netherlands tax for the tax paid in Slovenia on items of income which according to Article 7, paragraph 6 of Article 10, paragraph 6 of Article 11, paragraph 5 of Article 12 and paragraph 2 of Article 21 of this Convention may be taxed in Slovenia to the extent that these items are included in the basis referred to in paragraph 1, if and insofar as the Netherlands under the provisions of Netherlands law for the avoidance of double taxation allows a deduction from the Netherlands tax of the tax levied in another country on such items of income. For the computation of this deduction the provisions of paragraph 3 of this Article shall apply accordingly.

5. In Slovenia, double taxation shall be eliminated as follows:

- a) Where a resident of Slovenia derives income which, in accordance with the provisions of this Convention, may be taxed in the Netherlands, Slovenia shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in the Netherlands. Such deduction in either case shall not, however, exceed that portion of the income tax, as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in the Netherlands.
- b) Where in accordance with any provision of the Convention income derived by a resident of Slovenia is exempt from tax in Slovenia, Slovenia 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 23

### OFFSHORE ACTIVITIES

1. The provisions of this Article shall apply notwithstanding any other provisions of this Convention. 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.

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 12 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 12 month-period;
- b) an enterprise shall be regarded as associated with another enterprise if one holds directly or indirectly at least one third of the capital of the other enterprise or if a person holds directly or indirectly at least one third of the capital 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. 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.

6. Where documentary evidence is produced that tax has been paid in Slovenia on the items of income which may be taxed in Slovenia according to Article 7 in connection with respectively paragraph 3 and paragraph 5 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 22.

## Article 24

### 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 residents, 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 8 of Article 11, or paragraph 7 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 capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

5. Enterprises of 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 is a resident of a Contracting State to a pension plan that is recognized for tax purposes in the other Contracting State will be treated in the same way for tax purposes in the first-mentioned State as a contribution paid to a pension plan that is recognized for tax purposes in that first-mentioned State, provided that:

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

For the purpose of this paragraph, »pension plan« includes a pension plan created under a public social security system.

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

## Article 25

### 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 Convention, 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 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the 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.

5. **[REPLACED by Part VI of the MLI]** [If any difficulty or doubt arising as to the interpretation or application of the Convention cannot be resolved by the competent authorities of the Contracting States in a mutual agreement procedure pursuant to the previous paragraphs of this Article within a period of two years after the question was raised, the case may, at the request of either Contracting State, be resolved through an arbitration board created by the competent authorities and supplemented by independent persons, but only after fully exhausting the procedures available under paragraphs 1 to 4 of this Article and provided the taxpayer or taxpayers involved agree in writing to be bound by the decision of the arbitration board.

The decision of the arbitration board in a particular case shall be binding on both Contracting States and the taxpayer or taxpayers involved with respect to that case.]

*The following Part VI of the MLI replaces paragraph 5 of Article 25 of this Convention:*<sup>1</sup>

#### PART VI OF THE MLI (ARBITRATION)

*Paragraphs 1 to 10 and 12 of Article 19 (Mandatory Binding Arbitration) of the MLI*

1. Where:

- a) under *paragraph 1 of Article 25 of the Convention*, a person has presented a case to the competent authority of a *Contracting State* on the basis that the actions of one or both of the *Contracting States* have resulted for that person in taxation not in accordance with the provisions of *the Convention*; and
- b) the competent authorities are unable to reach an agreement to resolve that case pursuant to *paragraph 2 of Article 25 of the Convention*, within a period of *three-years* beginning on the start date referred to in *paragraph 8 or 9 of Article 19 of the MLI*, as the case may be (unless, prior to the expiration of that period the competent authorities of the *Contracting States* have agreed to a different time period with respect to that case and have notified the person who presented the case of such agreement),

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<sup>1</sup>

In accordance with paragraph 1 of Article 36 of the MLI, the provisions of Part VI (Arbitration) of the MLI have effect with respect to the Convention with respect to cases presented to the competent authority of a *Contracting State* on or after 1 July 2019.

In accordance with paragraph 2 of Article 36 of the MLI, the provisions of Part VI (Arbitration) of the MLI apply to a case presented to the competent authority of a *Contracting State* prior to 1 July 2019 only to the extent that the competent authorities of both *Contracting States* agree that it will apply to that specific case.



any unresolved issues arising from the case shall, if the person so requests in writing, be submitted to arbitration in the manner described in *Part VI of the MLI*, according to any rules or procedures agreed upon by the competent authorities of the *Contracting States* pursuant to the provisions of paragraph 10 of *Article 19 of the MLI*.

2. Where a competent authority has suspended the mutual agreement procedure referred to in paragraph 1 of *Article 19 of the MLI* because a case with respect to one or more of the same issues is pending before court or administrative tribunal, the period provided in subparagraph b) of paragraph 1 of *Article 19 of the MLI* 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. In addition, 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 of *Article 19 of the MLI* 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 period provided in subparagraph b) of paragraph 1 of *Article 19 of the MLI*, the period provided in subparagraph b) of paragraph 1 of *Article 19 of the MLI* 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. a) The arbitration decision with respect to the issues submitted to arbitration shall be implemented through the mutual agreement concerning the case referred to in paragraph 1 of *Article 19 of the MLI*. The arbitration decision shall be final.

b) The arbitration decision shall be binding on both *Contracting States* except in the following cases:

i) if a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision. In such a case, the case shall not be eligible for any further consideration by the competent authorities. 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.

ii) if 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 of *Article 19 of the MLI* 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 Articles 21 (Confidentiality of Arbitration Proceedings) and 25 (Costs of Arbitration Proceedings) of *the MLI*). 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.

iii) if a person directly affected by the case pursues litigation on the issues which were resolved in the mutual agreement implementing the arbitration decision in any court or administrative tribunal.

5. The competent authority that received the initial request for a mutual agreement procedure as described in subparagraph a) of paragraph 1 of *Article 19 of the MLI* shall, within two calendar months of receiving the request:

a) send a notification to the person who presented the case that it has received the request; and

b) send a notification of that request, along with a copy of the request, to the competent

authority of the other *Contracting State*.

6. Within three calendar months after a competent authority receives the request for a mutual agreement procedure (or a copy thereof from the competent authority of the other *Contracting State*) it shall either:

- a) 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
- b) request additional information from that person for that purpose.

7. Where pursuant to subparagraph b) of paragraph 6 of *Article 19 of the MLI*, 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 three calendar months of receiving the additional information from that person, notify that person and the other competent authority either:

- a) that it has received the requested information; or
- b) that some of the requested information is still missing.

8. Where neither competent authority has requested additional information pursuant to subparagraph b) of paragraph 6 of *Article 19 of the MLI*, the start date referred to in paragraph 1 of *Article 19 of the MLI* shall be the earlier of:

- a) the date on which both competent authorities have notified the person who presented the case pursuant to subparagraph a) of paragraph 6 of *Article 19 of the MLI*; and
- b) the date that is three calendar months after the notification to the competent authority of the other *Contracting State* pursuant to subparagraph b) of paragraph 5 of *Article 19 of the MLI*.

9. Where additional information has been requested pursuant to subparagraph b) of paragraph 6 of *Article 19 of the MLI*, the start date referred to in paragraph 1 of *Article 19 of the MLI* shall be the earlier of:

- a) 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 subparagraph a) of paragraph 7 of *Article 19 of the MLI*; and
- b) the date that is three calendar months 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 subparagraph b) of paragraph 7 of *Article 19 of the MLI*, such notification shall be treated as a request for additional information under subparagraph b) of paragraph 6 of *Article 19 of the MLI*.

10. The competent authorities of the *Contracting States* shall by mutual agreement pursuant to *Article 25 of the Convention* settle the mode of application of the provisions contained in *Part VI of the MLI*, including the minimum information necessary for each competent authority to undertake substantive consideration of the case. Such an agreement shall be concluded before the date on which unresolved issues in a case are first eligible to be submitted to arbitration and may be modified from time to time thereafter.

12. Notwithstanding the other provisions of *Article 19 of the MLI*:

- a) any unresolved issue arising from a mutual agreement procedure case otherwise within the scope of the arbitration process provided for by *the MLI* shall not be submitted to arbitration, if a decision on this issue has already been rendered by a court or administrative tribunal of either *Contracting State*;
- b) 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 one of the *Contracting States*, the arbitration process shall terminate.

*Article 20 (Appointment of Arbitrators) of the MLI*

1. Except to the extent that the competent authorities of the *Contracting States* mutually agree on different rules, paragraphs 2 through 4 of *Article 20 of the MLI* shall apply for the purposes of *Part VI of the MLI*.

2. The following rules shall govern the appointment of the members of an arbitration panel:

- a) The arbitration panel shall consist of three individual members with expertise or experience in international tax matters.
- b) Each competent authority shall appoint one panel member within 60 days of the date of the request for arbitration under paragraph 1 of *Article 19 of the MLI*. The two panel members so appointed shall, within 60 days of the latter of their appointments, appoint a third member who shall serve as Chair of the arbitration panel. The Chair shall not be a national or resident of either *Contracting State*.
- c) Each member 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.

3. In the event that the competent authority of a *Contracting State* fails to appoint a member of the arbitration panel in the manner and within the time periods specified in paragraph 2 of *Article 20 of the MLI* or agreed to by the competent authorities of the *Contracting States*, a member shall be appointed on behalf of that competent authority 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*.

4. If the two initial members of the arbitration panel fail to appoint the Chair in the manner and within the time periods specified in paragraph 2 of *Article 20 of the MLI* or agreed to by the competent authorities of the *Contracting States*, the Chair 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 that is not a national of either *Contracting State*.

*Article 21 (Confidentiality of Arbitration Proceedings) of the MLI*

1. Solely for the purposes of the application of the provisions of *Part VI of the MLI* and of the provisions of *the Convention* and of the domestic laws of the *Contracting States* related to the exchange of information, confidentiality, and administrative assistance, members of the arbitration panel and a maximum of three staff per member (and prospective arbitrators solely to the extent necessary to verify their ability to fulfil the requirements of arbitrators) shall be considered to be persons or authorities to whom information may be disclosed. Information received by the arbitration panel or prospective arbitrators and information that the competent authorities receive from the arbitration panel shall be considered information that is exchanged under the provisions of *the Convention* related to the exchange of information and administrative assistance.

2. The competent authorities of the *Contracting States* shall ensure that members of the arbitration panel and their staff agree in writing, prior to their acting in an arbitration proceeding, to treat any information relating to the arbitration proceeding consistently with the confidentiality and nondisclosure obligations described in the provisions of *the Convention* related to exchange of

information and administrative assistance and under the applicable laws of the *Contracting States*.

*Article 22 (Resolution of a Case Prior to the Conclusion of the Arbitration) of the MLI*

For the purposes of *Part VI of the MLI* and the provisions of *the Convention* that provide for resolution of cases through mutual agreement, the mutual agreement procedure, as well as the arbitration proceeding, with respect to a 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 of the *Contracting States*:

- a) the competent authorities of the *Contracting States* reach a mutual agreement to resolve the case; or
- b) the person who presented the case withdraws the request for arbitration or the request for a mutual agreement procedure.

*Paragraphs 2 and 5 of Article 23 (Type of Arbitration Process) of the MLI*

*Independent opinion Arbitration*

2. 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:

- a) After a case is submitted to arbitration, the competent authority of each *Contracting State* shall provide any information that may be necessary for the arbitration decision to all panel members without undue delay. Unless the competent authorities of the *Contracting States* agree otherwise, any information that was not available to both competent authorities before the request for arbitration was received by both of them shall not be taken into account for purposes of the decision.
- b) The arbitration panel shall decide the issues submitted to arbitration in accordance with the applicable provisions of *the Convention* and, subject to these provisions, of those of the domestic laws of the *Contracting States*. The panel members shall also consider any other sources which the competent authorities of the *Contracting States* may by mutual agreement expressly identify.
- c) The arbitration decision shall be delivered to the competent authorities of the *Contracting States* in writing and shall indicate the sources of law relied upon and the reasoning which led to its result. The arbitration decision shall be adopted by a simple majority of the panel members. The arbitration decision shall have no precedential value.

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 *the Convention*, as well as the arbitration proceeding under *Part VI of the MLI*, with respect 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 of the *Contracting States*, a person that presented the case or one of that person's advisors materially breaches that agreement.

*Article 25 (Costs of Arbitration Proceedings) of the MLI*

In an arbitration proceeding under *Part VI of the MLI*, the fees and expenses of the members of the arbitration panel, as well as any costs incurred in connection with the arbitration proceedings by the *Contracting States*, shall be borne by the *Contracting States* in a manner to be settled by mutual agreement between the competent authorities of the *Contracting States*. In the absence of such

agreement, each *Contracting State* shall bear its own expenses and those of its appointed panel member. The cost of the chair of the arbitration panel and other expenses associated with the conduct of the arbitration proceedings shall be borne by the *Contracting States* in equal shares.

*Paragraphs 2 and 3 of Article 26 (Compatibility) of the MLI*

2. Any unresolved issue arising from a mutual agreement procedure case otherwise within the scope of the arbitration process provided for in *Part VI of the MLI* shall not be submitted to arbitration if 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.

3. *Nothing in Part VI of the MLI* shall affect the fulfilment of wider obligations with respect to the arbitration of unresolved issues arising in the context of a mutual agreement procedure resulting from other conventions to which the *Contracting States* are or will become parties.

*Subparagraph a) of paragraph 2 of Article 28 (Reservations) of the MLI*

Pursuant to *subparagraph a) of paragraph 2 of Article 28 of the MLI*, the Republic of Slovenia formulates the following reservations with respect to the scope of cases that shall be eligible for arbitration under the provisions of *Part VI of the MLI*:

1. The Republic of Slovenia reserves the right to exclude from the scope of *Part VI* cases concerning items of income or capital that are not taxed by a *Contracting Jurisdiction* because they are not included in the taxable base in that *Contracting Jurisdiction* or because they are subject to an exemption or zero tax rate provided only under the domestic tax law of that *Contracting Jurisdiction* and that is specific to such item of income or capital.

2. The Republic of Slovenia reserves the right to exclude from the scope of *Part VI* cases involving conduct for which the taxpayer, a person acting on its behalf, or a related person:

- i. Has been found guilty by a court of a criminal tax offence; or
- ii. Has been subject to a serious penalty for tax fraud, evasion or avoidance.

For this purpose, the legislative provisions governing serious penalties for tax fraud, evasion or avoidance are contained in the Tax Procedure Act. Any subsequent provisions replacing, amending or updating these provisions would also be comprehended. The Republic of Slovenia shall notify the Depositary of any such subsequent provisions.

3. The Republic of Slovenia reserves the right to exclude from the scope of *Part VI* cases involving the residence of companies and other entities.

4. The Republic of Slovenia reserves the right to exclude from the scope of *Part VI* cases involving the application of domestic anti-avoidance provisions. For this purpose, the Republic of Slovenia's domestic anti-avoidance provisions shall include such provisions contained in the tax laws.

Article 26

EXCHANGE OF INFORMATION

1. The competent authorities of the *Contracting States* shall exchange such information as is necessary for carrying out the provisions of this Convention or 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. Any information received 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, or the determination of appeals in relation to, the taxes referred to in the first sentence. 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.

2. The Contracting States may release to the arbitration board, established under the provisions of paragraph 5 of Article 25, such information as is necessary for carrying out the arbitration procedure. The members of the arbitration board shall be subject to the limitations on disclosure described in paragraph 1 of this Article with respect to any information so released.

3. In no case shall the provisions of paragraphs 1 and 2 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).

## Article 27

### 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 submitted 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.

*The following paragraphs 1 to 3 of Article 10 of the MLI apply and supersede the provisions of this Convention:*

ARTICLE 10 OF THE MLI – ANTI-ABUSE RULE FOR PERMANENT ESTABLISHMENTS SITUATED  
IN THIRD JURISDICTIONS

*Paragraph 1 of Article 10 of the MLI*

1. Where:

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

the benefits of *the Convention* shall not apply to any item of income on which the tax in the third jurisdiction is less than 60 per cent of the tax that would be imposed in the first-mentioned *Contracting State* on that item of income if that permanent establishment were situated in the first-mentioned *Contracting State*. In such a case, any income to which the provisions of this paragraph apply shall remain taxable according to the domestic law of the other *Contracting State*, notwithstanding any other provisions of *the Convention*.

*Paragraph 2 of Article 10 of the MLI*

2. Paragraph 1 of Article 10 of the MLI shall not apply if the income derived from the other *Contracting State* described in paragraph 1 of Article 10 of the MLI is derived in connection with or is incidental to the active conduct of a business carried on through the permanent establishment (other than the business of making, managing or simply holding investments for the enterprise's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance enterprise or registered securities dealer, respectively).

*Paragraph 3 of Article 10 of the MLI*

3. If benefits under *the Convention* are denied pursuant to paragraph 1 of Article 10 of the MLI with respect to an item of income derived by a resident of a *Contracting State*, the competent authority of the other *Contracting State* may, nevertheless, grant these benefits with respect to that item of income if, in response to a request by such resident, such competent authority determines that granting such benefits is justified in light of the reasons such resident did not satisfy the requirements of paragraphs 1 and 2 of Article 10 of the MLI. The competent authority of the *Contracting State* to which a request has been made under the preceding sentence by a resident of the other *Contracting State* shall consult with the competent authority of that other *Contracting State* before either granting or denying the request.

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

ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE

*(Principal purposes test provision)*

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

#### Article 28

### TERRITORIAL EXTENSION

1. This Convention may be extended, either in its entirety or with any necessary modifications, to either or both of the countries of the Netherlands Antilles and Aruba, if the country concerned imposes taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed in notes to be exchanged through diplomatic channels.
2. Unless otherwise agreed the termination of the Convention shall not also terminate any extension of the Convention to any country to which it has been extended under this Article.

#### CHAPTER VI

### FINAL PROVISIONS

#### Article 29

### ENTRY INTO FORCE

1. This Convention shall enter into force on the thirtieth day after the receipt of the latter of the written of the notifications by which the respective Governments have notified each other that the formalities constitutionally required in their respective States have been complied with, and its provisions shall have effect for taxable years and periods beginning on or after the first day of January in the calendar year following that in which the Convention has entered into force.
2. The Convention between the Kingdom of the Netherlands and the Socialist Federal Republic of Yugoslavia for the avoidance of double taxation with respect to taxes on income and on capital, signed at Belgrade on February 22, 1982, shall cease to have effect in relation between the Kingdom of the Netherlands and the Republic of Slovenia as regards the taxes to which this Convention applies in accordance with the provision of paragraph 1.

#### Article 30

### TERMINATION



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

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

DONE in duplicate at Ljubljana this 30(th) day of June 2004, in the Slovenian, Netherlands and English languages, all texts being equally authentic. In case of divergence between any of the texts, the English text shall prevail.

For the Government of the  
Republic of Slovenia  
Milojka Kolar

For the Government of the  
Kingdom of the Netherlands  
Jan C. Henneman

## **PROTOCOL**

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

### **I. Ad Article 2**

If after the signature of this Convention Slovenia or the Netherlands would introduce a general tax on capital, upon request of a Contracting State discussions will be held as soon as possible with a view to the application of this Convention to such taxes on capital.

### **II. Ad Article 3, paragraph 1, subparagraph e**

In case an entity that is treated as a body corporate for tax purposes is liable as such to tax in a Contracting State, but the income of that entity is taxed in the other Contracting State as income of the participants in that entity, the competent authorities shall take such

measures that on the one hand no double taxation remains, but on the other hand it is prevented that merely as a result of application of the Convention income is (partly) not subject to tax. To determine whether this is the case, the tax levied on the income of that entity is deemed to be tax levied on the income of the participants in that entity, in proportion to their participation in the capital of that entity. Insofar necessary, it may also, in addition, be determined that each participant, in proportion of his/its participation in that entity, may credit the tax levied on the income at the level of that entity (including possible withholding tax thereon of third States), with the tax that he/it is due on the same income. Furthermore, the State of residence of that entity might refrain from possible taxation (up)on distribution of profit of that entity to the participants.

### III. Ad Article 4

1. It is understood that the term »resident of a Contracting State« also includes a pension fund that is recognized and controlled according to the statutory provisions of a Contracting State and the income of which is generally exempt from tax in that State.
2. An individual living aboard a ship without any real domicile in either of the Contracting States shall be deemed to be a resident of the Contracting State in which the ship has its home harbour.

### IV. Ad Articles 5, 6, 7, 13 and 23

It is understood that rights to the exploration and exploitation of natural resources shall be regarded as immovable property located in the Contracting State to whose 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 that exploration or exploitation or benefits from assets that arise from that exploration or exploitation.

### V. 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 received by 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. The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the Contracting State of which the enterprise is a resident.

### VI. Ad Article 7

Payments received as a consideration for technical services, including studies or surveys of a scientific, geological or technical nature, or for consultancy or supervisory services shall be deemed to be payments to which the provisions of Article 7 apply.

#### VII. Ad Article 9

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

#### VIII. Ad Article 10

1. Notwithstanding the provisions of paragraph 2, subparagraph a, of Article 10, as of the day that Slovenia becomes a member of the European Union, the Contracting States shall not levy a tax on the distribution of dividends if the conditions set forth in the Directive of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (90/435/EEC) are met.

2. Notwithstanding the provisions of paragraph 2 of Article 10 the Contracting State of which the company is a resident shall not levy a tax on dividends paid by that company, if the beneficial owner of the dividends is a pension fund referred to in paragraph III of this Protocol.

#### IX. Ad Article 10, paragraph 5 and Article 11, paragraph 5

Notwithstanding paragraph 5 of Article 10, it is understood that the term dividends also means income from debt-claims provided that the law of a Contracting State subjects this income from debt-claims to the same taxation treatment as income from shares according to a combination of the following criteria:

- the redemption date of a loan;
- the size of the remuneration or indebtedness of the remuneration is depending on the profit or the distributions of profits; and
- the subordination of a loan.

#### X. Ad Articles 10, 11 and 12

Where tax has been levied at source in excess of the amount of tax chargeable under the provisions of Articles 10, 11 or 12, applications for the refund of the excess amount of tax have to be lodged with the competent authority of the State having levied the tax, within a period of five years after the expiration of the calendar year in which the tax has been levied.

#### XI. Ad Articles 10 and 13

It is understood that income received in connection with the (partial) liquidation of a company or a purchase of own shares by a company is treated as dividends and not as capital gains.

#### XII. Ad Article 12

Notwithstanding the provisions of paragraph 2 of Article 12, it is understood that Slovenia shall not levy a tax on royalties paid to persons, not being individuals, for a period of three years from the date Slovenia introduces a withholding tax on such royalties.

#### XIII. Ad Article 15

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

- a.) in the case of a Netherlands company a "bestuurder" or a "commissaris";
- b.) in the case of a Slovenian company a member of a board of directors (član uprave) or a supervisory board (član nadzornega sveta).

2. It is further 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.

#### XIV. Ad Article 25

The competent authorities of the States may also agree, with respect to any agreement reached as a result of a mutual agreement procedure as meant in Article 25, if necessary contrary to their respective national legislation, that the State, in which there is an additional tax charge as a result of the aforementioned agreement, will not impose any increases, surcharges, interest and costs with respect to this additional tax charge, if the other State in which there is a corresponding reduction of tax as a result of the agreement, refrains from the payment of any interest due with respect to such a reduction of tax.

#### XV. Ad Article 26

With respect to the Netherlands Article 26 will, for political subdivisions or local authorities, not be applicable to other taxes than those covered by this Convention, until the national legislation of the Netherlands contains a juridical basis therefore in line with the 2000 OECD model.

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

DONE in duplicate at Ljubljana this 30th day of June 2004, in the Slovenian, Netherlands and English languages, all texts being equally authentic. In case of divergence between any of the texts, the English text shall prevail.

For the Government of the  
Republic of Slovenia  
Milojka Kolar

For the Government of the  
Kingdom of the Netherlands  
Jan C. Henneman