SYNTHESISED TEXT OF

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

AND

THE AGREEMENT BETWEEN THE KINGDOM OF THE NETHERLANDS AND MALTA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

General disclaimer on this Synthesised text document

This document presents the synthesised text for the application of the Agreement between the Kingdom of the Netherlands and Malta for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, and Protocol signed on 18 May 1977 as amended by the Protocol signed on 18 July 1995 (the "Agreement"), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the "MLI") signed by the Netherlands and Malta on 7 June 2017.

The document was prepared on the basis of the MLI position of the Netherlands submitted to the Depositary upon acceptance on 29 March 2019 and of the MLI position of Malta submitted to the Depositary upon ratification on 18 December 2018. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the Agreement.

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

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made to parts of provisions of the MLI that describe existing provisions of the Agreement: descriptive language has been replaced by legal references of the existing provisions to ease the readability.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

References

- Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (provides the authentic legal texts of the MLI).
- Agreement between the Kingdom of the Netherlands and Malta for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, and Protocol signed on 18 May 1977 as amended by the Protocol signed on 18 July 1995
- Signatories and parties to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (provides the MLI position of the Netherlands submitted to the Depositary upon acceptance on 29 March 2019 the MLI position of Malta submitted to the Depositary upon ratification on 18 December 2018).

Entry into Effect of the MLI Provisions

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

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

29 March 2019 for the Netherlands and 18 December 2018 for Malta.

Entry into force of the MLI:

1 July 2019 for the Netherlands and 1 April 2019 for Malta.

Entry into Effect of the MLI Provisions
In accordance with paragraph 1 of Article 35 of the MLI, the provisions of the MLI **(**other than Article 16 Mutual Agreement Procedure and Part VI (Arbitration)) have effect with respect to the application of this Agreement by the Netherlands:

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

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

In accordance with paragraphs 1 and 3 of Article 35 of the MLI, the provisions of the MLI (other than Article 16 Mutual Agreement Procedure and Part VI Arbitration) have effect with respect to the application of this Agreement by Malta:

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

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

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

In accordance with paragraph 2 of Article 36 of the MLI, the provisions of Part VI (Arbitration) of the MLI shall have effect with respect to this Agreement:

a) with respect to cases presented to the competent authority of a State (as described in subparagraph a) of paragraph 1 of Article 19 (Mandatory Binding Arbitration) of the MLI)), on or after 1 July 2019; and

b) with respect to cases presented to the competent authority of a State prior to 1 July 2019, only to the extent that the competent authorities of both Contracting States agree that Part VI of the MLI will apply to that specific case.

Agreement between the Kingdom of the Netherlands and the Republic of Malta for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital

The Government of the Kingdom of the Netherlands and

the Government of the Republic of Malta,

Desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,

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

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

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

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

Have agreed as follows:

CHAPTER I. Scope of the Agreement

Article 1. Personal scope

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

Article 2. Taxes covered

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of each of the States or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

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

3. The existing taxes to which this Agreement shall apply are, in particular:

a. in the case of the Netherlands:

- de inkomstenbelasting (income tax);
- de loonbelasting (wages tax);
- de vennootschapsbelasting (company tax);
- de dividendbelasting (dividend tax);
- de vermogensbelasting (capital tax);

(hereinafter referred to as “Netherlands tax”);

b. in the case of Malta:
the income tax and surtax, including prepayments of tax whether made by deduction at source or otherwise,
(hereinafter referred to as “Malta tax”).

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

5. Where under any provision of this Agreement income is relieved from tax in one of the States, either in full or in part, and, under the law in force in the other State, a person, in respect of the said income, is subject to tax by reference to the amount thereof which is remitted to or received in that other State and not by reference to the full amount thereof, then the relief to be allowed under this Agreement in the first-mentioned State shall apply to so much of the income as is remitted to or received in the other State.

CHAPTER II. Definitions

Article 3. General definitions

1. In this Agreement, unless the context otherwise requires:

a. the term “State” means the Netherlands or Malta, as the contexts requires; the term “States” means the Netherlands and Malta;
b. the term “the Netherlands” comprises the part of the Kingdom of the Netherlands that is situated in Europe and the part of the seabed and its subsoil under the North-Sea, over which the Kingdom of the Netherlands has sovereign rights in accordance with international law;
c. the term “Malta” means the Republic of Malta, and, when used in a geographical sense, means the Island of Malta, the Island of Gozo and the other islands of the Maltese archipelago, including the territorial waters thereof, and any area outside the territorial sea of Malta which, in accordance with international law, has been or may hereafter be designated, under the laws of Malta concerning the Continental Shelf, as an area within which the rights of Malta with respect to the seabed and subsoil and their natural resources may be exercised;
d. the term “person” comprises an individual, a company and any other body of persons;
e. the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
f. the terms “enterprise of one of the States” and “enterprise of the other State” mean respectively an enterprise carried on by a resident of one of the States and an enterprise carried on by a resident of the other State;
g. the term “national” means:
   (i) in respect of the Netherlands, any individual possessing the nationality of the Netherlands and any legal person, partnership or association deriving its status as such from the law in force in the Netherlands;
   (ii) in respect of Malta, any citizen of Malta as provided for in Chapter III of the Constitution of Malta and in the Maltese Citizenship Act, 1965, and any legal person, partnership or association deriving its status as such from the law in force in Malta;
h. the term “international traffic” means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in one of the States, except when the ship or aircraft is operated solely between places in the other State;
i. the term “competent authority” means:
   (i) in the case of the Netherlands, the Minister of Finance or his authorized representative;
   (ii) in the case of Malta, the Minister responsible for finance or his authorized representative.

2. As regards the application of this Agreement by either of the States, any term not otherwise defined shall, unless the context otherwise requires; have the meaning which it has under the laws of that State relating to the taxes which are the subject of this Agreement.

Article 4. Fiscal domicile

1. For the purposes of this Agreement, the term “resident of one of the States” means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. The term does not include any person who is liable to tax in that State in respect only of income from sources therein or capital situated in that State.

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

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

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

4. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both States, then it shall be deemed to be a resident of the State in which its place of eff

ective management is situated.

Article 5. Permanent establishment

1. For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2. The term “permanent establishment” shall include especially:

   a. a place of management;
   b. a branch;
   c. an office;
   d. a factory;
   e. a workshop;
   f. a mine, quarry or other place of extraction of natural resources;
   g. a building site or construction or assembly project or supervisory activities in connection therewith, where such site, project or activity continues for more than twelve months.

3. The term “permanent establishment” shall not be deemed to include:

   a. the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
   b. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
   c. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
   d. the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
   e. the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. A person acting in one of the States on behalf of an enterprise of the other State - other than an agent of an independent status to whom paragraph 5 applies - shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

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

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

CHAPTER III. Taxation of income

Article 6. Income from immovable property

1. Income from immovable property may be taxed in the State in which such property is situated.

2. The term “immovable property” shall be defined in accordance with the law of the State in which the property in question is situated. The term shall in any case include property accessory to immovable property, 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, and debt-claims of every kind secured by mortgage on immovable property, excluding bonds or debentures; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other

form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

Article 7. Business profits

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

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

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

4. Insofar as it has been customary in one of the States 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 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 embodied 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8. Shipping and air transport

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

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

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

Article 9. Associated enterprises

1. Where

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

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

2. Where profits on which an enterprise of one of the States has been charged to tax in that State are also included in the profits of an enterprise of the other State and taxed accordingly and the profits so included are profits which would have accrued to that enterprise of the other State if the conditions made between the enterprises had been those which would have been made between independent enterprises, then the first-mentioned State shall make an appropriate adjustment to the amount of tax charged on those profits in the first-mentioned State. In determining such an adjustment due regard shall be had to the other provisions of this Agreement in relation to the nature of the income, and for this purpose the competent authorities of the States shall if necessary consult each other.

The following paragraph 1 of Article 17 of the MLI replaces paragraph 2 of Article 9 of this Agreement:

ARTICLE 17 OF THE MLI – CORRESPONDING ADJUSTMENTS

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

Article 10. Dividends

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

2. Dividends paid by a company which is a resident of the Netherlands to a resident of Malta may also be taxed in the Netherlands, and according to Netherlands law, but, if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed:

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

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. Dividends paid by a company which is a resident of Malta to a resident of the Netherlands who is the beneficial owner thereof shall be exempt from any tax in Malta which is chargeable on dividends in addition to the tax chargeable in respect of the profits of the company. Furthermore, Malta tax chargeable with respect to distributed profits of the company shall not exceed 15 per cent of the gross amount thereof, if the distributed profits consist of gains or profits earned in any year in respect of which that company is in receipt of any benefit under the provisions regulating aids to industries in Malta, and the profits are distributed to a company which is a resident of the Netherlands and which is not charged to Netherlands company tax with respect to such profits: provided that the receiving company submits returns and accounts to the taxation authorities of Malta in respect of its income liable to Malta tax for the relative year of assessment.

This paragraph shall not affect the taxation of the company in respect of the profits out of which distributions are made, but the recipient of any distributed profits shall be entitled to any refund which may be available under the law of Malta on account of the tax paid by the company, if the tax so paid is in excess of that chargeable on the distributed profits in accordance with the provisions of this paragraph or of the law of Malta.

4. The term “dividends” as used in this Article means income from shares, “jouissance” shares or “jouissance” rights, mining shares, founders' shares or other rights participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the taxation law of the State of which the company making the distribution is a resident.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient of the dividends, being a resident of one of the States, carries on business in the other State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

6. Where a company which is a resident of one of the States derives profits or income from the other State, that

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

Article 11. Interest

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

2. However, such interest may be taxed in the State in which it arises and according to the law of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2:

a. interest arising in Malta and paid to the Netherlands Government, the Central Bank of the Netherlands, the Nederlandse Financieringsmaatschappij voor Ontwikkelingslanden N.V. (Netherlands finance company for developing countries), and the Nederlandse Investeringsbank voor Ontwikkelingslanden N.V. (Netherlands investment bank for developing countries) shall be exempt from Malta tax;
b. interest arising in the Netherlands and paid to the Malta Government, the Central Bank of Malta or the Malta Development Corporation shall be exempt from Netherlands tax;
c. the exemptions granted by this paragraph shall also apply to any other statutory body of one of the States if such body possesses a distinct legal personality.

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

5. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the interest, being a resident of one of the States, carries on business in the other State in which the interest arises, through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

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

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

Article 12. Royalties

1. Royalties arising in one of the States and paid to a resident of the other State shall be taxable only in that other State if such resident is the benificial owner of the royalties and the royalties consist of payments of any kind received as consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work.

2. Royalties arising in one of the States and paid to a resident of the other State may be taxed in that other State if the royalties consist of payments of any kind received as a consideration for the use of, or the right to use, cinematographic films or tapes for television or broadcasting, any patent, trade mark, design, model, plan, secret formula or process, industrial, commercial or scientific equipment, or information concerning industrial, commercial or scientific experience. However, such royalties may also be taxed in the State in which they arise, and according to the law of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10 per cent of the gross amount of such royalties.

3. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of one of the States, carries on business in the other State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

4. Royalties shall be deemed to arise in one of the States when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of one of the States or not, has in one of the States 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.

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

Article 13. Limitation of Articles 10,11 and 12

International organizations, organs and officials thereof and members of a diplomatic or consular mission of a third State, being present in one of the States, are not entitled, in the other State, to the reductions or exemptions from tax provided for in Articles 10, 11 and 12 in respect of the items of income dealt with in these Articles and arising in that other State, if such items of income are not subject to a tax on income in the first-mentioned State.

Article 14. Capital gains

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6, may be taxed in the State in which such property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of one of the States has in the other State, or of movable property pertaining to a fixed base available to a resident of one of the States in the other State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State.

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

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

5. The provisions of paragraph 4 shall not affect the right of each of the States to levy according to its own law a tax on gains from the alienation of shares or “jouissance” rights in a company which is a resident of that State, derived by an individual who is a resident of the other State but has been a resident of the firstmentioned State in the course of the last five years preceding the alienation of the shares or “jouissance” rights.

Article 15. Independent personal services

1. Income derived by a resident of one of the States in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base. A resident of one of the States performing such professional services or other independent activities in the other State shall be deemed to have such a fixed base available to him in that other State if he is present in that other State for a period or periods exceeding in the aggregate 183 days in the calendar year concerned.

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

Article 16. Dependent personal services

1. Subject to the provisions of Articles 17, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of one of the States in respect of an employment shall be taxable only in that State unless the employment is exercised in the other State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

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

3. Notwithstanding the preceding provisions of this Article remuneration derived by a resident of one of the States in respect of an employment exercised aboard a ship or aircraft in international traffic shall be taxable only in that State.

Article 17. Directors' fees

1. Directors' fees and similar payments derived by a resident of the Netherlands in his capacity as a member of the board of directors of a company which is a resident of Malta may be taxed in Malta.

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

Article 18. Artistes and athletes

1. Notwithstanding the provisions of Articles 15 and 16, income derived by entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such, may be taxed in the State in which these activities are exercised.

2. Where income in respect of personal activities as such of an entertainer or athlete accrues not to that entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16, be taxed in the State in which the activities of the entertainer or athlete are exercise

Article 19. Pensions

1. Subject to the provisions of paragraph 2 of Article 20, pensions and other similar remuneration paid to a resident of one of the States in consideration of past employment shall be taxable only in that State.

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

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

4. 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.

Article 20. Government service

1.

a. Remuneration, other than a pension, paid by one of the States or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof may be taxed in that State.
b. However, such remuneration shall be taxable only in the other State if the services are rendered in that State and the recipient is a resident of that other State who:
   (i) is a national of that State; or
   (ii) did not become a resident of that State solely for the purpose of performing the services.

2.

a. Any pension paid by, or out of funds created by, one of the States or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof may be taxed in that State.
b. However, such pension shall be taxable only in the other State if the recipient is a national of and a resident of that State.

3. The provisions of Articles 16, 17 and 19 shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by one of the States or a political subdivision or a local authority thereof.

Article 21. Professors and teachers

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

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

Article 22. Students and trainees

1. An individual who was a resident of one of the States immediately before visiting the other State and is temporarily present in that other State solely as a student at a university, college, school or other similar educational institution in that other State or as a business apprentice shall, from the date of his first arrival in that other State in connection with that visit, be exempt from tax in that other State:

a. on all remittances from abroad for purposes of his maintenance, education or training; and
b. for a period not exceeding in the aggregate five years, on any remuneration not exceeding 5000 guilders, or the equivalent in Malta currency, for each calendar year for personal services rendered in that other State with a view to supplementing the resources available to him for such purposes.

2. An individual who was a resident of one of the States immediately before visiting the other State and is temporarily present in that other State solely for the purpose of study, research or training as a recipient of a grant, allowance or award from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the Government of one of the States shall, from the date of his first arrival in that other State in connection with that visit, be exempt from tax in that other State:

a. on the amount of such grant, allowance or award, and
b. on all remittances from abroad for the purposes of his maintenance, education or training.

Article 23. Other income

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

2. The provisions of paragraph 1 shall not apply if the recipient of the income, being a resident of one of the States, carries on business in the other State through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 15, as the case may be, shall apply.

CHAPTER IV. Taxation of capital

Article 24. Capital

1. Capital represented by immovable property, as defined in paragraph 2 of Article 6, may be taxed in the State in which such property is situated.

2. Capital represented by movable property forming part of the business property of a permanent establishment of an enterprise, or by movable property pertaining to a fixed base used for the performance of professional services, may be taxed in the State in which the permanent establishment or fixed base is situated.

3. Notwithstanding the provisions of paragraph 2, ships and aircraft operated in international traffic and movable

property pertaining to the operation of such ships and aircraft shall be taxable only in the State in which the place of effective management of the enterprise is situated. For the purposes of this paragraph the provisions of paragraph 2 of Article 8 shall apply.

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

CHAPTER V. Elimination of double taxation

Article 25. Elimination of double taxation

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

2. Without prejudice to the application of the provisions concerning the compensation of losses in the unilateral regulations for the avoidance of double taxation, the Netherlands shall allow a deduction from the amount of tax computed in conformity with paragraph 1 of this Article equal to such part of that tax which bears the same proportion to the aforesaid tax, as the part of the income or capital which is included in the basis referred to in paragraph 1 of this Article and may be taxed in Malta according to Articles 6 and 7, paragraph 5 of Article 10, paragraph 5 of Article 11, paragraph 3 of Article 12, paragraphs 1 and 2 of Article 14, Article 15, paragraph 1 of Article 16, paragraph 1 of Article 17, Article 20, paragraph 2 of Article 23, and paragraphs 1 and 2 of Article 24 of this Agreement, bears to the total income or capital which forms the basis referred to in paragraph 1 of this Article.

3. Further the Netherlands shall allow a deduction from the tax computed in accordance with the preceding paragraphs of this Article with respect to the items of income which may be taxed in Malta according to paragraph 2 of Article 11, paragraph 2 of Article 12, and Article 18 and are included in the basis referred to in paragraph 1 of this Article.

The amount of this deduction shall be the lesser of the following amounts:

(i) the amount equal to the Malta tax;
(ii) the amount of the Netherlands tax which bears the same proportion to the amount of tax computed in conformity with paragraph 1 of this Article, as the amount of the said items of income bears to the amount of income which forms the basis referred to in paragraph 1 of this Article.

4. Where, by reason of special incentive measures designed to promote economic development in Malta, the Malta tax actually levied on interest and royalties (other than royalties in respect of cinematographic films or tapes for television and broadcasting) arising in Malta is lower than the tax Malta may levy according to paragraph 2 of Article 11 and paragraph 2 of Article 12, respectively, then the amount equal to the Malta tax referred to in subparagraph (i) of paragraph 3 on such interest and royalties shall be deemed to be 10 per cent of the gross amount thereof.

5. Subject to the provisions of the law of Malta regarding the allowance of a credit against Malta tax in respect of foreign tax (which shall not affect the general principle hereof) and saving the provisions of paragraph 6, where there is included in a Malta assessment income or capital which, in accordance with the provisions of this Agreement, may be taxed in the Netherlands, the Netherlands tax on such income or capital, as the ease may be, shall be allowed as a credit against the relative Malta tax payable thereon.

6. Where a resident of one of the States derives gains which may be taxed in the other State in accordance with paragraph 5 of Article 14, that other State shall allow a deduction from its tax on such gains to an amount equal to the tax levied in the first-mentioned State on the said gains.

CHAPTER VI. Special provisions

Article 26. Non-discrimination

1. The nationals of one of the States, whether they are residents of that State or not, shall not be subjected in the other State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of one of the States has in the other State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging one of the States to grant to

residents of the other State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 5 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of one of the States to a resident of the other State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same condition as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of one of the States to a resident of the other State shall, for the purpose of determining the taxable capital of such enterprise, be deductible as if they had been contracted to a resident of the first-mentioned State.

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

5. In this Article the term “taxation” means taxes of every kind and description.

Article 27. Mutual agreement procedure

1. Where a resident of one of the States considers that the actions of one or both of the States result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the State of which he is a resident, or, in any case referred to in paragraph 1 of Article 26, to that of the State of which he is a national. This case must be presented within three years from the first notification of the action giving rise to taxation not in accordance with the Agreement.

The following paragraph 1 of Article 16 of the MLI replaces the first sentence of paragraph 1 of Article 27 of this Agreement:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

Where a person considers that the actions of one or both of the States result or will result for that person in taxation not in accordance with the provisions of this Agreement, that person may, irrespective of the remedies provided by the domestic law of those States, present the case to the competent authority of either State.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other State, with a view to the avoidance of taxation not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the national laws of the States.

3. The competent authorities of the States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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

The following Part VI of the MLI applies to this Agreement:

PART VI OF THE MLI (ARBITRATION)

Article 19 (Mandatory Binding Arbitration) of the MLI

1. Where:

a) under paragraph 1 of Article 27 of this Agreement, a person has presented a case to the competent authority of a State on the basis that the actions of one or both of the States have resulted for that person in taxation not in accordance with the provisions of the Agreement; and

b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 of Article 27 of the Agreement, within a period of two 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 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), 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 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 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 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 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 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 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 States shall by mutual agreement pursuant to Article 25 of the MLI 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 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 State, a decision concerning the issue is rendered by a court or administrative tribunal of one of the 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 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 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 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 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 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 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 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 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 Agreement and of the domestic laws of the 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 Agreement related to the exchange of information and administrative assistance.

2. The competent authorities of the 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 Agreement related to exchange of information and administrative assistance and under the applicable laws of the 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 Agreement 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 States:

a) the competent authorities of the 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.

Article 23 (Type of Arbitration Process) of the MLI

Independent opinion arbitration

2. Except to the extent that the competent authorities of the 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 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 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 Agreement and, subject to these provisions, of those of the domestic laws of the States. The panel members shall also consider any other sources which the competent authorities of the States may by mutual agreement expressly identify.

c) The arbitration decision shall be delivered to the competent authorities of the 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 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 Agreement, as well as the arbitration proceeding under this Part, 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 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 this Part, 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 States, shall be borne by the States in a manner to be settled by mutual agreement between the competent authorities of the States. In the absence of such agreement, each 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 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 this Part 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 conventions that provides for mandatory binding arbitration of unresolved issues arising from a mutual agreement procedure case.

3. Nothing in this Part 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 States are or will become parties.

Subparagraph a) of paragraph 2 of Article 28 of the MLI

Pursuant to Article 28(2)(a) of the MLI, Malta makes the below reservation with respect to the scope of cases that shall be eligible for arbitration under the provisions of Part VI of the MLI.

Where a reservation made by the other Contracting Jurisdiction to a Covered Tax Agreement pursuant to Article 28(2)(a) refers exclusively to its domestic law (including legislative provisions, case law, judicial doctrines and penalties), Malta reserves the right to exclude from the scope of Part VI those cases that would be excluded from the scope of Part VI if the other Contracting Jurisdiction's reservation were formulated with reference to any analogous provisions of Malta's domestic law or any subsequent provisions which replace, amend or update those provisions. The competent authority of Malta will consult with the competent authority of the other Contracting Jurisdiction in order to specify any such analogous provisions which exist in Malta's domestic law in the agreement concluded pursuant to Article 19(10).

Article 28. Exchange of information

1. The competent authorities of the States shall exchange such information as is necessary for the carrying out of this Agreement or of the domestic laws of the States concerning taxes covered by this Agreement insofar as the taxation thereunder is not contrary to this Agreement. The exchange of information is not restricted by Article 1. Any information received by one of the States 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) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Agreement. Such persons or authorities shall use the information only for such purposes. These persons or authorities may disclose the information in public court proceedings or in judicial decisions.

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

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

Article 29. Diplomatic and consular officials

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

Article 30. Regulations

1. The competent authorities of the States shall by mutual agreement settle the mode of application of paragraphs 2 and 3 of Article 10, of paragraphs 2 and 3 of Article 11, and of paragraphs 1 and 2 of Article 12.

2. The competent authorities of each of the States, in accordance with the practices of that State, may prescribe regulations necessary to carry out the other provisions of this Agreement.

The following paragraph 1 of Article 7 of the MLI replaces paragraph 1 of Article IV of the Protocol to the Agreement:

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

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

The following paragraph 4 of Article 7 of the MLI applies to paragraph 1 of Article 7 of the MLI:

Where a benefit under this Agreement is denied to a person under provisions of paragraph 1 of Article 7 of the MLI that deny all or part of the benefits that would otherwise be provided under this Agreement where the principal purpose or one of the principal purposes of any arrangement or transaction, or of any person concerned with an arrangement or transaction, was to obtain those benefits, the competent authority of the State that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income or capital, if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person in the absence of the transaction or arrangement referred to in paragraph 1 of Article 7 of the MLI. The competent authority of the State to which a request has been made under this paragraph by a resident of the other State shall consult with the competent authority of that other State before rejecting the request.

Article 31. Territorial extension

1. This Agreement may be extended, either in its entirety or with any necessary modifications, to the

Netherlands Antilles, if that country imposes taxes substantially similar in character to those to which this Agreement 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 Agreement shall not of itself also terminate any extension of the Agreement to the Netherlands Antilles.

CHAPTER VII. Final provisions

Article 32. Entry into force

1. The Governments of the States shall notify to each other that the constitutional requirements for the entry into force of this Agreement have been complied with.

2. The Agreement shall enter into force thirty days after the date of the later of the notifications referred to in paragraph 1 and its provisions shall have effect:

a. in respect of taxes on income derived on or after the first day of January, 1976;
b. in respect of taxes on capital levied as from the first day of January, 1976.

Article 33. Termination

This Agreement shall remain in force until terminated by the Government of one of the States. Either State may terminate the Agreement through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year 1981. In such event the Agreement shall cease to have effect:

a. in respect of taxes on income derived on or after the first day of January next following the year during which notice of termination has been given;
b. in respect of taxes on capital levied as from the first day of January next following the year during which notice of termination has been given.

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

DONE at The Hague this 18th day of May 1977, in duplicate, in the Netherlands and English languages, both texts being equally authentic.

For the Government of the Kingdom of the Netherlands,

(sd.) M. VAN DER STOEL.

For the Government of the Republic of Malta,

(sd.) G. AGIUS.

Protocol

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

I. Ad Article 4

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

II. Ad Articles 5 and 7

Except with regard to re-insurance, the provisions of Articles 5 and 7 of the Agreement shall not affect the provisions of the law of either State regarding the taxation of profits from the business of insurance.

III. Ad Articles 8, 14 and 24

1. Notwithstanding the provisions of Article 8, profits from the operation of ships in international traffic derived by a company which is a resident of Malta, may be taxed in the Netherlands, unless the company proves that such profits are not relieved from Malta tax under the provisions of the Merchant Shipping Act, 1973, or under any identical or similar provision. The foregoing sentence, however, shall not apply if the company proves that not more than 25 per cent of its capital is owned, directly or indirectly, by persons who are not residents of Malta.

2. The provisions of paragraph 1 shall apply accordingly to capital gains referred to in paragraph 3 of Article 14 and to capital referred to in paragraph 3 of Article 24.

IV. Ad Article 10

1. **[REPLACED by paragraph 1 of Article 7 of the MLI[1]]** The provisions of sub-paragraph a) of paragraph 2 of Article 10 shall not apply if the relation between the two companies has been arranged or is maintained primarily with the intention of securing this reduction.

2. It is understood that the reference in the second sentence of paragraph 3 of Article 10 to the provisions of the Netherlands law to the effect that the receiving company is not charged to Netherlands company tax in respect of the profits distributed by a Malta company, is to the application of the so called “holding privilege” in the Netherlands Company Tax Act. Subject to the provisions of the said Act and to future amendments thereto, this “holding privilege” leads to the result that a company which is a resident of the Netherlands can leave out of account, in the computation of its taxable profits, dividends it receives from a company which is a resident of Malta, if it owns at least 5 per cent of the paid-up capital of the latter company.

V. Ad Articles 10, 11 and 12

Applications for the repayment of tax levied contrary to the provisions of Articles 10, 11 and 12 have to be lodged with the competent authority of the State, which has levied the tax, within a period of three years after the expiration of the calendar year in which the tax has been levied.

VI. Ad Articles 24 and 25

The provisions on the taxation of capital in Article 24 and the provisions with respect to the elimination of double taxation with respect to capital in paragraph 2 of Article 25 of the Agreement will not apply as long as Malta does not levy a tax on capital.

VII. Ad Article 25

It is understood that, insofar as the Netherlands income tax or company tax is concerned, the basis referred to in paragraph 1 of Article 25 is the “onzuivere inkomen” or “winst” in terms of the Netherlands Income Tax Law or Company Tax Law, respectively.

VIII. Ad Article 25

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[1] Refer to the box following Article 30 of the Agreement.

Notwithstanding Article 34 of the Agreement the provision of paragraph 5 of Article 25 shall cease to have effect after the last day of December, 1997, unless the competent authorities decide otherwise in mutual agreement.

IX. Ad Articles 28 and 30

1. It is understood that provisions on confidentiality in a special regime as meant in Article 30 or such provisions in any identical or substantially similar enactment in addition to or replacing this special regime, shall not impose any restrictions on the exchange of information as meant in Article 28 of the Agreement in those cases where the Maltese competent authority and the relative authority vested with the administration of such special regime agree that sufficient evidence exists to warrant criminal proceedings.

2. It is also understood that provisions in legislation enacted after 1 January 1994 on confidentiality, identical to or replacing provisions on confidentiality in the special regime as meant in Article 30 of the Agreement, shall not impose any restrictions on the exchange of information as meant in Article 28 of the Agreement in case of suspicion of tax avoidance or tax evasion.

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

DONE at The Hague this 18th day of May 1977, in duplicate, in the Netherlands and English languages, both texts being equally authentic.

For the Government of the Kingdom of the Netherlands,

(sd.) M. VAN DER STOEL.

For the Government of the Republic of Malta,

(sd.) G. AGIUS.