SYNTHESISED TEXT OF

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

AND

THE CONVENTION BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE CZECHOSLOVAK SOCIALIST REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL (*as applicable in respect of the Slovak Republic)*

General disclaimer on this Synthesised text document

This document presents the synthesised text for the application of the Convention between the Kingdom of the Netherlands and the Czechoslovak Socialist Republic 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 4 March 1974, as amended by the Protocols signed on 16 February 1996 and on 7 June 2010 (*as applicable in respect of the Slovak Republic*) (the "Convention"), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the "MLI") signed by the Netherlands and the Slovak Republic 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 the Slovak Republic submitted to the Depositary upon ratification on 20 September 2018. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the Convention.

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

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

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made to parts of provisions of the MLI that describe existing provisions of the Convention: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

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

References

- Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (provides the authentic legal texts of the MLI).
- Convention between the Kingdom of the Netherlands and the Czechoslovak Socialist Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital (*as applicable in respect of the Slovak Republic)*
- Signatories and parties to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (provides the MLI position of the Netherlands submitted to the Depositary upon acceptance on 29 March 2019 and the MLI position of the Slovak Republic submitted to the Depositary upon ratification on 20 September 2018).

Entry into Effect of the MLI Provisions

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

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

29 March 2019 for the Netherlands and 20 September 2018 for the Slovak Republic.

Entry into force of the MLI:

1 July 2019 for the Netherlands and 1 January 2019 for the Slovak Republic.

Entry into effect of the MLI provisions:

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

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

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

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

Convention between the Kingdom of the Netherlands and the Czechoslovak Socialist Republic 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 Czechoslovak Socialist Republic,

Desiring to conclude a convention 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 Convention:

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

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

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

Have agreed as follows:

CHAPTER I. SCOPE OF THE CONVENTION

Article 1. Personal scope

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

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

ARTICLE 3 OF THE MLI – TRANSPARANT ENTITIES

For the purposes of the Convention, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either State shall be considered to be income of a resident of a State but only to the extent that the income is treated, for purposes of taxation by that State, as the income of a resident of that State. In no case shall the provisions of this paragraph be construed to affect a State's right to tax the residents of that State.

Article 2. Taxes covered

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

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 the Convention 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 Czechoslovakia:

- daň zemědělská (the agricultural tax),
- daň domovní (the house tax),
- odvod ze zisku a daň ze zisku (the taxes on profits),
- daň z přijmu obyvatelstva (the tax on population income),
- daň ze mzdy (the wages tax),
- daň z příjmu z literární a umělecké činnosti (the tax on income from literary and artistic activities),

(hereinafter referred to as „Czechoslovak tax").

4. The Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed 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.

CHAPTER II. DEFINITIONS

Article 3. General definitions

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

a) the term „State" means the Netherlands or Czechoslovakia, as the context requires; the term „States" means the Netherlands and Czechoslovakia;
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 sub-soil under the North Sea, over which the Kingdom of the Netherlands has sovereign rights in accordance with international law;
c) the term „Czechoslovakia" means the Czechoslovak Socialist Republic;
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 „competent authority" means:
    1. in the Netherlands the Minister of Finance or his duly authorized representative;
    2. in Czechoslovakia the Minister of Finance of the Czechoslovak Socialist Republic or his duly authorized representative.

2. As regards the application of the Convention 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 Convention.

Article 4. Fiscal domicile

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

2. For the purposes of this Convention an individual, who is a member of a diplomatic or consular mission of one of the States in the other State or in a third State and who is a national of the sending State, shall be deemed to be a resident of the sending State if he is submitted therein to the same obligations in respect of taxes on income and 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 this case shall be determined in accordance with the following rules:

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 effective management is

situated.

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

ARTICLE 4 OF THE MLI – DUAL RESIDENT ENTITIES

Where by reason of the provisions of the Convention a person other than an individual is a resident of both States, the competent authorities of the States shall endeavour to determine by mutual agreement the State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by the Convention except to the extent and in such manner as may be agreed upon by the competent authorities of the States.

Article 5. Permanent establishment

1. For the purposes of this Convention, the term „permanent establishment" means a fixed place of business 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 which exists for more than twelve months.

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

ARTICLE 14 OF THE MLI – SPLITTING-UP OF CONTRACTS

For the sole purpose of determining whether the twelve month period referred to in paragraph 2, subparagraph g, of the Convention has been exceeded:

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

b) where connected activities are carried on in that other Contracting State at the same building site or construction or assembly project during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,

these different periods of time shall be added to the aggregate period of time during which the first-mentioned enterprise has carried on activities at that building site or construction or assembly project.

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.

The following paragraph 2 of Article 13 of the MLI applies to paragraph 3 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 3 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 3 of Article 5 of this Convention as modified by paragraph 2 of Article 13 of the MLI:

Article 5 of the Convention, as modified by paragraph 2 of Article 13 of the MLI shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same State and:

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

b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

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

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.

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 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 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, 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 other form of immovable property.

4. The provisions of paragraph 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. 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 a 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 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 laid down 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 preceeding 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 State in which the place of effective management of the enterprise is situated.

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

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

boat is a resident.

Article 9. Associated enterprises

Where

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

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

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

ARTICLE 17 OF THE MLI – CORRESPONDING ADJUSTMENTS

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

Article 10. Dividends

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

2. However, such dividends may be taxed in the State of which the company paying the dividends is a resident, and according to the law of that State, but the tax so charged shall not exceed 10 percent of the gross amount of the dividends.

3. Notwithstanding the provisions of paragraph 2 the State of which the company is a resident shall not levy a tax on dividends paid by that company to a company the capital of which is wholly or partly divided into shares and which is a resident of the other State and holds directly at least 25 percent of the capital of the company paying the dividends.

The following paragraph 1 of Article 8 of the MLI applies to paragraph 3 of Article 10 of this Convention:

ARTICLE 8 OF THE MLI – DIVIDEND TRANSFER TRANSACTIONS

Paragraph 3 of Article 10 of this Convention shall apply only if the ownership conditions described in those provisions are met throughout a 365 day period that includes the day of the payment of the dividends (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividends).

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

5. The provisions of paragraphs 2 and 3 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

6. The term „ dividends" as used in this Article means income from shares, „jouissance" shares or „jouissance" rights, mining shares, founders' shares or other rights participating in profits, as well as income from debt-claims participating in profits and income from other corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident.

7. 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, has in the other State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of Article 7 shall apply.

8. 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 to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11. Interest

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

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

3. The provisions of paragraph 1 shall not apply if the recipient of the interest, being a resident of one of the States, has in the other State in which the interest arises a permanent establishment with which the debt-claim from which the interest arises is effectively connected.

In such a case, the provisions of Article 7 shall apply.

4. 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 Convention.

Article 12. Royalties

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

2. However, such royalties may be taxed in the State in which they arise, and according to the law of that State, but the tax so charged shall not exceed 5 per cent of the amount of the royalties.

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

4. The term „royalties” as used in this Article means payment 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 the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

5. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of one of the States, has in the other State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of Article 7 shall apply.

6. Royalties shall be deemed to arise in one of the States when the payer is that State itself, a political subdivision, a local authority or a resident of that State. 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 contract under which the royalties are paid was concluded, 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, 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 Convention.

Article 13. Limitation of articles 10, 11 and 12

International organisations, 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 and of boats engaged in inland waterways transport, and movable property pertaining to the operation of such ships, aircraft and boats, shall be taxable only in the State in which the place of effective management of the enterprise is situated. For the purposes of this paragraph the provisions of paragraph 3 of Article 8 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, the capital of which is wholly or partly divided into shares and which under the laws of that State is a resident thereof, derived by an individual who is a resident of the other State and has been a resident of the first-mentioned State in the course of the last five years preceding the alienation of the shares or “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.

2. The term „professional services” includes 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 and 20, salaries, wages and other similar remuneration derived by a resident of one of the States in respect of an employment shall be taxable only in that State unless the employment is exercised in the other State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, 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 fiscal year concerned, and
b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the 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 or aboard a boat engaged in inland waterways transport, 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 Czechoslovakia may be taxed in Czechoslovakia.

2. Remuneration and other payments derived by a resident of Czechoslovakia 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

Notwithstanding the provisions of Articles 15 and 16, income derived by public 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.

Article 19. Pensions

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.

Article 20. Government service

1.
a) Salaries, wages and other similar remuneration paid by one of the States 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 State if the services are rendered in that State and the individual is a resident of that State who:
(i) is a national of that State; or
(ii) did not become a resident of that State solely for the purpose of rendering the services.

2.
a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, one of the States 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 pensions and other similar remuneration shall be taxable only in the other State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 16, 17 and 19 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a State or a political subdivision or a local authority thereof.

Article 21. Professors and teachers

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 for a maximum period of two years in a university, college or other teaching establishment in that other State, receives for such teaching, shall be taxable only in the first-mentioned State.

Article 22. Students

Payments which a student or business apprentice who is or was formerly a resident of one of the States and who is present in the other 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 other State, provided that such payments are made to him from sources outside that other State.

Article 23. Income not expressly mentioned

Items of income of a resident of one of the States which are not expressly mentioned in the foregoing Articles of this Convention shall be taxable only in that State.

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

Article 25. Elimination of double taxation

It is agreed that double taxation shall be avoided in the following manner:

A. In the case of the Netherlands:
   1. The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed, the items of income or capital, which according to the provisions of this Convention may be taxed in Czechoslovakia.
   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 mentioned in the first paragraph of this Article and may be taxed in Czechoslovakia according to Articles 6 and 7, paragraph 7 of Article 10, paragraph 3 of Article 11, paragraph 5 of Article 12, paragraphs 1 and 2 of Article 14, Article 15, paragraph 1 of Article 16, paragraph 1 of Article 17, paragraphs 1 (subparagraph a) and 2 (subparagraph a) of Article 20, paragraphs 1 and 2 of Article 24, of this Convention bears to the total income or capital which forms the basis mentioned in paragraph 1 of this Article.

The following paragraph 2 of Article 5 of the MLI applies to paragraph 2 of Letter A of Article 25 of this Convention with respect to the residents of the Netherlands:

ARTICLE 5 – APPLICATION OF METHODS FOR ELEIMINATION OF DOUBLE TAXATION (*Option A*)

Paragraph 2 of Letter A of Article 25 of the Convention shall not apply where the Slovak Republic applies the provisions of the Convention to exempt income derived or capital owned by a resident of the Netherlands from tax or to limit the rate at which such income or capital may be taxed. In the latter case, the Netherlands shall allow as a deduction from the tax on the income or capital of that resident an amount equal to the tax paid in the Slovak Republic. 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 or capital which may be taxed in the Slovak Republic .

   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 Czechoslovakia according to paragraph 2 of Article 10, paragraph 2 of Article 12, paragraph 5 of Article 14, and Article 18, and are included in the basis mentioned in paragraph 1 of this Article. The amount of this deduction shall be the lesser of the following amounts:
      a) the amount equal to the Czechoslovak tax;
      b) 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 mentioned in paragraph 1 of this Article.

B. In the case of Czechoslovakia:
   1. Income other than that mentioned in paragraph 2 below shall be exempt from the Czechoslovak taxes, if the income according to the provisions of this Convention may be taxed in the Netherlands.
   2. As regards income mentioned in Articles 10, 12, 14, 17 and 18, which has borne Netherlands tax in accordance with the provisions of these Articles, Czechoslovakia shall allow to a resident of

Czechoslovakia receiving such income from the Netherlands a tax credit corresponding to the amount of tax levied in the Netherlands; such tax credit, not exceeding the amount of the tax levied in the Netherlands on such income, shall be allowed against Czechoslovak taxes, in the bases of which such income is included.

3. Notwithstanding the provisions of paragraphs 1 and 2 Czechoslovak tax may be computed on income taxable in Czechoslovakia by virtue of this Convention at the rate appropriate to the total of the income taxable in accordance with Czechoslovak law.

The following paragraph 6 of Article 5 of the MLI replaces Article 25 letter B of this Convention with respect to residents of the Slovak Republic:

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

Where a resident of a the Slovak Republic derives income or owns capital which may be taxed in the Netherlands in accordance with the provisions of this Convention (except to the extent that these provisions allow taxation by the Netherlands solely because the income is also income derived by a resident of the Netherlands), the Slovak Republic shall allow

− i) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in the Netherlands;

− ii) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in the Netherlands.

Such deduction shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable to the income or the capital which may be taxed in the Netherlands.

Where in accordance with any provision of the Convention income derived or capital owned by a resident of the Slovak Republic is exempt from tax in the Netherlands, the Slovak Republic may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident,take into account the exempted income or capital.

The following paragraph 2 of Article 3 of the MLI applies and supersedes the provisions of this Convention:

ARTICLE 3 OF THE MLI – TRANSPARANT ENTITIES

Article 25 of the Convention shall not apply to the extent that such provision allows taxation by that other State solely because the income is also income derived by a resident of that other State.

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 term „nationals" means:

a) all individuals possessing the nationality of one of the States;
b) all legal persons, partnerships and associations deriving their status as such from the law in force in one of the States.

3. 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.

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 Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the State of which he is a resident.

The following second sentence of paragraph 1 of Article 16 of the MLI applies and supersedes the provisions of this Convention:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

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 an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other State, with a view to the avoidance of taxation not in accordance with this Convention.

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

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

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

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

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

Article 28. Exchange of information

1. The competent authorities of the States shall exchange such information (being information which such authorities have in proper order at their disposal) as is necessary for the carrying out of this Convention, in particular for the prevention of fraud, and for the administration of statutory provisions against legal avoidance concerning taxes covered by this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of this Convention.

2. In no case shall the provisions of paragraph 1 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 Convention shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

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 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 the Convention.

The following paragraphs 1 through 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 ESTABLISHMENT SITUATED IN THIRD JURISDICTIONS

Paragraph 1 of Article 10 of the MLI

Where:

a) an enterprise of a State derives income from the other State and the first-mentioned 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 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 State on that item of income if that permanent establishment were situated in the first-mentioned 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 State, notwithstanding any other provisions of the Convention.

Paragraph 2 of Article 10 of the MLI

Paragraph 1 of Article 10 of the MLI shall not apply if the income derived from the other 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

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 State, the competent authority of the other 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 State to which a request has been made under the preceding sentence by a resident of the other State shall consult with the competent authority of that other State before either granting or denying the request.

Article 30. 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 Surinam or the Netherlands Antilles, if the country concerned imposes taxes substantially similar in character to those to which this 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 the application of the Convention to any country to which it has been extended under this Article.

CHAPTER VII. FINAL PROVISIONS

Article 31. Entry into force

This Convention shall enter into force on the date on which the Contracting Governments have notified each other in writing that the Convention has been approved according to their respective constitutional laws, and its provisions shall have effect:

- as respects tax withheld at the source, for any amounts paid or credited on or after January 1, 1972;
- as respects other taxes, for taxable years or periods, beginning on or after January 1, 1972;

Article 32. Termination

This Convention shall remain in force until denounced by one of the Contracting Parties. Either Party may denounce the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year 1977.
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.

DONE at Prague, on 4 March 1974, in two originals, each in the Netherlands, Czech and English languages, the three texts being equally authentic. In case there is any divergence of interpretation between the Netherlands and Czech texts, the English text shall prevail.

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

For the Government of the Kingdom of the Netherlands

(sd.) R. FROGER

For the Government of the Czechoslovak Socialist Republic

(sd.) L. LÉR

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 and on capital, this day concluded between the Kingdom of the Netherlands and the Czechoslovak Socialist Republic, the undersigned have agreed that the following provisions shall form an integral part of the Convention.

I. Ad Article 4

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

II. Ad Articles 10, 11 and 12

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

III. Ad Article 25

It is understood that, in so far as the Netherlands income tax or company tax is concerned, the basis mentioned in Article 25, A, paragraph 1 is the „onzuivere inkomen" or „winst" in terms of the Netherlands Income Tax Law or Company Tax Law, respectively.

IV. Ad Article 28

The obligation to exchange information does not include information obtained from banks or from institutions assimilated thereto. The term institutions assimilated thereto" means inter alia insurance companies.

DONE at Prague, on 4 March 1974, in two originals, each in the Netherlands, Czech and English languages, the three texts being equally authentic. In case there is any divergence of interpretation between the Netherlands and Czech texts, the English text shall prevail.

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

For the Government of the Kingdom of the Netherlands

(sd.) R. FROGER

For the Government of the Czechoslovak Socialist Republic

(sd.) L. LÉR