

1968 No. 577

INCOME TAX

**The Double Taxation Relief (Taxes on Income)
(Netherlands) Order 1968***Laid before the House of Commons in draft**Made - - - 8th April 1968*

At the Court at Windsor Castle, the 8th day of April 1968

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the Commons House of Parliament in accordance with the provisions of section 347(6) of the Income Tax Act 1952(a), and an Address has been presented to Her Majesty by that House praying that an Order may be made in the terms of this Order:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 347(1) of the said Income Tax Act 1952, as amended by section 39 and section 64 of the Finance Act 1965(b), and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Netherlands) Order 1968.

2. It is hereby declared—

(a) that the arrangements specified in the Convention set out in the Schedule to this Order have been made with the Government of the Kingdom of the Netherlands with a view to affording relief from double taxation in relation to income tax, corporation tax, or capital gains tax and taxes of a similar character imposed by the laws of the Netherlands; and

(b) that it is expedient that those arrangements should have effect.

W. G. Agnew.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Arrangement makes two amendments to the Arrangement between the United Kingdom and Montserrat which is scheduled to the Double Taxation Relief (Taxes on Income) (Montserrat) Order 1947.

First it provides that the exemption of dividends from any tax chargeable in addition to the tax on the paying company's profits is not to be allowed in certain cases where the shareholder is a company having a substantial holding in the paying company. The restriction does not apply to dividends on shares acquired for *bona fide* commercial reasons.

Secondly, it amends paragraph 13 of the 1947 Arrangement in its application to dividends by providing that credit for tax on the profits out of which dividends are paid, whether that tax is deducted from the dividends or not, is to be given only where the recipient is a company which holds not less than 10 per cent of the voting power in the paying company. So far as United Kingdom income tax is concerned this provision takes effect from the year of assessment 1968/69.

SCHEDULE

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of the Netherlands;

Desiring to conclude a new Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital;

Have agreed as follows:—

ARTICLE 1

Persons Covered

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

ARTICLE 2

Taxes Covered

(1) The taxes which are the subject of this Convention are:

(a) In the United Kingdom of Great Britain and Northern Ireland:
the income tax including surtax, the corporation tax and the capital gains tax

(hereinafter referred to as "United Kingdom tax").

(b) In the Netherlands:

the income tax (*inkomstenbelasting*), the wages tax (*loonbelasting*), the company tax (*vennootschapsbelasting*), the dividend tax (*dividendbelasting*), the tax on fees of directors of companies (*commissarissenbelasting*) and the capital tax (*vermogensbelasting*)

(hereinafter referred to as "Netherlands tax").

(2) This Convention shall also apply to any identical or substantially similar future taxes which are imposed in addition to, or in place of, the existing taxes by either State. The taxation authorities of the States shall notify to each other any substantial changes which have been made in their respective taxation laws.

ARTICLE 3

General Definitions

(1) In this Convention, unless the context otherwise requires—

(a) the term "United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised;

(b) the term "Netherlands" comprises the part of the Kingdom of the Netherlands that is situated in Europe and the part of the sea bed 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 "State" means the United Kingdom or the Netherlands, as the context requires; the term "States" means the United Kingdom and the Netherlands;

(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 "taxation authorities" means, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative; in the case of the Netherlands, the Minister of Finance or his authorised representative;
- (h) the term "tax" means United Kingdom tax or Netherlands tax as the context requires;
- (i) the term "international traffic" includes any voyage of a ship or aircraft other than a voyage solely between places in the State which is not the State of which the person deriving the profits from the operation of the ship or aircraft is a resident.

(2) As regards the application of the Convention by one 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 the Convention.

ARTICLE 4

Residence

(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 but the term does not include any person who is liable to tax in that State only if he derives income from sources therein. The terms "resident of the United Kingdom" and "resident of the Netherlands" shall be construed accordingly.

(2) Where by reason of the provisions of paragraph (1) an individual is a resident of both States, then his status 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 taxation authorities of the States shall settle the question by mutual agreement.

(3) Where by reason of the provisions of paragraph (1) a person other than an individual is a resident of both States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

ARTICLE 5

Permanent Establishment

(1) For the purposes of this 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.
- (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.

ARTICLE 6

Limitation of Relief

Where under any provision of this Convention income is relieved from Netherlands tax and, under the law in force in the United Kingdom, an individual, in respect of the said income, is subject to tax by reference to the amount thereof which is remitted to or received in the United Kingdom and not by reference to the full amount thereof, then the relief to be allowed under the Convention in the Netherlands shall apply only to so much of the income as is remitted to or received in the United Kingdom.

ARTICLE 7

Immovable Property

- (1) Income from immovable property may be taxed in the State in which such property is situated.
- (2) (a) The term "immovable property" shall, subject to sub-paragraph (b) below, be defined in accordance with the law of the State in which the property in question is situated.

(b) The term "immovable property" shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

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

(4) The provisions of paragraphs (1) to (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 8

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 at arm's length 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 of the enterprise (other than expenses which would not be deductible if the permanent establishment were a separate enterprise) 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) In so far as it has been customary under the law of one of the States which is in force at the date of signature of this Convention to determine the profits to be attributed to a permanent establishment of a life assurance company on the basis of an apportionment of the total income and expenses of the enterprise nothing in paragraph (2) shall preclude that State from determining the profits to be taxed by such an apportionment. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles of 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 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 9

Shipping and Air Transport

Profits which a resident of one of the States derives from the operation of ships or aircraft in international traffic shall be taxable only in that State.

ARTICLE 10

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.

ARTICLE 11

Dividends

(1) Dividends derived from a company which is a resident of one of the States by 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 where such dividends are beneficially owned by a resident of the other State the tax charged shall not exceed:

- (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company the capital of which is wholly or partly divided into shares and it controls directly or indirectly at least 25 per cent of the voting power in the company paying the dividends;
- (b) in all other cases 15 per cent of the gross amount of the dividends.

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

(3) The term "dividends" as used in this Article means income from shares, *jouissance* shares or *jouissance* rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights treated in the same manner as income from shares by the taxation law of the State of which the company making the distribution is a resident (other than interest or royalties taxable only in one of the States according to Article 12 or Article 13) and also the excess part of any payment of interest or royalties mentioned in paragraph (5) of Article 12 or paragraph (5) of Article 13 to the extent that it is treated as a distribution under the taxation law of the State of which the company making the payment is a resident.

(4) If the beneficial owner of dividends being a resident of one of the States owns 10 per cent or more of the class of shares in respect of which the dividends are paid and does not suffer tax thereon in that State then paragraph (2) of this Article shall not apply to the dividends to the extent that they can have been paid only out of profits which the company paying the dividends earned or other income which it received in a period ending twelve months or more before the relevant date. For the purposes of this paragraph the term "relevant date" means the date on which the beneficial owner of the dividends became the owner of 10 per cent or more of the class of shares in question.

Provided that this paragraph shall apply only if the shares were acquired primarily for the purpose of securing the benefit of this Article and not for bona fide commercial reasons.

(5) The provisions of paragraphs (1) and (2) 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 and the

holding by virtue of which the dividends are paid is effectively connected with the business carried on through such permanent establishment. In such a case the provisions of Article 8 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 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.

(7) Not later than five years after the date of the entry into force of this Convention the taxation authorities shall consult together to study the possibility of an amendment of this Convention which would reduce the rate mentioned in paragraph (2)(a) of this Article.

ARTICLE 12

Interest

(1) Interest derived and beneficially owned by a resident of one of the States shall be taxable only in that State.

(2) The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and other 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) of this Article shall not apply if the recipient of the interest, being a resident of one of the States, has in the other State a permanent establishment and the debt-claim giving rise to the interest is effectively connected with the business carried on through such permanent establishment. In such a case the provisions of Article 8 shall apply.

(4) Any provision in the law of one of the States which relates only to interest paid to a non-resident company with or without any further requirement, or which relates only to interest payments between interconnected companies, with or without any further requirement, shall not operate so as to require such interest paid to a company which is a resident of the other State to be left out of account as a deduction in computing the taxable profits of the company paying the interest as being a distribution.

(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 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 payment shall remain taxable according to the law of each State, due regard being had to the other provisions of this Convention.

(6) The provisions of this Article shall not apply if the debt-claim in respect of which the interest is paid was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.

ARTICLE 13

Royalties

(1) Royalties derived and beneficially owned by a resident of one of the States shall be taxable only in that State.

(2) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films or tapes for radio or television broadcasting), 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 and shall include gains derived from the sale or exchange of any right or property giving rise to such royalties.

(3) The provisions of paragraph (1) of this Article shall not apply if the recipient of the royalties, being a resident of one of the States has in the other State a permanent establishment and the right or property giving rise to the royalties is effectively connected with the business carried on through such permanent establishment. In such a case the provisions of Article 8 shall apply.

(4) Any provision in the law of one of the States which requires royalties paid by a company to be left out of account as a deduction in computing the company's taxable profits as being a distribution shall not operate in relation to royalties paid to a resident of the other State.

(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 Convention.

(6) The provisions of this Article shall not apply if the right or property giving rise to the royalties was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.

ARTICLE 14

Application of Articles 11, 12 and 13

(1) The reductions and exemptions from tax in the State of source given by Articles 11, 12 and 13 shall be carried out in accordance with the mode of application determined (having due regard to the taxation laws of that State) by the taxation authorities of the States.

(2) Where tax has been deducted at the source in excess of the amount of tax chargeable under the provisions of Articles 11, 12 or 13 the excess amount of tax shall be refunded upon application to the taxation authorities concerned, provided that the application is made within a period of six years after the end of the calendar year in which the tax was deducted.

(3) The provisions of paragraph (2) of Article 11, paragraph (1) of Article 12 and paragraph (1) of Article 13 shall not apply if:

- (a) the holding, security or asset giving rise to the income in question was obtained in virtue of any contract, option or any arrangement under which the beneficial owner agreed, or might be obliged, to sell again or to transfer again the holding, security or asset or to sell or transfer a similar holding, security or asset, or
- (b) the beneficial owner of the holding, security or asset giving rise to the income in question sells the holding, security or asset within three months from the date on which he acquired it.

ARTICLE 15

Capital Gains

(1) Gains from the alienation of any 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 any 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.

(2) Notwithstanding paragraph (1) of this Article, gains derived by a resident of one of the States from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that State.

(3) Gains from the alienation of any property other than those mentioned in paragraph (1) shall be taxable only in the State of which the alienator is a resident.

(4) The provisions of paragraph (3) shall not affect the right of either of the States to levy according to its own law a tax on gains from the alienation of any property derived by an individual who is a resident of the other State and has been a resident of the first-mentioned State at any time during the five years immediately preceding the alienation of the property.

ARTICLE 16

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 17

Employments

(1) Subject to the provisions of Articles 18, 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 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 in respect of an employment exercised aboard a ship or aircraft shall be taxable only in the State of which the employee is a resident, provided that such remuneration may be taxed in the State of which the person deriving the profits from the operation of the ship or aircraft is a resident if that remuneration is paid in respect of a voyage solely between places in that State, or in respect of regular voyages between a port in that State and an overseas port involving an absence from that State of less than forty-eight hours.

ARTICLE 18

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 the United Kingdom may be taxed in the United Kingdom.

(2) Remuneration derived by a resident of the United Kingdom in his capacity as a *commissaris* of a company which is a resident of the Netherlands and remuneration

other than a fixed salary derived by a resident of the United Kingdom in his capacity as a *bestuurder* of a company which is a resident of the Netherlands may be taxed in the Netherlands.

ARTICLE 19

Artistes and Athletes

Notwithstanding the provisions of Articles 16 and 17, 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 20

Pensions

(1) Subject to the provisions of Article 21, pensions and other similar remuneration paid in consideration of past employment to a resident of one of the States and any annuity paid to such a resident, shall be taxable only in that State.

(2) 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 21

Governmental Functions

(1) Remuneration, including pensions, paid by, or out of funds created by, the Netherlands or a political sub-division or a local authority thereof to any individual in respect of services rendered to the Government of the Netherlands, or a political sub-division, or a local authority thereof, in the discharge of functions of a governmental nature, may be taxed in the Netherlands.

(2) Remuneration, including pensions, paid by, or out of funds created by, the United Kingdom or Northern Ireland or any local authority in the United Kingdom to any individual in respect of services rendered to the Government of the United Kingdom or Northern Ireland, or a local authority in the United Kingdom, in the discharge of functions of a governmental nature, may be taxed in the United Kingdom.

(3) The provisions of Articles 17, 18 and 20 shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by the Netherlands or a political sub-division, or a local authority thereof, or by the United Kingdom or Northern Ireland or any local authority in the United Kingdom.

ARTICLE 22

Students

A student or business apprentice who is or was immediately before visiting one of the States a resident of the other State and is present in the first-mentioned State solely for the purpose of his education or training shall not be taxed in that first-mentioned State on payments which he receives for the purpose of his maintenance, education or training provided that such payments are made to him from sources outside that first-mentioned State.

ARTICLE 23

Income not Expressly Mentioned

Items of income of a resident of one of the States being income of a class or from sources not expressly mentioned in the foregoing Articles of this Convention shall be taxable only in that State.

ARTICLE 24

Capital

(1) Capital represented by immovable property, as defined in paragraph (2) of Article 7, 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 paragraph (2) of this Article, 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 of which the operator is a resident.

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

ARTICLE 25

Personal Allowances

(1) Individuals who are residents of the Netherlands shall be entitled to the same personal allowances, reliefs and reductions for the purposes of United Kingdom tax as British subjects not resident in the United Kingdom.

(2) Individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Netherlands tax as Netherlands nationals resident in the United Kingdom.

ARTICLE 26

Elimination of Double Taxation

(1) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof)

(a) Netherlands tax payable under the laws of the Netherlands and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within the Netherlands (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the Netherlands tax is computed;

(b) In the case of a dividend paid by a company which is a resident of the Netherlands to a company which is a resident of the United Kingdom and which controls directly or indirectly at least 10 per cent of the voting power in the Netherlands company, the credit shall take into account (in addition to any Netherlands tax creditable under sub-paragraph (a)) the Netherlands tax payable by the company in respect of the profits out of which such dividend is paid if, at the time when the dividend is paid, a company which is a resident of the Netherlands the capital of which is wholly or partly divided into shares is exempt from Netherlands tax in respect of dividends received from a company which is a resident of the United Kingdom in which its holding of shares is related to its normal business.

(2) (a) The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed (i.e. the *onzuivere inkomen* in the case of Netherlands income tax or the *winst* in the case of Netherlands company tax) the items of income or capital, which according to the provisions of this Convention may be taxed in the United Kingdom.

(b) 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 (2)(a) 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 paragraph (2)(a) of this Article and may be taxed in the United Kingdom according to Articles 7, 8, 11 (paragraph (5)), 12 (paragraph (3)), 13 (paragraph (3)), 15 (paragraph (1)), 16, 17 (paragraphs (1) and (3)), 18 (paragraph (1)), 19, 21 (paragraphs (2) and (3)), and 24 (paragraphs (1) and (2)) of this Convention bears to the total income or capital which forms the basis mentioned in paragraph (2)(a) of this Article.

Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for such items of income, as may be taxed in the United Kingdom according to Articles 11 (paragraph (2)) and 15 (paragraph (4)) and are included in the basis mentioned in paragraph (2)(a) of this Article. The amount of this deduction shall be the lesser of the following amounts:

- (i) the amount equal to the United Kingdom tax;
- (ii) the amount of the Netherlands tax which bears the same proportion to the amount of tax computed in conformity with paragraph (2)(a) 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 (2)(a) of this Article.

(3) For the purposes of paragraph (1) of this Article, income and chargeable gains owned by a resident of the United Kingdom which may be taxed in the Netherlands in accordance with this Convention shall be deemed to arise from sources in the Netherlands.

ARTICLE 27

Non-discrimination

(1) The nationals of one of the States 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 "national" means:

(a) in relation to the United Kingdom:

- (i) all British subjects deriving their status as such from connection with the United Kingdom and all British subjects and British protected persons residing in the United Kingdom;
- (ii) all legal persons, partnerships, associations and other entities deriving their status as such from the law of the United Kingdom;

(b) in relation to the Netherlands:

- (i) all individuals possessing the Netherlands nationality;
- (ii) all legal persons, partnerships, associations and other entities deriving their status as such from the law in force in the Netherlands.

(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.

Nothing contained in this paragraph shall be construed as obliging either State to grant to individuals not resident in that State any of the personal allowances and reliefs for tax purposes which are granted to individuals so resident, nor as conferring any exemption from tax in a State in respect of dividends paid to a company which is a resident of the other 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 determining for the purpose of United Kingdom tax whether a company is a close company, the term "recognized stock exchange" shall include any stock exchange in the Netherlands which is a stock exchange within the meaning of the Netherlands law relating to stock exchanges.

(6) In this Article the term "taxation" means taxes of every kind and description.

ARTICLE 28

Mutual Agreement

(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 taxation authority of the State of which he is a resident or a national.

(2) The taxation 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 taxation authority of the other State, with a view to the avoidance of taxation not in accordance with the Convention.

(3) The taxation authorities of the States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular the taxation authorities may consult together to endeavour to resolve disputes arising out of the application of paragraph (2) of Article 8 or Article 10.

ARTICLE 29

Exchange of Information

(1) The taxation authorities of the States shall exchange such information (being information which such authorities have at their disposal) as is necessary for carrying out the provisions of this Convention or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of the Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than persons (including a Court or administrative body) concerned with the assessment or collection of, or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Convention.

(2) In no case shall the provisions of paragraph (1) be construed so as to impose on the taxation authority of either State the obligation:

- (a) to carry out administrative measures at variance with the laws or administrative practice prevailing in that or the other State;
- (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration in that or the other State; or
- (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 in that or the other State.

ARTICLE 30

Territorial Extension

(1) This Convention may be extended, either in its entirety or with any necessary modifications, to any territory for whose international relations the United Kingdom of Great Britain and Northern Ireland is responsible as well as to either or both of the countries of Surinam or the Netherlands Antilles, if the territory or 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 this Convention shall not also terminate the application of this Convention to any territory or country to which it has been extended under this Article.

ARTICLE 31

Entry into Force

(1) This Convention shall be ratified and the instruments of ratification shall be exchanged at The Hague as soon as possible.

(2) This Convention shall enter into force after the expiration of a period of thirty days following the date on which the instruments of ratification are exchanged^(a) and shall, subject to paragraph (5) of this Article, thereupon have effect—

(a) In the United Kingdom—

(i) in respect of income tax (including surtax) and capital gains tax for any year of assessment beginning on or after 6th April, 1968 ;

(ii) in respect of corporation tax for any financial year beginning on or after 1st April, 1964.

(b) In the Netherlands—

in respect of any taxes for taxable years and periods beginning on or after 1st January, 1968.

(3) Subject to paragraph (4) of this Article the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of the Netherlands signed at London on 15th October, 1948 shall terminate and cease to be effective as respects taxes to which this Convention in accordance with paragraph (2) above applies.

(4) Subject to paragraph (5) of this Article where any provision of the Convention signed at London on 15th October, 1948 would have afforded any greater relief from tax any such provision as aforesaid shall continue to have effect for any year of assessment or financial year or taxable year or period beginning before the entry into force of this Convention.

(5) The provisions of sub-paragraphs (a) and (b) of paragraph (2), of paragraph (3) and of paragraph (4) shall not apply in relation to dividends but the provisions of this Convention shall have effect, and the provisions of the Convention signed at London on 15th October, 1948 shall cease to be effective, in relation to dividends paid on or after the date of entry into force of this Convention.

(6) The following agreements between the United Kingdom and the Kingdom of the Netherlands shall not have effect for any year or period for which this Convention has effect, that is to say,

(a) the Agreement dated 20th May, 1926, for the reciprocal exemption from income tax in certain cases of profits accruing from the business of shipping ;

(b) the Convention dated 6th June, 1935, for reciprocal exemption from taxes in certain cases ; and

(c) the Agreement constituted by the Exchange of Notes dated 27th August, 1936, for reciprocal exemptions from certain taxation in respect of the business of air transport.

(7) This Convention shall not affect any agreement in force extending the Convention signed at London on 15th October, 1948 in accordance with Article XIX thereof.

(a) Instruments of ratification were exchanged on 14th March 1968.

ARTICLE 32**Termination**

This Convention shall continue in effect indefinitely but either State may, on or before the thirtieth day of June in any calendar year after the year 1971 give, through diplomatic channels, notice of termination to the other State and, in such event, this Convention shall cease to be effective—

(a) In the United Kingdom:

- (i) as respects income tax (including surtax) and capital gains tax for any year of assessment beginning on or after 6th April in the calendar year next following that in which the notice is given ;
- (ii) as respects corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the notice is given ;

(b) In the Netherlands:

for any taxable year or period beginning after the end of the calendar year in which the notice is given.

In witness whereof the undersigned, duly authorised thereto, have signed this Convention.

Done in duplicate at London this thirty-first day of October, 1967 in the English and Netherlands languages, both texts being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

CHALFONT

For the Government of the Kingdom of the Netherlands:

J. H. VAN ROJEN

EXPLANATORY NOTE

(This Note is not part of the Order.)

Under the Convention with the Netherlands scheduled to this Order (which is to replace the Convention signed in London on 15th October, 1948(a)) shipping and air transport profits, certain trading profits not arising through a permanent establishment, interest, royalties, pensions (other than Government pensions) and the earnings of temporary business visitors are (subject to certain conditions) to be taxed only in the country of the taxpayer's residence. ~~Government salaries and pensions are normally to be taxed by the paying Government only.~~ Payments made for the maintenance of visiting students are (subject to certain conditions) to be exempt in the country visited.

The rate of tax in the source country on dividends paid to residents of the other country is, in general, not to exceed 5 per cent if the recipient is a company which controls at least 25 per cent of the voting power in the paying company or 15 per cent in other cases. Where income continues to be taxable in both countries, relief from double taxation is to be given by the country of the taxpayer's residence. In the case of a dividend paid by a Netherlands company, credit for the tax on the profits out of which the dividend is paid is, while certain provisions of the Netherlands law are in force, to be given for United Kingdom tax purposes where the recipient of the dividend is a United Kingdom company which controls not less than 10 per cent of the voting power of the paying company. Capital gains are normally to be taxed only in the country of the taxpayer's residence unless they arise from the disposal of the assets of a permanent establishment which the taxpayer has in the other country. There are provisions safeguarding nationals and enterprises of one country against discriminatory taxation in the other country, and for the exchange of information and consultation between the taxation authorities of the two countries.

The Convention is in general to take effect in the United Kingdom for all years for corporation tax, and for 1968-69 and subsequent years for income tax, surtax and capital gains tax.

(a) S.I. 1950/1196 (1950 I, p. 1044).