

# Argentina

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

Done at Buenos Aires, on 27 December 1996

*text published:* Trb. 1997, 63  
*authentic texts:* Dutch, Spanish and English (English text prevailing)  
*treaty into force:* 11 February 1998 (see Trb. 1998, 79)  
*treaty applicable:* 1 January 1999

## 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 Contracting States.

### Article 2. Taxes covered

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income 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:
    - i. income tax (de inkomstenbelasting);
    - ii. wages tax (de loonbelasting);
    - iii. company tax (de vennootschapsbelasting) including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mining Act of 1810 (de Mijnwet 1810) with respect to concessions issued from 1967, or pursuant to the Netherlands Continental Shelf Mining Act of 1965 (de Mijnwet Continentaal Plat 1965);
    - iv. dividend tax (de dividendbelasting);
    - v. capital tax (de vermogensbelasting); (hereinafter referred to as 'Netherlands tax');
  - b. in the case of Argentina:
    - i. the income tax (impuesto a las ganancias); and
    - ii. the personal assets tax (impuesto sobre los bienes personales); (hereinafter referred to as 'Argentine tax').
4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of significant changes which have been made in their respective taxation laws.

## Chapter II. Definitions

### Article 3. General definitions

1. For the purposes of this Convention, unless the context otherwise requires:

- a. the term 'a Contracting State' means the Netherlands or the Argentine Republic, as the context requires; the term 'Contracting States' means the Netherlands and the Argentine Republic;
  - b. the term 'the Netherlands' means the part of the Kingdom of the Netherlands that is situated in Europe, including the maritime areas adjacent to the coast of 'the Netherlands', to the extent to which the Netherlands may exercise sovereign rights or jurisdiction in those areas according to international law;
  - c. the term 'Argentina' when used in a geographical sense, includes the maritime areas adjacent to the coast of Argentina, to the extent to which Argentina may exercise sovereign rights or jurisdiction in those areas according to international law;
  - d. the term 'person' includes an individual, a company and any other body of persons;
  - e. the term 'company' means any body corporate or any entity which is treated as a body corporate for tax purposes;
  - f. the terms 'enterprise of a Contracting State' and 'enterprise of the other Contracting State' mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
  - g. the term 'international traffic' means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
  - h. the term 'national' means:
    1. any individual possessing the nationality of a Contracting State;
    2. any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
  - i. the term 'competent authority' means:
    1. in the case of the Netherlands the Minister of Finance or his authorized representative;
    2. in the case of Argentina, the Ministry of Economy and Works and Public Services, Secretariat of Finance (el Ministerio de Economía y Obras y Servicios Públicos, Secretaria de Hacienda).
2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

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

1. For the purposes of this Convention, the term 'resident of a Contracting State' means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, or that is a pension fund as described in Article 31. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
  - a. he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
  - b. if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
  - c. if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
  - d. if he is national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

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

1. For the purposes of this Convention, the term 'permanent establishment' means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term 'permanent establishment' includes especially:

- a. a place of management
  - b. a branch
  - c. an office
  - d. a factory
  - e. a workshop, and
  - f. a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. The term 'permanent establishment' likewise encompasses:
- a. a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six months;
  - b. the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where such activities continue (for the same or a connected project) within the country for a period or periods aggregating more than six months within any twelve month period;
  - c. activities connected with the exploration for natural resources, but only where such activities continue for a period of more than six months.
4. Notwithstanding the preceding provisions for this Article, the term 'permanent establishment' shall be deemed not to include:
- a. the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
  - b. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - c. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - d. the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
  - e. the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
  - f. the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise and in his commercial or financial relations with the enterprise conditions are made or imposed that differ from those generally agreed to by independent agents, he will not be considered an agent of an independent status within the meaning of this paragraph.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

## **Chapter III. Taxation of income**

### **Article 6. Income from immovable property**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. For the purposes of this Convention, the term 'immovable property' shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any

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

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

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

## **Article 7. Business profits**

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

- a. that permanent establishment; or
- b. sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or
- c. other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

However, the provisions of subparagraph (b) and (c) will only apply if the selling process, respectively the business activities, have for the main part been carried out by the permanent establishment.

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

3. In 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 Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. Notwithstanding the provisions of paragraph 1, profits derived by an enterprise of a Contracting State from the activity of granting insurance or reinsurance covering property situated in the other Contracting State or persons which are residents of that other State, at the time of the conclusion of the insurance or reinsurance contract, may be taxed in that other State, whether or not the enterprise carries on its activity in that other State through a permanent establishment situated therein or otherwise, provided that, in the latter case, the premium is paid by a resident of that other State. However, the tax charged in that other State shall not exceed 2.5 per cent of the gross amount of the premium.

6. 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.

7. 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.

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

## **Article 8. Shipping and air transport**

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

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.
3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.
4. In this Article,
  - a. the term 'profits' includes:
    - i. profits, net profits, gross receipts and revenues derived directly from the operation of ships or aircraft in international traffic; and
    - ii. interest on sums generated from the operation of ships or aircraft in international traffic provided that such interest is incidental to the operation;
  - b. the term 'operation of ships or aircraft' in international traffic by an enterprise of a Contracting State includes:
    - i. the charter or rental of ships or aircraft on a bareboat basis; and
    - ii. the rental of containers and related equipment; by that enterprise provided that such charter or rental is incidental to the operation by that enterprise of ships or aircraft in international traffic.

## **Article 9. Associated enterprises**

1. Where
  - a. an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
  - b. the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State;and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.
2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned state if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.
3. A Contracting State shall not change the income of an enterprise in the circumstances referred to in paragraph 1 after the expiry of the time limits provided in its national laws and, in any case, after six years from the end of the year in which the income which would be subject to such change would, but for the conditions referred to in paragraph 1, have accrued to that enterprise.
4. The provisions of paragraphs 2 and 3 shall not apply in the case of fraud, wilful default or neglect.

## **Article 10. Dividends**

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:
  - a. 10 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;
  - b. 15 per cent of the gross amount of the dividends in all other cases.
3. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraph 2.
4. The provisions of paragraph 2 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

5. The term 'dividends' as used in this Article means income from shares, 'jouissance' shares or 'jouissance' rights, mining shares, founders' shares or other rights not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

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

#### **Article 11. Branch tax**

Where a resident of a Contracting State has a permanent establishment in the other Contracting State, the last-mentioned Contracting State's tax on the profits of such permanent establishment, whether levied on the permanent establishment as such, from the said resident or from both, shall not exceed the tax chargeable under the law of such other State in respect of profits of a company being a resident of that other Contracting State and in addition thereto a tax on such profits, determined after deduction of the aforementioned tax on profits. In such case, and in the case that the additional tax would be applicable only on the part of the profits remitted abroad, the rate cannot exceed the rate laid down in subparagraph (a) of paragraph 2 of Article 10.

#### **Article 12. Interest**

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 12 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 interest arising in a Contracting State shall be exempt from tax in that State if:

- a. the payer of the interest is that State itself, or a political subdivision or a local authority thereof, or the central bank of that State; or
- b. the interest is paid to the other Contracting State or a political subdivision, or a local authority thereof, or to an institution (including financial institutions) owned or controlled by that Contracting State or to any of its local collectivities; or
- c. the interest is paid to other institutions, in respect of loans on preferential terms, for a period of three years or more, guaranteed or insured by the Government of the other Contracting State, the central bank of the other Contracting State or any agency or instrumentality (including a financial institution) owned or controlled by the Government of the other Contracting State; or
- d. the interest is paid in connection with the importation of machinery, or industrial, commercial or scientific equipment.

4. The provisions of subparagraph (c) of paragraph 3 shall in any case apply, in the case of the Netherlands, to the Netherlands Development Finance Company (Nederlandse Financieringsmaatschappij voor Ontwikkelingslanden NV) and the Netherlands Investment Bank for developing countries (Nederlandse Investeringsbank voor Ontwikkelingslanden NV) and, in the case of Argentina, to the Banco de la Nación Argentina and the Banco de la Provincia de Buenos Aires. The competent authorities may, by mutual agreement, designate other agencies or instrumentalities to which these provisions shall in any case apply.

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

6. The term 'interest' as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in

particular income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

7. The provisions of paragraphs 1, 2, and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein and the debt–claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.

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

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

### **Article 13. Royalties**

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed:

- a. 3 per cent of the gross amount paid for the use of, or the right to use, news;
- b. 5 per cent of the gross amount paid for the use of, or the right to use, any copyright of literary, artistic or scientific work (but not including royalties in respect of motion picture films and works on film or videotape or other means of reproduction for use in connection with television); or
- c. 10 per cent of the gross amount paid for the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, computer software, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, and includes payments for the rendering of technical assistance;
- d. 15 per cent of the gross amount of the royalties in all other cases.

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

4. The term ‘royalties’ as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, news, any copyright of literary, artistic or scientific work including motion picture films and works on film, videotape, or other means of reproduction for use in connection with television, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use computer software, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, and includes payments for the rendering of technical assistance.

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

6. Royalties shall be deemed to arise in a Contracting State 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 a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

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

#### **Article 14. Capital gains**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains derived by a resident of a Contracting State from the alienation of shares in a company which is a resident of the other Contracting State, the value of which shares is derived principally from immovable property situated in that other Contracting State, may be taxed in that other State. For the purposes of this paragraph and of paragraph 2 of Article 24:
  - a. the term 'immovable property' includes the shares of a company the value of which shares is derived principally from immovable property; and
  - b. items of immovable property used by such company in its business or agricultural activities or for performing professional services shall not be taken into account.
3. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
4. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated. For the purposes of this paragraph the provisions of paragraph 2 of Article 8 shall apply.
5. Gains derived by a resident of a Contracting State from the alienation of shares in a company which is a resident of the other Contracting State may be taxed in that other State. However, the tax so charged shall not exceed:
  - a. 10 per cent of the gains in the case of a direct participation in the capital of at least 25 per cent;
  - b. 15 per cent in all other cases.
6. Gains arising in a Contracting State and derived by a resident of the other Contracting State from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 may be taxed in the first-mentioned Contracting State in accordance to the laws of that State.
7. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4, 5, and 6 shall be taxable only in the Contracting State of which the alienator is a resident.

#### **Article 15. Independent personal services**

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State.
2. Notwithstanding the provisions of paragraph 1, such income may be taxed in the other Contracting State in accordance with the law of that State:
  - a. if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. However, only so much of the income may be taxed in the other Contracting State as is attributable to that fixed base; or
  - b. if he does not have a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities, but the professional services or other activities of an independent character are performed in the other Contracting State. In such a case the tax charged by the other Contracting State shall not exceed 10 per cent of the gross amount of that income.
3. The term 'professional services' includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

## **Article 16. Dependent personal services**

1. Subject to the provisions of Articles 17, 19, 20, and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
  - a. the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and
  - b. the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
  - c. the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State, may be taxed in the Contracting State in which the profits of the enterprise are taxable according to Article 8 of this Convention.

## **Article 17. Directors' fees**

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

## **Article 18. Artistes and sportsmen**

1. Notwithstanding the provisions of Articles 15 and 16, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.
3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in one of the Contracting States by entertainers or sportsmen which are resident of the other Contracting State in the context of a visit to the first-mentioned State if that visit is substantially supported by public funds of the other State or a political subdivision or a local authority thereof. In such a case the income shall be taxable only in the Contracting State of which the entertainer or sportsman is a resident.

## **Article 19. Pensions, annuities, social security payments and alimony**

1. Subject to the provisions of paragraph 2 of Article 20, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment and any annuity shall be taxable only in that State.
2. However, where such remuneration is not of a periodical nature and it is paid in consideration of past employment in the other Contracting State, or where instead of the right to annuities a lump sum is paid, this remuneration or this lump sum may be taxed in the Contracting State where it arises.
3. Any pension and other payment paid out under the provisions of a social security system of a Contracting State to a resident of the other Contracting State may be taxed in the first-mentioned State.
4. 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.
5. Alimony and other similar payments arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State. The term 'alimony and other similar payments' as used in this paragraph means periodic payments made pursuant to a written separation agreement or a

decree of divorce, separate maintenance, or compulsory support, as well as lump sum payments in lieu thereof.

#### **Article 20. Government service**

1. a. Salaries, wages and similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.  
b. However, such salaries, wages and similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
  - i. is a national of that State; or
  - ii. did not become a resident of that State solely for the purpose of rendering the services.
2. a. Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority may be taxed in that State;  
b. However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. The provisions of Articles 16, 17 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

#### **Article 21. Professors and teachers**

1. Payments which a professor or teacher who is resident of a Contracting State and who is present in the other Contracting State for the purpose of teaching or scientific research for a maximum period of two years in a university, college or other establishment for teaching or scientific research in that other State, receives for such teaching or research, shall be taxable only in the first-mentioned State. In the case of Argentina this provision shall only apply for teaching or scientific research at a public university, college or other public establishment.
2. This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

#### **Article 22. Students**

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

#### **Article 23. Other income**

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.
3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other State.

## **Chapter IV. Taxation of capital**

### **Article 24. Capital**

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
2. Where a resident of a Contracting State owns shares in a company which is a resident of the other Contracting State and the value of the shares is derived principally from immovable property situated in the other Contracting State, then the capital represented by such shares may be taxed in the other State.
3. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.
4. Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated. For the purposes of this paragraph the provisions of paragraph 2 of Article 8 shall apply.
5. Where a resident of a Contracting State owns shares in a company which is a resident of the other Contracting State and the shares are shares referred to in paragraph 5 of Article 14 then the capital represented by such shares may be taxed in the other State.
6. All other elements of capital of a resident of a Contracting State shall be taxable only in that State. However, those elements of capital that are situated in the other Contracting State may also be taxed in that other Contracting State according to the laws of that State.

## **Chapter V. Elimination of double taxation**

### **Article 25. Elimination of double taxation**

1. In the case of Argentina, double taxation shall be avoided as follows: Where a resident of Argentina derives income which, in accordance with the provisions of this Convention, may be taxed in the Netherlands, Argentina shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in the Netherlands. Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in the Netherlands.
2. 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 Argentina.
3. However, where a resident of the Netherlands derives items of income, or owns items of capital which according to Article 6, Article 7, paragraph 6 of Article 10, paragraph 7 of Article 12, paragraph 5 of Article 13, paragraphs 1 and 3 of Article 14, paragraph 2 (subparagraph (a)) of Article 15, paragraph 1 of Article 16, paragraph 3 of Article 19, paragraphs 1 (subparagraph (a)) and 2 (subparagraph (a)) of Article 20, paragraph 2 of Article 23 and paragraphs 1 and 3 of Article 24 of this Convention may be taxed in Argentina and are included in the basis referred to in paragraph 2, the Netherlands shall exempt such items of income or capital by allowing a reduction of its tax. This reduction shall be computed in conformity with the provisions of Netherlands law for the avoidance of double taxation. For that purpose the said items of income or capital shall be deemed to be included in the total amount of the items of income or capital which are exempt from Netherlands tax under those provisions.
4. Notwithstanding the provisions of paragraphs 3, the Netherlands shall allow a deduction from the Netherlands tax so computed for the items of income which according to paragraph 5 of Article 7 of this Convention may be taxed in Argentina and where the insurance or reinsurance activities are not carried on through a permanent establishment situated in Argentina, but only to the extent that these items of income are included in the basis referred to in paragraph 2. Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for the items of income or capital which according to paragraph 2 of Article 10, paragraph 2 of Article 12, paragraph 2 of Article 13, paragraphs 2, 5 and 6 of Article 14, paragraph 2 (subparagraph (b)) of Article 15, paragraph 3 of Article 16, Article 17, Article 18, paragraph 2 of Article 19, paragraph 3 of Article 23 and paragraphs 2, 5 and 6 of Article 24 of this Convention may be taxed in

Argentina to the extent that these items are included in the basis referred to in paragraph 2. The amount of these deductions shall be equal to the tax paid in Argentina on these items of income or capital, but shall not exceed the amount of the reduction which would be allowed if the items of income or capital so included were the sole items of income or capital which are exempt from Netherlands tax under the provisions of Netherlands law for the avoidance of double taxation.

## **Chapter VI. Special provisions**

### **Article 26. Offshore activities**

1. The provisions of this Article shall apply notwithstanding any other provisions of this Convention. However, this Article shall not apply where offshore activities of a person constitute for that person a permanent establishment under the provisions of Article 5 or a fixed base under the provisions of Article 15.
2. In this Article the term 'offshore activities' means activities which are carried on offshore in connection with the exploration or exploitation of the sea, the sea bed and its sub-soil and their natural resources, situated in a Contracting State.
3. An enterprise of a Contracting State which carries on offshore activities in the other Contracting State shall, subject to paragraph 4 of this Article, be deemed to be carrying on, in respect of those activities, business in that other State through a permanent establishment situated therein, unless the offshore activities in question are carried on in the other State for a period or periods not exceeding in the aggregate 30 days in any period of 12 months.  
For the purposes of this paragraph:
  - a. where an enterprise carrying on offshore activities in the other Contracting State is associated with another enterprise and that other enterprise continues, as part of the same project, the same offshore activities that are or were being carried on by the first-mentioned enterprise, and the aforementioned activities carried on by both enterprises – when added together – exceed a period of 30 days, then each enterprise shall be deemed to be carrying on its activities for a period exceeding 30 days in a 12 month period;
  - b. an enterprise shall be regarded as associated with another enterprise if one holds directly or indirectly at least one third of the capital of the other enterprise or if a person holds directly or indirectly at least one third of the capital of both enterprises.
4. However, for the purposes of paragraph 3 of this Article the term 'offshore activities' shall be deemed to include:
  - a. one or any combination of the activities mentioned in paragraph 4 of Article 5;
  - b. towing or anchor handling by ships primarily designed for that purpose and any other activities performed by such ships;
  - c. the transport of supplies or personnel by ships or aircraft in international traffic.
5. A resident of a Contracting State who carries on offshore activities in the other Contracting State, which consist of professional services or other activities of an independent character, shall be deemed to be performing those activities from a fixed base in the other Contracting State if the offshore activities in question last for a continuous period of 30 days or more.
6. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment connected with offshore activities carried on through a permanent establishment in the other Contracting State may, to the extent that the employment is exercised offshore in that other State, be taxed in that other State.
7. Where documentary evidence is produced that tax has been paid in Argentina on the items of income which may be taxed in Argentina according to Article 7 and Article 15 in connection with respectively paragraph 3 and paragraph 5 of this Article, and to paragraph 6 of this Article, the Netherlands shall allow a reduction of its tax which shall be computed in conformity with the rules laid down in paragraph 3 of Article 25.

### **Article 27. Non-discrimination**

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This

provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 9 of Article 12, or paragraph 7 of Article 13, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

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

5. Nothing in this Article shall be construed to prevent or limit the application by either Contracting State of its tax on branch profits described in Article 11.

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

#### **Article 28. Mutual agreement procedure**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 27, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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

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

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

#### **Article 29. Exchange of information**

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

2. Nothing in paragraph 1 shall be construed so as to impose on a Contracting State the obligation:

- a. to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

- b. to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c. to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

### **Article 30. Diplomatic agents and consular officers**

1. Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.
2. For the purposes of the Convention an individual, who is a member of a diplomatic or consular mission of a Contracting State in the other Contracting State or in a third State and who is a national of the sending State, shall be deemed to be a resident of the sending State if he is submitted therein to the same obligations in respect of taxes on income and on capital as are residents of that State.
3. The Convention shall not apply to international organisations, organs and officials thereof and members of a diplomatic or consular mission of a third State, being present in a Contracting State, if they are not subjected therein to the same obligations in respect of taxes on income or on capital as are residents of that State.

### **Article 31. Exempt pensions funds**

Income derived by and capital owned by a pension fund resident in a Contracting State, which income arises, respectively which capital is situated in the other Contracting State, shall be exempt from tax in that other Contracting State. For the purpose of this Article a pension fund is a pension fund recognized as such for taxation purposes in the Contracting State of which it is a resident. If after the date of signature of this Convention the domestic law with respect to the taxation of pension funds changes, the competent authorities of the Contracting States shall meet with a view to reach agreement on how this Article should be applied to properly reflect these changes.

## **Chapter VII. Final provisions**

### **Article 32. Entry into force**

1. The Governments of the Contracting States shall notify each other that the constitutional requirements for the entry into force of this Convention have been complied with.
2. The Convention shall enter into force on the thirtieth day after the date of the later of the notifications referred to in paragraph 1 and its provisions shall have effect in both Contracting States:
  - a. in respect of taxes withheld at source, on income derived on or after 1 January in the calendar year immediately following the year in which the Convention has entered into force;
  - b. in respect of other taxes on income, and taxes on capital, for taxes chargeable for any tax year beginning on or after 1 January in the calendar year immediately following the year in which the Convention has entered into force.

### **Article 33. Termination**

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the expiration of a period of six years from the date of its entry into force. In such event the Convention shall cease to have effect in both Contracting States:

- a. in respect of taxes withheld at source, on income derived on or after 1 January in the calendar year immediately following the year in which the notice of termination has been given;
- b. in respect of other taxes on income, and taxes on capital, for taxes chargeable for any tax year beginning on or after 1 January in the calendar year immediately following the year in which the notice of termination has been given.

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

DONE at Buenos Aires this 27th day of December, 1996, in two originals, in the Netherlands, Spanish and English languages, the three texts being equally authentic. In case there is any divergence of interpretation between the Netherlands and Spanish texts, the English text shall prevail.

## **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 Argentine 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 Contracting States shall be deemed to be a resident of the Contracting State in which the ship has its home harbour.

### **II. ad Articles 5, 6, 7, 14, and 26**

It is understood that exploration and exploitation rights of natural resources shall be regarded as immovable property situated in the Contracting State the sea bed and sub-soil of which they are related to, and that these rights shall be deemed to pertain to the property of a permanent establishment in that State. Furthermore, it is understood that the afore-mentioned rights include rights to interests in, or to the benefits of, assets to be produced by such exploration or exploitation.

### **III. ad Article 7**

- a. As regards paragraphs 1 and 2, where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of that portion of the income of the enterprise that is attributable to the actual activity of the permanent establishment in respect of such sales or business. It is understood that, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits attributable to such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract that is effectively carried out by the permanent establishment in the Contracting State where the permanent establishment is situated. It is further understood that the foregoing does not interfere with the provisions of subparagraphs (b) and (c) of paragraph 1;
- b. It is understood that for the purposes of applying the provisions of subparagraphs (b) and (c) of paragraph 1, the competent authorities shall consult together:
  - i. regarding the similarity of the goods or merchandise, respectively the business activities; and
  - ii. in order to determine whether or not the selling process or the business activities have for the main part been carried out by the permanent establishment;
- c. It is understood that nothing contained in paragraph 3 shall require a Contracting State to allow the total deduction of certain expenses when they are limited in some way in the determination of profits with regard to enterprises of that Contracting State under its domestic tax legislation or to allow the deduction of any expenditure which, by reason of its nature, is not generally allowed as a deduction with regard to enterprises of that Contracting State under the taxation laws of that Contracting State;
- d. As regards paragraph 6, in the case of Argentina the export of goods or merchandise purchased by an enterprise through a permanent establishment that has the required export registration shall, notwithstanding

the provisions of subparagraph (d) of paragraph 4 of Article 5 of the Convention, remain subject to the income tax law (Article 8) in force in Argentina at the date of signature of this Convention as long as this provision is effective.

#### **IV. ad Articles 7 and 13**

It is understood that income from financial leasing activities shall not be considered as 'payments received for the use of or the right to use industrial, commercial or scientific equipment.'

#### **V. ad Articles 7, 10, 11, 12, 13, 14 and 15**

- a. Where tax has been levied at source in excess of the amount of tax chargeable under the provisions of Articles 7, 10, 11, 12, 13, 14 and 15 applications for the refund of the excess amount of tax have to be lodged with the competent authority of the State having levied the tax, within a period of three years after the expiration of the calendar year in which the tax has been levied;
- b. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of Articles 7, 11, 14 and 15.

#### **VI. ad Articles 9 and 28**

It is understood that the provisions of the Convention shall not be interpreted so as to prevent the application by a Contracting State of the thin capitalization provisions provided for in its domestic law, except in those cases in which the associated enterprises can prove that due to the special characteristics of their activities or their specific economic circumstances, the conditions made or imposed between those enterprises are in conformity with the arm's length principle. In accordance with paragraph 3 of Article 28 the competent authorities shall endeavour to resolve by mutual agreement, as in the case of all other situations of double taxation due to actions of one or both of the Contracting States, any case of double taxation arising by reason of the application of internal law regarding thin capitalization.

#### **VII. ad Article 13**

It is understood that the limitations on the taxation at source provided for under paragraph 2 are, in the case of Argentina, subject to the registration requirement provided for in its domestic legislation in force at the date of signature of this Convention and as long as this requirement is in effect.

#### **VIII. ad Article 13**

In the case of payments for technical assistance, the tax charged under subparagraph (c) of paragraph 2 of Article 13 shall be determined after the deduction of the expenses directly related to such activities.

#### **IX. ad Article 14**

The mere transfer of property carried out by a resident of a Contracting State, owing to a corporate organisation, reorganisation, amalgamation, division or similar transaction, shall be exempt from tax in accordance with the domestic laws of each Contracting State.

#### **X. ad Articles 14 and 24**

It is understood that, for purposes of Articles 14 and 24, the term 'shares': includes 'jouissance' shares or 'jouissance' rights, mining shares, founders' shares or other rights not being debt-claims, participating in profits, as well as other corporate rights the income of which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident.

#### **XI. ad Article 17**

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

#### **XII. ad Articles 20 and 25**

It is understood that the provisions of subparagraph (a) of paragraph 1 of Article 20 do not prevent the Netherlands from applying the provisions of paragraphs 2 and 3 of Article 25 of the Convention.

#### **XIII. ad Article 25**

a. It is understood that for the computation of the reduction mentioned in paragraph 3 of Article 25, the items of capital referred to in paragraph 1 of Article 24 shall be taken into account for the value thereof reduced by the value of the debts secured by mortgage on that capital and the items of capital referred to in paragraph 2 of Article 24 shall be taken into account for the value thereof reduced by the value of the debts pertaining to the permanent establishment or fixed base;

b. It is further understood that, if after the date of signature of this Convention, the provisions of Netherlands law for the avoidance of double taxation are substantially amended and if, as a result of such amendment, the advantages of special provisions of Argentine law, in force at the date of the said amendment, for the purpose of encouraging direct investment in active business in Argentina are undone, then the Netherlands competent authority will without undue delay contact the Argentine competent authority in order to determine how the advantages of the special provisions of Argentine law for the purpose of such direct investment in Argentina can be preserved. It is also understood that, as long as the new measures are not defined and to the extent that the advantages of the special provisions of Argentine law are undone by the amendments of the provisions of Netherlands law for the avoidance of double taxation, nothing in this Convention will prevent Argentina from applying its domestic legislation aimed to avoid the transfer of taxes to foreign States.

#### **XIV. ad Articles 7, 10, 11, 12, 13, 14, 15 and 23**

If under any double tax treaty concluded after the date of conclusion of this Convention between the Republic of Argentina and a third country which is a member of the OECD, the Republic of Argentina limits its taxation at source on insurance or reinsurance premiums, on dividends as meant in subparagraph (a) of paragraph 2 of Article 10, on branch profits, on interest, on royalties, on capital gains, on independent personal services, on other income as meant in Article 23, or on specific items of such income, to a rate lower, including exemption from taxation, exemption from the additional taxation as meant in Article 11, or a taxation over a reduced taxable base, than the rates provided for in paragraph 5 of Article 7, subparagraph (a) of paragraph 2 of Article 10, Article 11, paragraph 2 of Article 12, paragraph 2 of Article 13, paragraphs 2, 5 and 6 of Article 14, subparagraph (b) of paragraph 2 of Article 15 and paragraph 3 of Article 23 of this Convention, respectively, then the lower rates, the exemption or the reduced taxable base as provided for in the double tax treaty concerned shall automatically apply to the residents of both Contracting States, with effect from the date of the entry into force of such double tax treaty, in respect to the relevant type or category of income.

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

DONE at Buenos Aires, this 27th day of December, 1996, in two originals, in the Netherlands, Spanish and English languages, the three texts being equally authentic. In case there is any divergence of interpretation between the Netherlands and Spanish texts, the English text shall prevail.