Armenia

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

Done at Yerevan, on 31 October 2001

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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 Netherlands:
      – de inkomstenbelasting (income tax);
      – de loonbelasting (wages tax);
      – de vennootschapsbelasting (company tax) including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mijnwet 1810 (the Mining Act of 1810) with respect to concessions issued from 1967, or pursuant to the Mijnwet Continentaal Plat 1965 (the Netherlands Continental Shelf Mining Act of 1965);
      – de dividendbelasting (dividend tax);
      – de vermogensbelasting (capital tax)
      (hereinafter referred to as 'Netherlands tax');
   b. in Armenia:
      – Shahutahark (the profit tax);
      – Yekamtahark (the income tax);
      – Gujkahark (the property tax);
      – Hokhihark (the land tax)
      (hereinafter referred to as 'Armenian 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 any substantial 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 terms ‘a Contracting State’ or ‘other Contracting State’ mean the Kingdom of the Netherlands (the Netherlands) or the Republic of Armenia (Armenia), as the context requires; the term ‘Contracting States’ means the Kingdom of the Netherlands (the Netherlands) and the Republic of Armenia (Armenia);
   b. the term ‘the Netherlands’ means the part of the Kingdom of the Netherlands that is situated in Europe, including its territorial sea, and any area beyond the territorial sea within which the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights with respect to the sea bed, its sub–soil and its superjacent waters, and their natural resources;
   c. the term ‘Armenia’ means the Republic of Armenia, and when used in the geographical sense means the territory, including internal waters over which the Republic of Armenia exercises its sovereign rights and jurisdiction in accordance with international law and internal legislation;
   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 ‘nationals’ means:
      1. any individual possessing the nationality of a Contracting State;
      2. any legal person or organization deriving its status as such from the laws in force in a Contracting State;
   i. the term ‘competent authority’ means:
      1. in the Netherlands, the Minister of Finance or his authorized representative;
      2. in Armenia, the Minister of Finance and the Minister of State Revenues or their authorized representatives.

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. 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 a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is registered as such in both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated. If there is a doubt as to where the place of effective management of a person other than an individual is situated, the competent authorities shall endeavour to agree where the place of effective management of such person is situated. But if the competent authorities are unable to reach an agreement, the person shall be treated as a resident of neither State for the purposes of deriving the benefits under the Convention.

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 or of exploitation of natural resources.
3. A building site or construction, assembly or installation project or supervisory activities in connection therewith constitutes a permanent establishment only if it lasts more than 12 months.
4. Notwithstanding the preceding provisions of this Article, the term ‘permanent establishment’ shall be deemed not to include:
   a. the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
   b. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
   c. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
   d. the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
   e. the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
   f. the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
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.
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. 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 that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8. Shipping and air transport

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.
3. For the purposes of this Article, profits derived from the operation in international traffic of ships and aircraft include:

   a. profits derived from the rental on a bareboat basis of ships and aircraft if operated in international traffic; and

b. profits derived from the use, maintenance or rental of containers (including related equipment for the transport of containers) used for the transport of goods or merchandise;

where such rental profits or profits from such use, maintenance or rental, as the case may be, are incidental to the profits from the operation of ships and aircraft in international traffic.

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

Article 9. Associated enterprises

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

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

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

Article 10. Dividends

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:
   a. 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 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 Convention 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 situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 (Business profits) or Article 14 (Independent personal services), 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 arising in such other State.

Article 11. Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 5 per cent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2, any such interest as is mentioned in paragraph 1 shall be taxable only in the Contracting State of which the recipient is a resident, if such recipient is the beneficial owner of the interest and if one of the following conditions is met:
   a. such recipient is a Contracting State, one of its administrative–territorial subdivisions or local authorities or a statutory body thereof, including the Central Bank of that State; or such interest is paid by a Contracting State, one of its administrative–territorial subdivisions or local authorities or statutory bodies;
   b. such interest is paid in respect of any debt–claim or loan guaranteed, insured or supported by a Contracting State or other person acting on behalf of a Contracting State;
   c. such interest is paid in connection with the sale on credit of any industrial, commercial or scientific equipment, or with the sale on credit of any merchandise or the furnishing of any services by one enterprise to another enterprise; or
   d. such interest is paid on any loan of whatever kind granted by a bank.
4. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraph 2 of this Article.
5. The term ‘interest’ as used in this Convention 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 Convention.
6. The provisions of paragraphs 1 and 2 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 (Business profits) or Article 14 (Independent personal services), as the case may be, shall apply.
7. 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.
8. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt–claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last–mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12. Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.
3. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraph 2 of this Article.

4. The term ‘royalties’ as used in this Convention 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, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.
5. The provisions of 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 (Business profits) or Article 14 (Independent personal services), 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 liability 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 13. Capital gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 (Income from immovable property) and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State 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.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated. For the purposes of this paragraph the provisions of paragraph 2 of Article 8 (Shipping and air transport) shall apply.
4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the Contracting State of which the alienator is a resident.
5. The provisions of paragraph 4 shall not affect the right of each of the Contracting States to levy according to its own law a tax on gains from the alienation of shares or ‘jouissance’ rights in a company, the capital of which is wholly or partly divided into shares and which under the laws of that State is a resident of that State, derived by an individual who is a resident of the other Contracting State and has been a resident of the first–mentioned State in the course of the last five years preceding the alienation of the shares or ‘jouissance’ rights.

Article 14. 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 unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.
2. The term ‘professional services’ includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15. Dependent personal services

1. Subject to the provisions of Articles 16 (Directors' fees), 18 (Pensions, annuities and social security payments), 19 (Government service) and 20 (Professors and teachers), 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 by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated in international traffic, shall be taxable only in that State.

Article 16. 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 of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17. Artistes and sportsmen

1. Notwithstanding the provisions of Articles 14 (Independent personal services) and 15 (Dependent personal services), income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a 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 (Business profits), 14 (Independent personal services) and 15 (Dependent personal services), be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.
3. Notwithstanding the provisions of paragraphs 1 and 2, the income derived by an entertainer or a sportsperson from the activities referred to in paragraph 1 performed within the framework of cultural or sport exchanges agreed to by the Governments of the Contracting States and carried out other than for the purpose of profit, shall be exempt from tax in the Contracting State in which these activities are exercised.

Article 18. Pensions, annuities and social security payments

1. Subject to the provisions of paragraph 2 of Article 19 (Government service), 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. 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 19. Government service

1. a. Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority may be taxed in that State.
   b. However, such 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:
      1. is a national of that State; or
      2. 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 15 (Dependent personal services), 16 (Directors' fees) and 18 (Pensions, annuities and social security payments) 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 20. Professors and teachers

1. Payments which a professor or teacher who is a 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 and which is recognised as such in that other State, receives for such teaching or research, shall be taxable only in the first–mentioned State.
2. This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

Article 21. Students

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

Article 22. 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 (Income from immovable property), 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 (Business profits) or Article 14 (Independent personal services), as the case may be, shall apply.

Chapter IV. Taxation of capital

Article 23. Capital

1. Capital represented by immovable property referred to in Article 6 (Income from immovable property), owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
2. 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.
3. 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 (Shipping and air transport) shall apply.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Chapter V. Elimination of double taxation

Article 24. Elimination of double taxation

1. The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed the items of income or capital which, according to the provisions of this Convention, may be taxed in Armenia.
2. However, where a resident of the Netherlands derives items of income or owns items of capital which according to Article 6 (Income from immovable property), Article 7 (Business profits), paragraph 6 of Article 10 (Dividends), paragraph 6 of Article 11 (Interest), paragraph 5 of Article 12 (Royalties), paragraphs 1 and 2 of Article 13 (Capital gains), paragraph 1 of Article 14 (Independent personal services), paragraph 1 of Article 15 (Dependent personal services), paragraph 3 of Article 18 (Pensions, annuities and social security payments), paragraphs 1 (subparagraph (a)) and 2 (subparagraph (a)) of Article 19 (Government service) and paragraph 2 of Article 22 (Other income) of this Convention may be taxed in Armenia and are included in the basis referred to in paragraph 1, the Netherlands shall exempt such items of income by allowing a reduction of its tax. This reduction shall be computed in conformity with the provisions of Netherlands law for the avoidance of double taxation. For that purpose the said items of income shall be deemed to be included in the total amount of the items of income which are exempt from Netherlands tax under those provisions.
3. Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for the items of income or capital which according to subparagraph (b) of paragraph 2 of Article 10 (Dividends), paragraph 2 of Article 11 (Interest), paragraph 2 of Article 12 (Royalties), paragraph 5 of Article 13 (Capital gains), Article 16 (Directors' fees), Article 17 (Artistes and sportsmen), paragraph 2 of Article 18 (Pensions, annuities and social security payments) and paragraphs 1 and 2 of Article 23 (Capital) of this Convention may be taxed in Armenia to the extent that these items are included in the basis referred to in paragraph 1. The amount of this deduction shall be equal to the tax paid in Armenia 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.
4. Notwithstanding the provisions of paragraph 2, the Netherlands shall allow a deduction from the Netherlands tax for the tax paid in Armenia on items of income which according to Article 7 (Business profits), paragraph 6 of Article 10 (Dividends), paragraph 6 of Article 11 (Interest), paragraph 5 of Article 12 (Royalties), paragraph 1 of Article 14 (Independent personal services) and paragraph 2 of Article 22 (Other income) of this Convention may be taxed in Armenia to the extent that these items are included in the basis referred to in paragraph 1, if and insofar as the Netherlands under the provisions of Netherlands law for the avoidance of double taxation allows a deduction from the Netherlands tax of the tax levied in another country on such items of income. For the computation of this deduction the provisions of paragraph 3 of this Article shall apply accordingly.
5. In Armenia double taxation shall be eliminated as follows:
   a. where a resident of Armenia derives income or owns capital which, in accordance with the provisions of this Convention may be taxed in the Netherlands, Armenia shall allow:
      i. as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in the Netherlands;
      ii. as a deduction from the tax on the capital of that resident, amount equal to the capital tax paid in the Netherlands.

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

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

Chapter VI. Special provisions

Article 25. 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 (Permanent establishment) or a fixed base under the provisions of Article 14 (Independent personal services).
2. In this Article the term ‘offshore activities’ means activities which are carried on offshore in connection with the exploration or exploitation of the sea bed and its sub–soil and their natural resources, situated in a Contracting State.
3. An enterprise of a Contracting State which carries on offshore activities in the other Contracting State shall, subject to paragraph 4 of this Article, be deemed to be carrying on, in respect of those activities, business in that other State through a permanent establishment situated therein, unless the offshore activities in question are carried on in the other State for a period or periods not exceeding in the aggregate 30 days in any period of 12 months.
For the purposes of this paragraph:
    a. where an enterprise carrying on offshore activities in the other Contracting State is associated with another enterprise and that other enterprise continues, as part of the same project, the same offshore activities that are or were being carried on by the first–mentioned enterprise, and the afore–mentioned activities carried on by both enterprises – when added together – exceed a period of 30 days, then each enterprise shall be deemed to be carrying on its activities for a period exceeding 30 days in a 12–month period;
    b. an enterprise shall be regarded as associated with another enterprise if one holds directly or indirectly at least one third of the capital of the other enterprise or if a person holds directly or indirectly at least one third of the capital of both enterprises.
4. However, for the purposes of paragraph 3 of this Article the term ‘offshore activities’ shall be deemed not to include:
    a. one or any combination of the activities mentioned in paragraph 4 of Article 5 (Permanent establishment);
    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 Armenia on the items of income which may be taxed in Armenia according to Article 7 (Business profits) and Article 14 (Independent personal services) 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 2 of Article 24 (Elimination of double taxation).

Article 26. 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 (Personal scope), also apply to persons who are not residents of one or both of the Contracting States.
2. Stateless persons who are residents of a Contracting State shall not be subjected in either Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of the State concerned in the same circumstances are or may be subjected.
3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
4. Except where the provisions of paragraph 1 of Article 9 (Associated enterprises), paragraph 8 of Article 11 (Interest), or paragraph 7 of Article 12 (Royalties), apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first–mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first–mentioned State.
5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first–mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first–mentioned State are or may be subjected.
6. Contributions paid by, or on behalf of, an individual who is a resident of a Contracting State to a pension plan that is recognized for tax purposes in the other Contracting State will be treated in the same way for tax purposes in the first–mentioned State as a contribution paid to a pension plan that is recognized for tax purposes in that first–mentioned State, provided that

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

For the purpose of this paragraph, 'pension plan' includes a pension plan created under a public social security system.
7. The provisions of this Article shall, notwithstanding the provisions of Article 2 (Taxes covered), apply to taxes of every kind and description.

Article 27. 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 26 (Non–discrimination), to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.
5. If after the procedures of paragraphs 1 to 4 any dispute arising as to the interpretation or application of the Convention in a particular case cannot be resolved by the competent authorities of the Contracting States in a mutual agreement procedure, the case may, if both competent authorities agree be resolved through an arbitration board created by the competent authorities and supplemented by independent persons and according to internationally accepted arbitration procedures. These procedures shall by mutual agreement be established between the competent authorities of both Contracting States. The decision of the arbitration board shall be binding on both Contracting States and the taxpayer or taxpayers involved with respect to that case. This paragraph will only apply after the competent authorities of both Contracting States have established the above–mentioned procedures.

Article 28. 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 (Personal scope). 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. The competent authorities shall, by mutual agreement, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information shall be made.
2. The Contracting States may release to the arbitration board, established under the provisions of paragraph 5 of Article 27, such information as is necessary for carrying out the arbitration procedure. Such release of information shall be subject to the provisions of Article 30. The members of the arbitration board shall be subject to the limitations on disclosure described in paragraph 1 of this Article with respect to any information so released.

Article 29. Assistance in recovery

1. The competent authorities of the Contracting States undertake to lend help and assistance to each other in the collection of taxes covered by this Convention together with interest, penalties for the late payment and fines without penal character relating to such taxes.
2. At the request of the applicant State the requested State shall recover tax claims of the first–mentioned State in accordance with the law and administrative practice for the recovery of its own tax claims. However, such claims do not enjoy any priority in the requested State and cannot be recovered by imprisonment for debt of the debtor. The requested State is not obliged to take any executory measures which are not provided for in the laws of the applicant State.
3. Amounts recovered by the competent authority of a Contracting State pursuant to this Article shall be forwarded to the competent authority of the other Contracting State within a period of one month from the date of the recovery.
4. The provisions of paragraph 2 shall apply only to tax claims which form the subject of an instrument permitting their enforcement in the applicant State and, unless otherwise agreed between the competent authorities, which are not contested.
However, where the claim relates to a liability to tax of a person as a non–resident of the applicant State, paragraph 2 shall only apply, unless otherwise agreed between the competent authorities, where the claim may no longer be contested.
5. The requested State shall not be obliged to accede to the request:
   a. if the applicant State has not pursued all means available in its own territory, except where recourse to such means would give rise to disproportionate difficulty;
   b. if and insofar as it considers the tax claim to be contrary to the provisions of this Convention or of any other convention to which both of the States are parties.
6. The request for administrative assistance in the recovery of a tax claim shall be accompanied by:

a. a declaration that the tax claim concerns a tax covered by the Convention and that the conditions of paragraph 4 are met;
b. an official copy of the instrument permitting enforcement in the applicant State;
c. any other document required for recovery;
d. where appropriate, a certified copy confirming any related decision emanating from an administrative body or a public court.

7. At the request of the applicant State, the requested State shall, with a view to the recovery of an amount of tax, take measures of conservancy even if the claim is contested or is not yet the subject of an instrument permitting enforcement, in so far as such is permitted by the laws and administrative practice of the requested State.
8. Questions concerning any period beyond which a tax claim cannot be enforced shall be governed by the law of the applicant State. The request for assistance in the recovery shall give particulars concerning that period.
9. Acts of recovery carried out by the requested State in pursuance of a request for assistance, which, according to the laws of that State, would have the effect of suspending or interrupting the period mentioned in paragraph 8, shall also have this effect under the laws of the applicant State. The requested State shall inform the applicant State about such acts.
10. The requested State may allow deferral of payment or payment by instalments, if its laws or administrative practice permit it to do so in similar circumstances; but it shall first inform the applicant State.
11. The competent authorities of the Contracting States shall by common agreement prescribe rules concerning minimum amounts of tax claims subject to a request for assistance.
12. Nothing in this Article shall be construed as imposing on either Contracting State the obligation to carry out administrative measures of a different nature from those used in the collection of its own taxes or that would be contrary to its public policy (ordre public).

Article 30. Limitation of Articles 28 and 29

In no case shall the provisions of Articles 28 (Exchange of information) and 29 (Assistance in recovery) 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 31. Members of diplomatic missions and consular posts

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

Chapter VII. Final provisions

Article 32. Entry into force

This Convention shall enter into force on the thirtieth day after the latter of the dates on which the respective States have notified each other in writing that the formalities constitutionally required in the respective States have been complied with, and its provisions shall have effect for taxable years and periods beginning on or after the first day of January in the calendar year following that in which the Convention has entered into force.

Article 33. Termination

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

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

DONE at Yerevan this 31st day of October 2001, in duplicate, in the Netherlands, Armenian and English languages, the three texts being equally authentic. In case there is any divergence of interpretation between the Netherlands and Armenian texts, the English text shall prevail.

Protocol

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

I.

It is understood that for the application of the relevant Articles of this Convention 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.

II.

It is understood that when establishing the ‘place of effective management’ as meant in subparagraph (g) of paragraph 1 of Article 3 (General definitions), paragraph 3 of Article 4 (Resident), paragraph 1 of Article 8 (Shipping and air transport), paragraph 3 of Article 13 (Capital gains) and in paragraph 3 of Article 23 (Capital) circumstances which may, inter alia, be taken into account are the place where a company is actually managed and controlled, the place that plays a leading part in the management of a company from an economic and functional point of view and the place where the most important accounting books are kept.

III.

It is understood that the term ‘operation of ships and aircraft in international traffic’ as used in this Convention includes also the supplementary transport by road or railway vehicles in direct connection with international transport undertaken by an enterprise engaged in such international transport.

IV. Ad Articles 1 and 4

It is understood that for the purposes of this Convention a Contracting State, its political subdivisions or local authorities thereof, an instrumentality of that State, political subdivision or authority as well as a pension fund recognized as such in a Contracting State and of which the income is generally exempt from tax in that State, shall be regarded as resident of that State. As recognized pension fund shall be regarded any pension fund recognized and controlled according to statutory provisions.

V. Ad Article 2

In the case of Armenia the term ‘political subdivisions’ shall have the meaning of ‘administrative–territorial subdivisions’.

VI. Ad Article 5

For the purposes of subparagraphs (a) and (b) of paragraph 4, it is understood that the term ‘delivery’ means the mere transfer of goods, and for the purposes of subparagraphs (e) and (f) of paragraph 4, it is understood that the mere facilitation of the conclusion (including the mere signing) of contracts concerning loans, concerning the delivery of goods or merchandise or concerning technical services shall be considered as an activity of a preparatory or auxiliary character.

VII. Ad Article 7

In respect of paragraphs 1 and 2 of Article 7 (Business profits), where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of that portion of the income of the enterprise that is attributable to the actual activity of the permanent establishment in respect of such sales or business. Specifically, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits attributable to such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract that is effectively carried out by the permanent establishment in the Contracting State where the permanent establishment is situated. The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the Contracting State of which the enterprise is a resident.

VIII. Ad Articles 7, 14 and 26

It is understood that interest, wages and salaries paid by an enterprise carried on by a company that is a resident of a Contracting State, the capital of which is wholly or partly owned by a resident of the other Contracting State, shall be equally deductible in computing the taxable profits of that enterprise as in the case that such interest, wages and salaries were paid by a company that is a resident of the first–mentioned State, the capital of which is wholly or partly owned by a resident of that first–mentioned State. Accordingly, interest, wages and salaries borne by a permanent establishment of an enterprise carried on by a resident of a Contracting State in the other Contracting State, or borne by a fixed base of a resident of a Contracting State in the other Contracting State, shall be equally deductible in computing the taxable profits of such permanent establishment or the taxable income of such fixed base as in the case that such interest, wages and salaries were paid by an enterprise which is a resident of the first–mentioned State.

IX. Ad Articles 7 and 14

Payments received as a consideration for technical services, including studies or surveys of a scientific, geological or technical nature, or for consultancy or supervisory services shall be deemed to be payments to which the provisions of Article 7 or Article 14 apply.

X. Ad Article 9

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

XI. Ad Article 10

1. Notwithstanding the provisions of subparagraph (a) of paragraph 2 of Article 10 (Dividends), the rate of withholding tax provided in that subparagraph shall be lowered to 0% in case the profits out of which the dividends are paid have been effectively taxed at the normal rate for profits tax and the dividends are exempt from tax in the hands of the company receiving such dividends.
2. It is understood that in the case of the Netherlands the term dividends includes income from profit sharing bonds.

XII. Ad Article 10

1. It is understood, that, notwithstanding Article XI of this Protocol, with respect to dividends as meant in subparagraph (a) of paragraph 2 of Article 10 of the Convention which are paid by a company which is a resident of a Contracting State to a company which is a resident of the other Contracting State, if according to the law in force of the other Contracting State taxation of such dividends when paid to an individual would in that other Contracting State result in a tax burden less than the tax burden on dividends in the first–mentioned Contracting State, the first–mentioned Contracting State may levy a tax at a rate which together with the tax rate levied on the redistributed dividends by the other Contracting State does not exceed 15 per cent of the gross amount of the dividends. This tax will be levied by way of an assessment issued by the Netherlands to the company that received the above–mentioned dividends.
2. However, it is further understood that the provisions under paragraph 1 above do not apply if the dividends are paid by a company which is a resident of a Contracting State and the beneficial owner of the dividends is a company which is a resident of the other Contracting State and either:
    a. the capital of the company receiving the dividends is exclusively beneficially owned by the Government of the other Contracting State, a political subdivision or local authority thereof; or
    b. shares in such company are regularly traded in a Stock Exchange of the other Contracting State; or
    c. the company receiving the dividends is engaged in an active trade or business in the other Contracting State.
3. In case a company does not fulfil one of the conditions laid down in paragraph 2 above, the provisions of paragraph 1 above shall also not apply with respect to such company if it is established in mutual agreement by the competent authorities of the Contracting States, in conformity with Article 27 of the Convention, that such company is not established or maintained in the other Contracting State mainly for the purpose of ensuring the benefits of subparagraph (a) of paragraph 2 of Article 10 of the Convention or Article XII of this Protocol and provided that the company receiving the dividends is a resident of the other Contracting State and the beneficial owner of the dividends.

XIII. Ad Articles 10, 11 and 12

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

XIV. Ad Articles 10 and 13

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

XV. Ad Article 16

1. It is understood that the term ‘member of the board of directors’ means:
   a. in the case of the Netherlands, a ‘bestuurder’ or a ‘commissaris’;
   b. in the case of Armenia, a member of any organ which activities or responsibilities are similar to the activities or responsibilities of a board of directors.
2. It is further understood that ‘bestuurder or commissaris’ of a Netherlands company means persons, who are nominated as such by the general meeting of shareholders or by any other competent body of such company and are charged with the general management of the company and the supervision thereof, respectively.

XVI. Ad Article 24

It is understood that for the computation of the reduction mentioned in paragraph 3 of Article 24 (Elimination of double taxation), the items of capital referred to in paragraph 1 of Article 23 (Capital) 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 23 (Capital) shall be taken into account for the value thereof reduced by the value of the debts pertaining to the permanent establishment or fixed base.

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

DONE at Yerevan this 31st day of October 2001, in duplicate, in the Netherlands, Armenian and English languages, the three texts being equally authentic. In case there is any divergence of interpretation between the Netherlands and Armenian texts, the English text shall prevail.