

Brazil

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

Done at Brasília, on 8 March 1990

text published: Trb. 1990, 67
authentic texts: Dutch, Portuguese and English (English text prevailing)
treaty into force: 20 November 1991 (see Trb. 1991, 176)
treaty applicable: 1 January 1992

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 imposed on behalf of each Contracting State, irrespective of the manner in which they are levied.
2. The existing taxes to which the Convention shall apply are:
 - a. in the case of Brazil:
 - the federal income tax, excluding the supplementary income tax and the tax on activities of minor importance (hereinafter referred to as 'Brazilian tax');
 - b. in the case of the Netherlands:
 - the income tax;
 - the wages tax;
 - the company tax including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mijwvet 1810 (the Mining Act of 1810) with respect to concessions issued from 1976, or pursuant to the Mijwvet Continentaal Plat 1965 (the Netherlands Continental Shelf Mining Act of 1965);
 - the dividend tax (hereinafter referred to as 'Netherlands tax').
3. The Convention shall also apply 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 taxes mentioned in paragraph 2. 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 term 'Contracting State' means Brazil or the Netherlands, as the context requires; the term 'Contracting States' means Brazil and the Netherlands;
 - b. the term 'Brazil' means the continental and insular territory of the Federative Republic of Brazil, including its territorial sea, as defined by the United Nations Convention on the Law of the Sea, and the corresponding seabed and subsoil, as well as any maritime area beyond the territorial sea, including the seabed and the subsoil to the extent that in that area Brazil in accordance with

international law exercises rights with respect to the exploration and exploitation of the natural resources;

- c. the term 'the Netherlands' means the part of the Kingdom of the Netherlands that is situated in Europe including the part of the seabed and its subsoil under the North Sea, to the extent that that area in accordance with international law has been or may hereafter be designated under Netherlands laws as an area within which the Netherlands may exercise certain rights with respect to the exploration and exploitation of the natural resources of the seabed or its subsoil;
 - d. the term 'nationals' means:
 1. all individuals possessing the nationality of a Contracting State;
 2. all legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State;
 - e. the term 'person' includes an individual, a company and any other body of persons;
 - f. the term 'company' means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - g. 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;
 - h. the term 'international traffic' means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - i. the term 'tax' means Brazilian tax or Netherlands tax, as the context requires;
 - j. the term 'competent authority' means:
 1. in Brazil: the Minister of Finance, the Secretary of Federal Revenue or their authorized representatives;
 2. in the Netherlands: the Minister of Finance or his duly authorized representative.
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 law of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.
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 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;
 - f. a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. A building site, a construction, assembly or installation project constitutes a permanent establishment only if it lasts more than 6 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.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 7 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State and has, and habitually exercises, in the first-mentioned Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in the first- mentioned 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. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.
7. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
8. 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 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.
4. 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.
5. 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.

Article 9. Associated enterprises

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.

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 15% of the gross amount of the dividends. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
3. The term 'dividends' as used in this Article means income from shares, 'jouissance' shares or 'jouissance' rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights 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.
4. 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, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Where a resident of a Contracting State has a permanent establishment in the other Contracting State, this permanent establishment may be subject to a tax withheld at source in accordance with the internal law of that State. However, such a tax shall not exceed 15% of the gross amount of the profits of that permanent establishment determined after the payment of the corporate tax related to such profits.

6. 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 situated in that 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.

7. The tax rate limitations referred to in paragraphs 2 and 5 shall not apply to dividends or profits paid before the end of the first calendar year following the year of signature of this Convention.

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 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:

- a. 10% of the gross amount of the interest if the recipient is a bank and the loan is granted for a period of at least 7 years in connection with the purchase of industrial equipment; with the study, the purchase and installation of industrial or scientific units, as well as with the financing of public works;
- b. 15% of the gross amount of the interest in all other cases.

3. Notwithstanding the provisions of paragraphs 1 and 2, interest arising in a Contracting State and paid to the Government of the other Contracting State, a political subdivision thereof or any agency (including a financial institution) owned by that Government or political subdivision shall be exempt from tax in the first-mentioned State.

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

5. 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, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6. The tax rate limitation provided for in paragraph 2 shall not apply to interest arising in a Contracting State and paid to a permanent establishment of an enterprise of the other Contracting State which is situated in a third State.

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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

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:
 - a. 25% of the gross amount of the royalties arising from the use or the right to use trade marks;
 - b. 15% of the gross amount of the royalties in all other cases.
3. The term 'royalties' as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, films or tapes for television or radio broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.
4. 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, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.
5. 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 in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.
6. 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.
7. The tax rate limitation provided for in sub-paragraph (b) of paragraph 2 of this Article shall not apply to royalties paid before the end of the first calendar year following the year of signature of this Convention, where such royalties are paid to a resident of a Contracting State which holds, directly or indirectly, at least 50% of the voting capital of the company paying the royalties.

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, which is 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, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State. However, 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.
3. Gains from the alienation of any property, other than that referred to in paragraphs 1 and 2, may be taxed in both Contracting States.

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 the remuneration for such services or activities is paid by a company resident of the other Contracting State or is borne by a permanent establishment situated therein. In such case, the income may be taxed in that other State.
2. The term 'professional services' includes especially independent scientific, technical, 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, 18, 19 and 20, 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 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 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 may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16. Directors' fees

Directors' fees and other regular payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or of any council of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17. Artistes and athletes

1. Notwithstanding the provisions of Articles 14 and 15, 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 an athlete, 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 an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

Article 18. Pensions

1. Subject to the provisions of paragraph 2 of Article 19, any pension or other similar remuneration in consideration of past employment not exceeding an amount equivalent to US\$ 5,000 in a calendar year and any annuity or alimony paid to a resident of a Contracting State shall be taxable only in that State. The amount of such remuneration which exceeds the above-mentioned limit may also be taxed in the other Contracting State, if it is derived from that State.
2. The term 'annuity' means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.
3. Any payment made under the provisions of a social security system of a Contracting State to a resident of the other Contracting State shall be taxable only in the first-mentioned State.

Article 19. Governmental payments

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 shall be taxable only in that State.
 - b. However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other 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 shall be taxable only 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 other State.
3. The provisions of Articles 15, 16 and 18 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 temporarily 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 not be taxed in the last-mentioned State provided that the payments are received from the first-mentioned State or from a person who is a resident of 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 one of the Contracting States a resident of the other 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

Items of income of a resident of a Contracting State, arising in the other Contracting State and not dealt with in the foregoing Articles of this Convention, may be taxed in that other State.

Chapter IV. Elimination of double taxation

Article 23. 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 which, according to the provisions of this Convention, may be taxed in Brazil.
2. However, where a resident of the Netherlands derives items of income which according to Article 6, Article 7, paragraph 4 of Article 10, paragraph 5 of Article 11, paragraph 4 of Article 12, paragraphs 1 and 2 of Article 13, Article 14, Article 15, Article 16 and Article 19 of this Convention may be taxed in Brazil and are included in the basis referred to in paragraph 1, the Netherlands shall, subject to the provisions concerning the mode of application, including the provisions concerning the compensation of losses, in its national regulations for the avoidance of double taxation, exempt such items from tax consistently with the above-mentioned provisions of this Convention.
3. Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for the items of income which according to paragraph 2 of Article 10, paragraph 2 of Article 11, paragraph 2 of Article 12, paragraph 3 of Article 13, Article 17, paragraph 1 of Article 18 and Article 22 of this Convention may be taxed in Brazil 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 Brazil on these items of income, but shall not exceed the amount of the reduction which would be allowed if the items of income so included were the sole items of income which are exempt from Netherlands tax under the provisions of Netherlands law for the avoidance of double taxation.

4. For the purpose of paragraph 3, the tax paid in Brazil shall be deemed to be:
 - a. with respect to dividends as meant in paragraph 2 of Article 10, 25% of such dividends if they are paid to a company of the Netherlands holding at least 10% of the voting capital of the Brazilian company, and 20% in all other cases;
 - b. with respect to interest as meant in paragraph 2 of Article 11, 20% of such interest;
 - c. with respect to royalties as meant in sub-paragraph (b) of paragraph 2 of Article 12, 25% of such royalties if they are paid to a company of the Netherlands holding directly or indirectly at least 50% of the voting capital of a Brazilian company provided that they are not deductible in the determination of the taxable income of the company paying the royalties, and 20% in all other cases.
5. Where a resident of Brazil derives income which, in accordance with the provisions of this Convention, may be taxed in the Netherlands, Brazil shall allow as a deduction from the tax on the income of that person an amount equal to the income tax paid in the Netherlands. The deduction shall not, however, exceed that part of the income tax as computed before the deduction is given, which is appropriate to the income which may be taxed in the Netherlands.

Chapter V. Special provisions

Article 24. 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.
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. 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.
4. In this Article, the term 'taxation' means taxes to which this Convention applies.

Article 25. Mutual agreement procedure

1. Where a resident of a Contracting State 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. The case must be presented within five 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.
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, including Article 9 of 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 26. 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. Any information received by a Contracting State shall be treated as secret and shall be disclosed only to persons or authorities (including courts) involved in the assessment or collection of the taxes covered by the Convention or in the prosecution of offences or the determination of appeals in relation thereto.
2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:
 - a. to carry out administrative measures at variance with the laws and the 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 27. Diplomatic agents and consular officers

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.

Chapter VI. Final provisions

Article 28. Entry into force

1. This Convention shall be ratified and the instruments of ratification shall be exchanged as soon as possible.
2. This Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect for the first time:
 - a. as respects taxes withheld at source, to amounts paid or credited on or after January 1st of the calendar year immediately following that in which the Convention enters into force;
 - b. as respects other taxes covered by the Convention, for the taxable year beginning on or after January 1st of the calendar year immediately following that in which the Convention enters into force.

Article 29. Termination

Either Contracting State may terminate this Convention after a period of five years from the date on which the Convention enters into force by giving to the other Contracting State, through diplomatic channels, a written notice of termination, provided that any such notice shall be given only on or before the thirtieth day of June in any calendar year.

In such case the Convention shall apply for the last time:

- a. as respects taxes withheld at source, to amounts paid or credited before the expiration of the calendar year in which the notice of termination is given;
- b. as respects other taxes covered by the Convention, to amounts received during the taxable year beginning in the calendar year in which the notice of termination is given.

IN WITNESS whereof the undersigned, being duly authorized thereto, have signed this Convention and have affixed their seals.

DONE at Brasília this 8th day of March 1990, in duplicate, in the Netherlands, Portuguese and English languages, all three texts being equally authentic. In case of any divergence of interpretation the English text shall prevail.

Protocol

1. With reference to Article 7

It is understood that the provisions of paragraph 3 of Article 7 shall apply whether the expenses mentioned therein are incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

2. With reference to Articles 10, 11 and 12

- a. Where tax has been levied at source in excess of the amount of tax chargeable under the provisions of Article 10, 11 or 12, applications for the refund of the excess amount of tax have to be lodged with the competent authority of the Contracting State having levied the tax, within a period of five years after the expiration of the calendar year in which the tax has been levied.
- b. The competent authority of a Contracting State may settle the mode of application of the Articles 10, 11 and 12.

3. With reference to Articles 10 and 23

It is understood that the value of shares issued by a corporation of a Contracting State and received by a resident of the other Contracting State shall not be subject to tax as income in either Contracting State.

4. With reference to Article 11

- a. It is understood that the commissions paid by a resident of Brazil to a bank or financial institution in connection with services rendered by such bank or financial institution are considered to be interest and subject to the provisions of paragraph 2 or 3 of Article 11.
- b. With respect to paragraph 3 of Article 11, the competent authorities may determine by mutual agreement other governmental institutions to which this provision shall apply.

5. With reference to Article 12, paragraph 3

It is understood that the provisions of paragraph 3 of Article 12 shall apply to payments of any kind received as a consideration for the rendering of technical assistance and technical services.

6. With reference to Article 19

It is understood that the provisions of sub-paragraph (a) of paragraph 1 and sub-paragraph (a) of paragraph 2 of Article 19 do not prevent the Netherlands from applying the provisions of paragraphs 1 and 2 of Article 23 of the Convention.

7. With reference to Article 24, paragraph 2

It is understood that the provisions of paragraph 5 of Article 10 are not in conflict with the provisions of paragraph 2 of Article 24.

8. With reference to Article 24, paragraph 3

It is understood that:

- a. the provisions of the Brazilian law which do not allow that royalties as defined in paragraph 3 of Article 12, paid by a company resident of Brazil to a resident of the Netherlands which holds at least 50% of the voting capital of that company, be deductible at the moment of the determination of the taxable

income of the company resident of Brazil, are not in conflict with the provisions of paragraph 3 of Article 24 of the present Convention;

- b. in the event that Brazil, after the signature of the present Convention, would allow, either by internal law or by a tax Convention, that royalties paid by an enterprise which is a resident of Brazil to an enterprise which is a resident of a third State not located in Latin-America, and which holds at least 50% of the voting capital of the enterprise which is a resident of Brazil, be deductible at the moment of the determination of the taxable profits of this enterprise, an equal deduction will be automatically applicable, under similar conditions, to an enterprise which is a resident of Brazil paying royalties to an enterprise which is a resident of the Netherlands.

IN WITNESS whereof the undersigned, being duly authorized thereto, have signed this Protocol and have affixed their seals.

DONE at Brasília this 8th day of March 1990, in duplicate, in the Netherlands, Portuguese and English languages, all three texts being equally authentic. In case of any divergence of interpretation the English text shall prevail.