Indonesia

Agreement between the government of the Kingdom of the Netherlands and the government of the Republic of Indonesia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

Done at Jakarta 29 January 2002

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Chapter I. Scope of the Agreement

Article 1. Personal scope

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

Article 2. Taxes covered

1. This Agreement shall apply to taxes on income imposed on behalf of each of the two States or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or elements of income, 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 Agreement shall apply, are, in particular:
   a. in the case of 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 Mining Act of 1810 (Mijnwet 1810) with respect to concessions issued from 1967, or pursuant to the Netherlands Continental Shelf Mining Act of 1965 (Mijnwet Continentaal Plat 1965);
      – de dividendbelasting (dividend tax)

      (hereinafter referred to as 'Netherlands tax');
   b. in the case of Indonesia:
      – the income tax

      (hereinafter referred to as 'Indonesian tax').
4. The Agreement shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes. The competent authorities of the two States shall notify to each other any substantial changes which have been made in their respective taxation laws.

Chapter II. Definitions

Article 3. General definitions

1. In this Agreement, unless the context otherwise requires:
   a. the terms 'one of the two States' and 'the other State' mean Indonesia or the Netherlands, as the context requires; the term 'the two States' means Indonesia and the Netherlands;

b. the term ‘the Netherlands’ comprises the part of the Kingdom of the Netherlands that is situated in Europe and the part of the seabed and its sub–soil under the North Sea, over which the Kingdom of the Netherlands has sovereign rights in accordance with international law;
c. the term ‘Indonesia’ comprises the territory of the Republic of Indonesia as defined in its laws, and parts of the continental shelf and adjacent seas over which the Republic of Indonesia has sovereignty, sovereign rights or jurisdiction in accordance with international law;
d. the term ‘person’ comprises an individual, a company and any other body of persons;
e. the term ‘company’ means any body corporate or any entity which is treated as a body corporate for tax purposes;
f. the terms ‘enterprise of one of the two States’ and ‘enterprise of the other State’ mean respectively an enterprise carried on by a resident of one of the two States and an enterprise carried on by a resident of the other State;
g. the term ‘international traffic’ means any transport by a ship or aircraft operated by an enterprise of one of the two States, except when the ship or aircraft is operated solely between places in the other State;
h. the term ‘nationals’ means:
    1. all individuals possessing the nationality of one of the two States;
    2. all legal persons, partnerships and associations deriving their status as such from the laws in force in one of the two States;
i. the term ‘competent authority’ means:
    1. in the Netherlands, the Minister of Finance or his duly authorized representative;
    2. in Indonesia, the Minister of Finance or his duly authorized representative.

2. As regards the application of the Agreement at any time by one of the two States, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the law of that State for the purpose of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4. Fiscal domicile

1. For the purposes of this Agreement, the term ‘resident of one of the two States’ means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.
2. For the purposes of this Agreement an individual, who is a member of a diplomatic or consular mission of one of the two States in the other State or in a third State and who is a national of the sending State, shall be deemed to be a resident of the sending State if he is submitted therein to the same obligations in respect of taxes on income as are residents of that State.
3. Where by reason of the provisions of paragraph 1 an individual is a resident of both States, then this case shall be determined in accordance with the following rules:
a. he shall be deemed to be a resident of the State in which he has a permanent home available to him. If he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closest (centre of vital interests);
b. if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
c. if he has an habitual abode in both States or in neither of them, the competent authorities of the two States shall settle the question by mutual agreement.
4. Where by reason of the provisions of paragraph 1 a person other than an individual and other than an enterprise to which the provisions of Article 8 apply, is a resident of both States, then it shall be deemed to be a resident of the State in which its place of effective management is situated. If the competent authorities of the two States consider that a place of effective management is present in both States, they shall settle the question by mutual agreement.

Article 5. Permanent establishment

1. For the purposes of this Agreement, the term ‘permanent establishment’ means a fixed place of business in which the business of the enterprise is wholly or partly carried on.
2. The term ‘permanent establishment’ shall include especially:
    a. a place of management;

b. a branch;
c. an office;
d. a factory;
e. a workshop;
f. a farm of plantation;
g. a mine, an oil–well, quarry or other place of extraction of natural resources.

3. The term ‘permanent establishment’ likewise encompasses:
   a. a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six months;
   b. the furnishing of services, including consultancy services, by an enterprise through an employee or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than three months within any 12–month period.
4. The term ‘permanent establishment’ shall not be deemed to include:
   a. the use of facilities solely for the purpose of storage or display 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 or display;
   c. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
   d. the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
   e. the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.
5. A person acting in one of the two States on behalf of an enterprise of the other State – other than an agent of an independent status to whom paragraph 7 applies – shall be deemed to be a permanent establishment in the first–mentioned State if:
   a. he has, and habitually exercises in the first–mentioned State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
   b. he maintains in the first–mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise.
6. An insurance enterprise of one of the two States shall, except with regard to reinsurance, be deemed to have a permanent establishment in the other State if it collects premiums in the territory of that other State or insures risks situated therein through an employee or through a representative who is not an agent of an independent status within the meaning of paragraph 7.
7. An enterprise of one of the two States shall not be deemed to have a permanent establishment in the other State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business. However, when such a broker or agent carries on activities wholly or almost wholly for that enterprise itself or for that enterprise and other enterprises which are controlled by or have a controlling interest in it, he shall not be considered an agent of an independent status within the meaning of this paragraph.
8. The fact that a company which is a resident of one of the two States controls or is controlled by a company which is a resident of the other State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Chapter III. Taxation of income

Article 6. Income from immovable property

1. Income from immovable property may be taxed in the State in which such property is situated.
2. The term ‘immovable property’ shall be defined in accordance with the law of the State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general

law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships 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 professional services.

Article 7. Business profits

1. The profits of an enterprise of one of the two States shall be taxable only in that State unless the enterprise carries on business in the other State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment or are derived within such other State from sales of goods or merchandise of the same kind as those sold, or from other business transactions of the same kind as those effected, through the permanent establishment.
2. Where an enterprise of one of the two States carries on business in the other State through a permanent establishment situated therein, there shall in each State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. Insofar as it has been customary in one of the two States to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles laid down in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8. Shipping and aircraft

1. Profits from the operation of ships or aircraft in international traffic carried on by an enterprise of a State shall be taxable only in that State.
2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency but only to so much of them as is attributable to the participating enterprise in proportion to its share in such joint operation.

Article 9. Associated enterprises

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

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

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

Article 10. Dividends

1. Dividends paid by a company which is a resident of one of the two States to a resident of the other State may be taxed in that other State.
2. However, such dividends may also be taxed in the State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.
3. The competent authorities of the two States shall by mutual agreement settle the mode of application of paragraph 2.
4. The provisions of paragraph 2 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
5. The term ‘dividends’ as used in this Article means income from shares, ‘jouissance’ shares or ‘jouissance’ rights, founders' shares or other rights participating in profits, as well as income from debt–claims participating in profits and income from other corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident.
6. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of one of the two States, has in the other State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of Article 7 shall apply.
7. Where a company which is a resident of one of the two States derives profits or income from the other State, the other State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.
8. Notwithstanding any other provisions of this Agreement, where a company which is a resident of one of the two States has a permanent establishment in the other State, the profits of the permanent establishment may be subjected to an additional tax in that other State in accordance with its law, but the additional tax so charged shall not exceed 10 per cent of the amount of such profits after deducting therefrom income tax and other taxes on income imposed thereon in that other State.

Article 11. Interest

1. Interest arising in one of the two States and paid to a resident of the other 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 beneficial owner of the interest is a resident of the other State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2, interest arising in one of the two States shall be taxable only in the other State to the extent that such interest is derived by:
   i. the Government of the other State, including political subdivisions and local authorities thereof; or
   ii. the Central Bank of the other State; or
   iii. a financial institution owned or controlled by the Government of the other State, including political subdivisions and local authorities thereof; or
   iv. any resident of the other State with respect to debt–claims guaranteed or insured by the Government of the other State including political subdivisions and local authorities thereof, the Central Bank of the other State or any financial institution owned or controlled by that Government.
4. Notwithstanding the provision of paragraph 2, interest arising in one of the two States shall be taxable only in the other State if the beneficial owner of the interest is a resident of the other State and if the interest

is paid on a loan made for a period of more than 2 years or is paid in connection with the sale on credit of any industrial, commercial or scientific equipment.
5. The competent authorities of the two States shall by mutual agreement settle the mode of application of paragraphs 2, 3 and 4.
6. The term ‘interest’ as used in this Article means income from debt–claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and, in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article. However, the term ‘interest’ does not include income dealt with in Article 10.
7. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the interest, being a resident of one of the two States, has in the other State in which the interest arises a permanent establishment with which the debt–claim from which the interest arises is effectively connected. In such a case, the provisions of Article 7 shall apply.
8. Interest shall be deemed to arise in one of the two States when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of one of the two States or not, has in one of the two States 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.
9. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt–claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last–mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each State, due regard being had to the other provisions of this Agreement.

Article 12. Royalties

1. Royalties arising in one of the two States and paid to a resident of the other State may be taxed in that other State.
2. However, such royalties may also be taxed in the 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 10 per cent of the gross amount of the royalties.
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 and films or tapes used for radio or television broadcasting – any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience. However, the term does not include payments for the furnishing of technical services.
4. The competent authorities of the two States shall by mutual agreement settle the mode of application of paragraph 2.
5. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of one of the two States, has in the other State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such case, the provisions of Article 7 shall apply.
6. Royalties shall be deemed to arise in one of the two States when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of one of the two States or not, has in one of the two States a permanent establishment in connection with which the contract under which the royalties are paid was concluded, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.
7. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last–mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each State, due regard being had to the other provisions of this Agreement.

Article 13. Limitation of Articles 10, 11 and 12

International organisations, organs and officials thereof and members of a diplomatic or consular mission of a third State, being present in one of the two States, shall not be entitled, in the other State, to the reductions from tax provided for in Articles 10, 11 and 12 in respect of the items of income dealt with in these Articles and arising in that other State, if such items of income are not subject to a tax on income in the first–mentioned State.

Article 14. Capital gains

1. Gains from the alienation of immovable property, as defined in paragraph 2 of Article 6, may be taxed in the State in which such property is situated.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of one of the two States has in the other State or of movable property pertaining to a fixed base available to a resident of one of the two States in the other State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships and aircraft shall be taxable only in the State of which the enterprise is a resident.
4. Gains from the alienation of any property other than those mentioned in paragraphs 1, 2 and 3, shall be taxable only in the State of which the alienator is a resident.
5. Notwithstanding the provisions of paragraph 4, one of the two States may, in accordance with its own laws, including the interpretation of the term alienation, levy tax on gains derived by an individual who is a resident of the other State from the alienation of shares in, jouissance rights or debt–claims on, a company whose capital is divided into shares and which, under the laws of the first–mentioned State, is a resident of that State, and from the alienation of part of the rights attached to the said shares, jouissance shares or debt–claims, if that individual either alone or with his or her spouse – or one of their relations by blood or marriage in the direct line – directly or indirectly holds at least 5 per cent of the issued capital of a particular class of shares in that company. This provision shall apply only if the individual who derives the gains has been a resident of the first–mentioned State in the course of the last ten years preceding the year in which the gains are derived and provided that, at the time he became a resident of the other State, the above–mentioned conditions regarding share ownership in the said company were satisfied.
In cases where, under the domestic laws of the first–mentioned State, an assessment has been issued to the individual in respect of the alienation of the aforesaid shares deemed to have taken place at the time of his emigration from the first–mentioned State, the above shall apply only in so far as part of the assessment is still outstanding.

Article 15. Independent personal services

1. Income derived by a resident of one of the two States 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 State for the purpose of performing his activities or he is present in that other State for a period or periods exceeding in the aggregate 91 days in any 12–month period. If he has such a fixed base or remains in that other State for the aforesaid period or periods, the income may be taxed in that other State but only so much of it as is attributable to that fixed base or is derived in that other State during the aforesaid period or periods.
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, dentists and accountants.

Article 16. Dependent personal services

1. Subject to the provisions of Articles 17, 19, 20, 21 and 22 salaries, wages and other similar remuneration derived by a resident of one of the two States in respect of an employment shall be taxable only in that State

unless the employment is exercised in the other State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of one of the two States in respect of an employment exercised in the other State shall be taxable only in the first–mentioned State, if:
   a. the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in 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 one of the two States in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the State of which the enterprise is a resident.

Article 17. Directors' fees

1. Remuneration and other payments derived by a resident of Indonesia in his capacity as a ‘bestuurder’ or a ‘commissaris’ of a company which is a resident of the Netherlands may be taxed in the Netherlands.
2. Remuneration and other payments derived by a resident of the Netherlands in his capacity as a ‘pengurus’ or a ‘komisaris’ of a company which is a resident of Indonesia may be taxed in Indonesia.

Article 18. Artistes and athletes

Notwithstanding the provisions of Articles 7, 15 and 16, income derived by public entertainers, such as theatre, motion picture, radio or television artists, and musicians, and by athletes, from their personal activities as such, or income derived from the furnishing by an enterprise of the services of such public entertainers or athletes, may be taxed in the State in which these activities or services are exercised.

Article 19. Pensions, annuities and social security payments

1. Subject to the provisions of paragraph 1 of Article 20, pensions and other similar remuneration and annuities and lump–sum payments in lieu of the right to an annuity, arising in one of the two States and paid to a resident of the other State, may be taxed in the first–mentioned State.
2. Any pension and other payment paid out under the provisions of a social security system of one of the two States to a resident of the other State may be taxed in the first–mentioned State.
3. 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 payments in return for adequate and full consideration in money or money's worth.
4. A pension or other similar remuneration or annuity is deemed to be derived from one of the two States if and insofar as the contributions or payments associated with the pension or similar remuneration or annuity, or the entitlements received from it qualified for tax relief in that State. The transfer of a pension from a pension fund or an insurance company in one of the two States to a pension fund or an insurance company in another State will not restrict in any way the taxing rights of the first–mentioned State under this Article.

Article 20. Governmental functions

1. Remuneration, including pensions, paid by, or out of funds created by, one of the two States or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or local authority thereof in the discharge of functions of a governmental nature may be taxed in that State.
2. Notwithstanding paragraph 1, the provisions of Article 16, 17 or 19 shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by one of the two States or a political subdivision or a local authority thereof.
3. Paragraph 1 shall not apply in so far as services are rendered to a State in the other State by an individual who is a resident and a national of that other State.

Article 21. Professors and teachers

An individual who sojourns in one of the two States for a period not exceeding two years, for the purpose of teaching at a university, college, school or other educational institution or at a non–commercial and non–industrial research institute in that State and who immediately prior to such sojourn is a resident of the other State, shall not be taxed in the first–mentioned State in respect of any payments which he receives for such activity.

Article 22. Students

1. An individual who immediately before visiting one of the two States is a resident of the other State and is temporarily present in the first–mentioned State for the primary purpose of:
   a. studying at a recognised university, college or school in that first–mentioned State; or
   b. securing training as a business apprentice,

   shall be exempt from tax in the first–mentioned State in respect of:
      i. all remittances from abroad for the purpose of his maintenance, education or training; and
      ii. any remuneration for personal services performed in the first–mentioned State in an amount that does not exceed an amount to be determined by the competent authorities by mutual agreement, for any taxable year.

The benefits under this paragraph shall only extend for such period of time as may be reasonable or customarily required to effectuate the purpose of the visit.

2. An individual who immediately before visiting one of the two States is a resident of the other State and is temporarily present in the first–mentioned State for a period not exceeding three years for the purpose of study, research or training solely as a recipient of a grant, allowance or award from a scientific, educational, religious or charitable organization or under a technical assistance programme entered into by one of the two States, a political subdivision or a local authority thereof shall be exempted from tax in the first–mentioned State on:
   a. the amount of such grant, allowance or award; and
   b. any remuneration for personal services performed in the first–mentioned State provided such services are in connection with his study, research or training or are incidental thereto, to an amount that does not exceed an amount to be determined by the competent authorities by mutual agreement, for any taxable year.

3. An individual who immediately before visiting one of the two States is a resident of the other State and is temporarily present in the first–mentioned State for a period not exceeding twelve months as an employee of, or under contract with the last–mentioned State, a political subdivision or a local authority thereof, or an enterprise of the last–mentioned State, for the purpose of acquiring technical, professional or business experience, shall be exempted from tax in the first–mentioned State on:
   a. all remittances from the last–mentioned State for the purpose of his maintenance, education or training; and
   b. any remuneration for personal services performed in the first–mentioned State, provided such services are in connection with his study or training or are incidental thereto, in an amount that does not exceed an amount to be determined by the competent authorities by mutual agreement.

However, the benefits under this paragraph shall not be granted if the technical, professional or business experience is acquired from a company 50 per cent or more of the voting stock of which is owned by the State, the political subdivision or the local authority thereof or the enterprise, having sent the employee or the person working under contract.

Article 23. Other income

1. Items of income of a resident of one of the two States, wherever arising, not dealt with in the foregoing Articles of this Agreement, and other than income in the form of lotteries and prizes, shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of one of the two States, carries on business in the other State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in

respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

Chapter IV

Article 24. Elimination of double taxation

1. Each of the two States, 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 Agreement may be taxed in the other State.
2. Where a resident of Indonesia derives items of income which may be taxed in the Netherlands in accordance with the provisions of this Agreement and are included in the basis referred to in paragraph 1, the amount of the Netherlands tax payable in respect of the income shall be allowed as a credit against the Indonesian tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Indonesian tax which is appropriate to such income.
3. Where a resident of the Netherlands derives items of income which according to Article 6, Article 7, paragraph 6 of Article 10, paragraph 7 of Article 11, paragraph 5 of Article 12, paragraphs 1 and 2 of Article 14, Article 15, paragraph 1 of Article 16, Article 19, Article 20, and paragraph 2 of Article 23, of this Agreement may be taxed in Indonesia 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 the 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 the Netherlands tax under those provisions.
4. 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 5 of Article 14, paragraph 1 of Article 17, and Article 18, of this Agreement may be taxed in Indonesia 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 Indonesia 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 the Netherlands tax under the provisions of the Netherlands law for the avoidance of double taxation.

Chapter V. Special provisions

Article 25. Offshore activities

1. The provisions of this Article shall apply notwithstanding any other provisions of this Agreement. However, this Article shall not apply where offshore activities of a person constitute for that person a permanent establishment under the provisions of Article 5 or a fixed base under the provisions of Article 15.
2. In this Article the term ‘offshore activities’ means activities which are carried on offshore in connection with the exploration or exploitation of the seabed and its sub–soil and their natural resources, situated in one of the two States.
3. An enterprise of one of the two States which carries on offshore activities in the other 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 of one of the two States carrying on offshore activities in the other 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 of one of the two States 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;
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 State who carries on offshore activities in the other 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 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 State in respect of an employment connected with offshore activities carried on through a permanent establishment in the other 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 one of the States on the items of income which may be taxed in that State according to Article 7 and Article 15 in connection with respectively paragraph 3 and paragraph 5 of this Article, and to paragraph 6 of this Article, the other State shall allow a reduction of its tax which shall be computed in conformity with the rules laid down in paragraph 2 of Article 24 respectively paragraph 3 of Article 24.

Article 26. Non–discrimination

1. Nationals of one of the two States shall not be subjected in the other State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the two States.

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

3. Except where the provisions of paragraph 1 of Article 9, paragraph 9 of Article 11, or paragraph 7 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of one of the two States to a resident of the other 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.

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

5. Contributions paid by, or on behalf of, an individual who is a resident of one of the two States to a pension plan that is recognized for tax purposes in the other 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.

6. In this Article the term 'taxation' means taxes which are the subject of this Agreement.

Article 27. Mutual agreement procedure

1. Where a person considers that the actions of one or both of the two States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the State of which he is a resident or, if his case comes under paragraph 1 of Article 26, to that of the 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 Agreement.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other State, with a view to the avoidance of taxation not in accordance with this Agreement.
3. The competent authorities of the two States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.
4. The competent authorities of the two States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 28. Exchange of information

1. The competent authorities of the two States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the two States concerning taxes covered by the Agreement in so far as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received by one of the two States 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 in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the two States the obligation:
   a. to carry out administrative measures at variance with the laws or administrative practice of that or of the other 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 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 29. Diplomatic and consular officials

Nothing in the Agreement shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

Article 30. Territorial extension

1. This Agreement may be extended, either in its entirety or with any necessary modifications, to either or both of the countries Aruba or the Netherlands Antilles, if the country concerned imposes taxes substantially similar in character to those to which this Agreement applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed in notes to be exchanged through diplomatic channels.
2. Unless otherwise agreed the termination of the Agreement shall not also terminate the application of the Agreement to any country to which it has been extended under this Article.

Chapter VI. Final provisions

Article 31. Entry into force

This Agreement shall enter into force on the latter of the dates on which the respective Governments notify each other in writing through diplomatic channels, that the formalities constitutionally required in their respective States for the entry into force of this Agreement have been complied with. This Agreement shall have effect:

a. in respect of tax withheld at the source, to income derived on or after 1st of January in the year next following that in which the Agreement enters into force; and
b. in respect of other taxes on income, for taxable years beginning on or after 1st of January in the year next following that in which the Agreement enters into force.

Article 32. Termination

This Agreement shall remain in force until terminated by a State. Either State may terminate the Agreement, through diplomatic channels, by giving written notice of termination on or before the thirtieth of June of any calendar year following after the period of five years from the year in which the Agreement enters into force. In such case, the Agreement shall cease to have effect:

a. in respect of tax withheld at source, to income derived on or after 1st of January in the year next following that in which the notice of termination is given; and
b. in respect of other taxes on income, for taxable years beginning on or after 1st of January in the year next following that in which the notice of termination is given.

IN WITNESS whereof the undersigned, duly authorised thereto, have signed this Agreement.

DONE at Jakarta, on 29 January 2002, in two originals, each in the Netherlands, Indonesian and English languages, the three texts being equally authentic. In case there is any divergence of interpretation between the Indonesian and Netherlands texts, the English text shall prevail.

Protocol

I. With reference to subparagraph (e) of paragraph 1 of Article 3

In case an entity that is treated as a body corporate for tax purposes is liable as such to tax in a State, but the income of that entity is taxed in the other State respectively as income of the participants in that entity, the competent authorities shall take such measures that on the one hand no double taxation remains, but on the other hand it is prevented that merely as a result of application of the Agreement income is (partly) not subject to tax.

II. With reference to Article 4

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

III. With reference to paragraph 3 of Article 5

It is understood that representative offices which operate in Indonesia on a permit given by the Indonesian Ministry of Finance or the Indonesian Ministry of Trade, shall not constitute a permanent establishment, unless they carry on business activities other than activities which have a preparatory or auxiliary character.

IV. With reference to Article 7

In respect of paragraphs 1 and 2 of Article 7, where an enterprise of one of the two States sells goods or merchandise or carries on business in the other 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 the remuneration which is attributable to the actual activity of the permanent establishment for such sales or business. Especially, 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 of 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 which is effectively carried out by the permanent establishment in the 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 State of which the enterprise is a resident.

V. With reference to Article 7

In the application of paragraph 3 of Article 7, no deduction shall be allowed in respect of amounts charged – otherwise than with respect to expenses actually incurred – by the head office of the enterprise or any of its other offices to the permanent establishment, 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 made available to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for such amounts charged – otherwise than with respect to expenses actually incurred – by the permanent establishment to the head office of the enterprise or any of its other offices.

VI. With reference to Article 9

It is understood, however, 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.

VII. With reference to paragraph 3 subparagraph (iii) of Article 11

A financial institution as mentioned in paragraph 3 subparagraph (iii) of Article 11, includes especially: the Netherlands Development Finance Company (Nederlandse Financierings–Maatschappij voor Ontwikkelingslanden N.V.), and the Netherlands Investment Bank for Developing Countries (Nederlandse Investeringsbank voor Ontwikkelingslanden N.V.).

VIII. With reference to 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 and 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.

IX. With reference to Article 12

In respect of paragraph 3 of Article 12, the term ‘technical services’ includes studies or surveys of a scientific, geological or technical nature, engineering contracts including blue prints related thereto, and consultancy or supervisory services.

X. With reference to Article 28

It is understood that, notwithstanding the fourth sentence in paragraph 1 of Article 28, such persons or authorities may use the information received for the levying of any national taxes and in case of the Netherlands also social security.

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

DONE at Jakarta, on 29 January 2002, in two originals, each in the Netherlands, Indonesian and English languages, the three texts being equally authentic. In case there is any divergence of interpretation between the Indonesian and Netherlands texts, the English text shall prevail.