

## PROTOCOL

### AMENDING THE CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF THE NETHERLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the United States of America and the Government of the Kingdom of the Netherlands, desiring to amend the Convention between the United States of America and the Kingdom of the Netherlands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Washington on December 18, 1992, as amended by a protocol signed at Washington on October 13, 1993 (hereinafter referred to as "the Convention"),

Have agreed as follows:

#### ARTICLE 1

Article 1 (General Scope) of the Convention is amended by adding the following paragraph:

- “3. a) Notwithstanding the provisions of subparagraph 2 b):
- i) any question arising as to the interpretation or application of this Convention and, in particular, whether a taxation measure is within the scope of this Convention shall be determined exclusively in accordance with the provisions of Article 29 (Mutual Agreement Procedure) of this Convention; and
  - ii) the provisions of Article XVII of the General Agreement on Trade in Services shall not apply to a taxation measure unless the competent authorities agree that the measure is not within the scope of Article 28 (Non-Discrimination) of this Convention.
- b) For the purpose of this paragraph, a "measure" is a law, regulation, rule, procedure, decision, administrative action, or any similar provision or action.”

ARTICLE 2

Article 4 (Resident) is amended by omitting the last sentence of paragraph 1 and substituting the following sentence:

"However, the term "resident of one of the States" does not include any person who is liable to tax in that State in respect only of income from sources in that State."

ARTICLE 3

(a) Article 10 (Dividends) of the Convention is omitted and the following Article is substituted:

“Article 10

DIVIDENDS

1. Dividends paid by a company which is a resident of one of the 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:
  - a) 5 percent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 percent of the voting power in the company paying the dividends; and
  - b) 15 percent of the gross amount of the dividends in all other cases.
3. Notwithstanding the provisions of paragraph 2, dividends shall not be taxed in the State of which the company paying the dividends is a resident if the person who is the

beneficial owner of the dividends is a company that is a resident of the other State that has owned directly shares representing 80 percent or more of the voting power in the company paying the dividends for a 12-month period ending on the date the dividend is declared and:

- a) owned, directly or indirectly, shares representing at least 80 percent of the voting power in the company paying the dividends prior to October 1st, 1998;
  - b) is a qualified person by reason of subparagraph c) of paragraph 2 of Article 26 (Limitation on Benefits);
  - c) is entitled to benefits with respect to the dividends under paragraph 3 of Article 26; or
  - d) has received a determination pursuant to paragraph 7 of Article 26 with respect to this paragraph.
4. a) Subparagraph a) of paragraph 2 and paragraph 3 shall not apply in the case of dividends paid by a United States person that is a Regulated Investment Company (RIC) or a Real Estate Investment Trust (REIT) or in the case of dividends paid by a Dutch company that is a “beleggingsinstelling” in the sense of Article 28 of the Netherlands Corporation Tax Act (Wet op de vennootschapsbelasting 1969) (hereinafter referred to as “beleggingsinstelling”).
- b) In the case of dividends paid by a RIC or a beleggingsinstelling, subparagraph b) of paragraph 2 shall apply.
  - c) In the case of dividends paid by a REIT or, notwithstanding subparagraph b) of this paragraph 4, by a beleggingsinstelling that invests in real estate to the same extent as is required of a REIT, subparagraph b) of paragraph 2 shall apply only if:

- i) the beneficial owner of the dividends is an individual holding an interest of not more than 25 percent in the REIT or beleggingsinstelling;
- ii) the dividends are paid with respect to a class of stock that is publicly traded and the beneficial owner of the dividends holds an interest of not more than 5 percent of any class of the stock of the REIT or beleggingsinstelling;
- iii) the beneficial owner of the dividends holds an interest of not more than 10 percent in the REIT or beleggingsinstelling and the gross value of no single interest in real property held by the REIT or beleggingsinstelling exceeds 10 percent of the gross value of the total interest in real property held by the REIT or beleggingsinstelling; or
- iv) the beneficial owner is a beleggingsinstelling, in the case of dividends paid by a REIT, or a RIC or a REIT, in the case of dividends paid by a beleggingsinstelling.

5. The provisions of the preceding paragraphs shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

6. The term “dividends” as used in this Convention means income from shares or other rights 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. For the purposes of this paragraph, the term “dividends” also includes, in the case of the Netherlands, income from debt claims that is

subjected to the same taxation treatment as income from shares and, in the case of the United States, income from debt obligations carrying the right to participate in profits.

7. The provisions of paragraphs 1, 2, 3, and 4 of this Article shall not apply if the beneficial owner of the dividends, being a resident of one of the States, carries on business in the other State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid forms part of the business property of such permanent establishment or pertains to such fixed base. In that case the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services), as the case may be, shall apply.

8. Where a company which is a resident of one of the States derives profits or income from the other State, that other State may not impose any tax on the dividends paid by the company, 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 forms part of the business property of a permanent establishment or pertains to a fixed base situated in that other State, nor, except as provided in Article 11 (Branch Tax), 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."

(b) Article 25 (Methods of Elimination of Double Taxation) is modified by

- i) omitting in the first sentence of paragraph 2 "paragraph 5 of Article 10" and substituting "paragraph 7 of Article 10"; and

- ii) omitting in subparagraph 3(c) “paragraph 2(i) of Article 10” and substituting “paragraph 4 of Article 10”.

#### ARTICLE 4

Article 11 (Branch Tax) is modified by adding at the end of paragraph 3 the following new sentence:

“Paragraph 1 shall not apply in the case of a company that:

- a) prior to October 1st, 1998 was engaged in activities giving rise to profits attributable to that permanent establishment or to income or gains to which the provisions of Article 6 or, as the case may be, paragraph 1 of Article 14 apply;
- b) is a qualified person by reason of subparagraph c) of paragraph 2 of Article 26 (Limitation on Benefits) of this Convention; or
- c) is entitled to benefits with respect to the dividends under paragraph 3 of Article 26; or
- d) has received a determination pursuant to paragraph 7 of Article 26 with respect to this paragraph.”

#### ARTICLE 5

(a) Article 19 (Pensions, Annuities, Alimony) is amended by adding the following new paragraphs:

“7. Where an individual who is a resident of one of the States is a member or beneficiary of, or participant in, an exempt pension trust that is a resident of the other State, income earned by the exempt pension trust may be taxed as income of that individual only when, and, subject to

the provisions of paragraphs 1, 2 and 3 of this Article, to the extent that, it is paid to, or for the benefit of, that individual from the exempt pension trust (and not transferred to another exempt pension trust in that other State).

8. Where an individual who is a member or beneficiary of, or participant in, an exempt pension trust established in one of the States exercises an employment or self-employment in the other State:

a) contributions paid by or on behalf of that individual to the exempt pension trust during the period that he exercises an employment or self-employment in the other State shall be deductible (or excludible) in computing his taxable income in that other State; and

b) any benefits accrued under the exempt pension trust, or contributions made to the exempt pension trust by or on behalf of the individual's employer, during that period shall not be treated as part of the employee's taxable income and any such contributions shall be allowed as a deduction in computing the business profits of his employer in that other State.

The relief available under this paragraph shall not exceed the relief that would be allowed by the other State to residents of that State for contributions to, or benefits accrued under, an exempt pension trust established in that State.

9. The provisions of paragraph 8 of this Article shall not apply unless:

a) contributions by or on behalf of the individual, or by or on behalf of the individual's employer, to the exempt pension trust (or to another similar exempt pension trust for which the first-mentioned exempt pension trust was substituted) were made

before the individual began to exercise an employment or self-employment in the other State; and

b) the competent authority of the other State has agreed that the exempt pension trust generally corresponds to an exempt pension trust established in that other State.

10. a) Where a citizen of the United States who is a resident of the Netherlands exercises an employment in the Netherlands the income from which is taxable in the Netherlands and is borne by an employer who is a resident of the Netherlands or by a permanent establishment situated in the Netherlands, and the individual is a member or beneficiary of, or participant in, an exempt pension trust established in the Netherlands,

i) contributions paid by or on behalf of that individual to the exempt pension trust during the period that he exercises the employment in the Netherlands, and that are attributable to the employment, shall be deductible (or excludible) in computing his taxable income in the United States; and

ii) any benefits accrued under the exempt pension trust, or contributions made to the exempt pension trust by or on behalf of the individual's employer, during that period, and that are attributable to the employment, shall not be treated as part of the employee's taxable income in computing his taxable income in the United States. This paragraph shall apply only to the extent that the contributions or benefits qualify for tax relief in the Netherlands.



b) The relief available under this paragraph shall not exceed the relief that would be allowed by the United States to its residents for contributions to, or benefits accrued under, a generally corresponding exempt pension trust established in the United States.

c) For purposes of determining an individual's eligibility to participate in and receive tax benefits with respect to an exempt pension trust established in the United States, contributions made to, or benefits accrued under, an exempt pension trust established in the Netherlands shall be treated as contributions or benefits under a generally corresponding exempt pension trust established in the United States to the extent relief is available to the individual under this paragraph.

d) This paragraph shall not apply unless the competent authority of the United States has agreed that the exempt pension trust generally corresponds to an exempt pension trust established in the United States.

11. The benefits of paragraphs 7, 8, 9 and 10 will apply with respect to an exempt pension trust that is established in the United States only if the pension trust undertakes to provide information and to provide surety to the tax authorities of the Netherlands in accordance with the Netherlands law regarding designated foreign pension trusts.”

(b) Article 28 (Non-Discrimination) is modified by omitting paragraph 5 and re-numbering paragraphs 6 and 7 as 5 and 6.

## ARTICLE 6

Article 24 (Basis of Taxation) of the Convention is amended by:

- (a) inserting in the last sentence of paragraph 1 "or long-term resident" after "include a former citizen";
- (b) omitting in the last sentence of paragraph 1 "United States citizenship" and substituting "such United States status";
- (c) omitting in subparagraph 2 a) "paragraph 4 of Article 19" and substituting "paragraphs 4, 7, 8 and 10 of Article 19";
- (d) omitting in the first sentence of paragraph 3 "paragraph 5 of Article 10" and substituting "paragraph 7 of Article 10"; and
- (e) adding a new paragraph as follows:  
"4. In the case of an item of income, profit or gain derived through a person that is fiscally transparent under the laws of either State, such item shall be considered to be derived by a resident of a State to the extent that the item is treated for the purposes of the taxation law of such State as the income, profit or gain of a resident."

#### ARTICLE 7

Article 26 (Limitation on Benefits) of the Convention is omitted and the following Article is substituted:

## “Article 26

LIMITATION ON BENEFITS

1. Except as otherwise provided in this Article, a resident of one of the States that derives income from the other State shall be entitled to all the benefits of this Convention otherwise accorded to residents of a State only if such resident is a “qualified person” as defined in paragraph 2 of this Article and satisfies any other specified conditions for the obtaining of such benefits.

2. A resident of one of the States is a qualified person for a taxable year only if such resident is either:

- a) an individual;
- b) a State, or a political subdivision or local authority thereof;
- c) a company, if
  - i) the principal class of its shares (and any disproportionate class of shares) is listed on a recognized stock exchange specified in clauses i) or ii) of subparagraph a) of paragraph 8 of this Article and is regularly traded on one or more recognized stock exchanges, unless the company has no substantial presence in the State of which it is a resident; or
  - ii) shares representing at least 50 percent of the aggregate voting power and value (and at least 50 percent of any disproportionate class of shares) of the company are owned directly or indirectly by five or fewer companies entitled to benefits under clause i) of this subparagraph, provided that, in

the case of indirect ownership, each intermediate owner is a resident of either State;

- d) a person described in Article 35 (Exempt Pension Trusts) of this Convention, provided that:
  - i) more than 50 percent of the person's beneficiaries, members or participants are individuals who are residents of either State; or
  - ii) the organization sponsoring such person is entitled to the benefits of the Convention pursuant to this Article;
- e) a not-for-profit organization not described in subparagraph d) that, by virtue of such status, is generally exempt from income taxation in its State of residence; or
- f) a person, other than an individual or a company that would qualify for benefits under clause i) of subparagraph c) but for the fact that it has no substantial presence in the State of which it is a resident, if:
  - i) on at least half the days of the taxable year persons that are qualified persons by reason of subparagraphs a), b), clause i) of subparagraph c), or subparagraphs d) or e) of this paragraph own, directly or indirectly, shares or other beneficial interests representing at least 50 percent of the aggregate voting power and value (and at least 50 percent of any disproportionate class of shares) of the person, and
  - ii) less than 50 percent of the person's gross income for that taxable year is paid or accrued, directly or indirectly, to persons who are not residents of either State in the form of payments that are deductible for the purposes of

the taxes covered by this Convention in the State of which the person is a resident (but not including arm's length payments in the ordinary course of business for services or tangible property and payments in respect of financial obligations to a bank, provided that where such a bank is not a resident of a State such payment is attributable to a permanent establishment of that bank located in one of the States).

3. Notwithstanding that a company that is a resident of a State may not be a qualified person, it shall be entitled to all the benefits of this Convention otherwise accorded to residents of a State with respect to an item of income if it satisfies any other specified conditions for the obtaining of such benefits and:

- a) shares representing at least 95 percent of the aggregate voting power and value (and at least 50 percent of any disproportionate class of shares) of the company are owned, directly or indirectly, by seven or fewer persons who are equivalent beneficiaries; and
- b) less than 50 percent of the company's gross income for the taxable year in which the item of income arises is paid or accrued, directly or indirectly, to persons who are not equivalent beneficiaries, in the form of payments that are deductible for the purposes of the taxes covered by this Convention in the State of which the company is a resident (but not including arm's length payments in the ordinary course of business for services or tangible property and payments in respect of financial obligations to a bank, provided that where such a bank is not a resident of a State such payment is attributable to a permanent establishment of that bank located in one of the States).

4. a) Notwithstanding that a resident of a State may not be a qualified person, it shall be entitled to all the benefits of this Convention otherwise accorded to residents of a State with respect to an item of income derived from the other State, if the resident is engaged in the active conduct of a trade or business in the first-mentioned State (other than the activities of making or managing investments for the resident's own account, unless these activities are banking, insurance or securities dealing carried on by a bank, insurance company or registered securities dealer), the income derived from the other State is derived in connection with, or is incidental to, that trade or business and that resident satisfies any other specified conditions for the obtaining of such benefits.
- b) If a resident of one of the States or any of its associated enterprises carries on a trade or business activity in the other State which gives rise to an item of income, subparagraph a) of this paragraph shall apply to such item only if the trade or business activity in the first-mentioned State is substantial in relation to the trade or business activity in the other State.
- c) In determining whether a person is engaged in the active conduct of a trade or business in a State under subparagraph a) of this paragraph, activities conducted by a partnership in which that person is a partner and activities conducted by persons connected to such person shall be deemed to be conducted by such person. A person shall be connected to another if one possesses at least 50 percent of the beneficial interest in the other (or, in the case of a company, shares representing at least 50 percent of the aggregate voting power and value of the company or of the beneficial equity interest in the company) or another person possesses, directly or indirectly, at least 50 percent of the

beneficial interest (or, in the case of a company, shares representing at least 50 percent of the aggregate voting power and value of the company or of the beneficial equity interest in the company) in each person. In any case, a person shall be considered to be connected to another if, on the basis of all the facts and circumstances, one has control of the other or both are under the control of the same person or persons.

5. A person that is a resident of a State shall also be entitled to all the benefits of this Convention otherwise accorded to residents of a State if that person functions as a headquarters company for a multinational corporate group and that resident satisfies any other specified conditions for the obtaining of such benefits. A person shall be considered a headquarters company for this purpose only if:

- a) it provides a substantial portion of the overall supervision and administration of the group, which may include, but cannot be principally, group financing;
- b) the corporate group consists of corporations resident in, and engaged in an active business in, at least five countries, and the business activities carried on in each of the five countries (or five groupings of countries) generate at least 10 percent of the gross income of the group;
- c) the business activities carried on in any one country other than the State of residence of the headquarters company generate less than 50 percent of the gross income of the group;
- d) no more than 25 percent of its gross income is derived from the other State;
- e) it has, and exercises, independent discretionary authority to carry out the functions referred to in subparagraph a);

- f) it is subject to the same income taxation rules in its country of residence as persons described in paragraph 4; and
- g) the income derived in the other State either is derived in connection with, or is incidental to, the active business referred to in subparagraph b).

If the gross income requirements of subparagraphs b), c), or d) of this paragraph are not fulfilled, they will be deemed to be fulfilled if the required ratios are met when averaging the gross income of the preceding four years.

6. A person, resident of one of the States, which derives from the other State income mentioned in Article 8 (Shipping and Air Transport) and which is not entitled to the benefits of this Convention because of the foregoing paragraphs, shall nevertheless be entitled to the benefits of this Convention with respect to such income if:

- a) more than 50 percent of the beneficial interest in such person (or in the case of a company, more than 50 percent of the value of the stock of such company) is owned, directly or indirectly, by qualified persons or individuals who are residents of a third state; or
- b) in the case of a company, the stock of such company is primarily and regularly traded on an established securities market in a third state, provided that such third state grants an exemption under similar terms for profits as mentioned in Article 8 of this Convention to citizens and corporations of the other State either under its national law or in common agreement with that other State or under a Convention between that third state and the other State.



7. A person resident of one of the States, who is not entitled to some or all of the benefits of this Convention because of the foregoing paragraphs, may, nevertheless, be granted benefits of this Convention if the competent authority of the State in which the income in question arises so determines. In making such determination, the competent authority shall take into account as its guidelines whether the establishment, acquisition or maintenance of such person or the conduct of its operations has or had as one of its principal purposes the obtaining of benefits under this Convention. The competent authority of the State in which the income arises will consult with the competent authority of the other State before denying benefits of the Convention under this paragraph.

8. For the purposes of this Article the following rules and definitions shall apply:

- a) the term “recognized stock exchange” means:
  - i) the NASDAQ System and any stock exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange under the U.S. Securities Exchange Act of 1934;
  - ii) the Amsterdam Stock Exchange and any other stock exchange subject to regulation by the Authority for the Financial Markets (or its successor) in the Netherlands;
  - iii) the Irish Stock Exchange, the Swiss Stock Exchange and the stock exchanges of Brussels, Frankfurt, Hamburg, Johannesburg, London, Madrid, Milan, Paris, Stockholm, Sydney, Tokyo, Toronto and Vienna; and
  - iv) any other stock exchange which the competent authorities agree to

recognize for the purposes of this Article;

- b) i) the term “principal class of shares” means the ordinary or common shares of the company, provided that such class of shares represents the majority of the voting power and value of the company. If no single class of ordinary or common shares represents the majority of the aggregate voting power and value of the company, the “principal class of shares” is that class or those classes that in the aggregate represent a majority of the aggregate voting power and value of the company;
- ii) the term “shares” shall include depository receipts thereof or trust certificates thereof;
- c) the term “disproportionate class of shares” means any class of shares of a company resident in one of the States that entitles the shareholder to disproportionately higher participation, through dividends, redemption payments or otherwise, in the earnings generated in the other State by particular assets or activities of the company;
- d) a company has no substantial presence in the State of which it is a resident if:
  - i) A) the aggregate volume of trading in such company’s stock on recognized stock exchanges located in the other State is greater than the aggregate volume of trading in its stock on recognized stock exchanges in its primary economic zone, or
  - B) the company is not traded on any recognized stock exchange located in the primary economic zone of the State of which the company is a

- resident, or trading on such exchange or exchanges constitutes less than 10 percent of total worldwide trading in such company's stock; and
- ii) the company's primary place of management and control is not in the State of which it is a resident;
- e) in making the determinations in subparagraph d),
- i) for purposes of clause i) thereof, the company may make the determination using average trading volumes for the three preceding taxable years;
  - ii) the primary economic zone of the Netherlands includes the member states of the European Union or the European Economic Area. The primary economic zone of the United States includes the states party to the North American Free Trade Agreement; and
  - iii) the company's primary place of management and control will be in the State of which it is a resident only if executive officers and senior management employees exercise day-to-day responsibility for more of the strategic, financial and operational policy decision making for the company (including its direct and indirect subsidiaries) in that State than in any other state and the staffs conduct more of the day-to-day activities necessary for preparing and making those decisions in that State than in any other state.

f) an equivalent beneficiary is a resident of a member state of the European Union or of a European Economic Area state or of a party to the North American Free Trade Agreement but only if that resident:

- i) A) would be entitled to all the benefits of a comprehensive convention for the avoidance of double taxation between any member state of the European Union or a European Economic Area state or any party to the North American Free Trade Agreement and the State from which the benefits of this Convention are claimed under provisions analogous to subparagraph a), b), clause i) of subparagraph c) or subparagraph d) or e) of paragraph 2 of this Article, provided that if such convention does not contain a comprehensive limitation on benefits article, the person would be a qualified person under subparagraph a), b), clause i) of subparagraph c) or subparagraph d) or e) of paragraph 2 of this Article if such person were a resident of one of the States under Article 4 (Resident) of this Convention; and  
B) with respect to income referred to in Article 10 (Dividends), 11 (Branch Tax), 12 (Interest) or 13 (Royalties) of this Convention, would be entitled under such convention to a rate of tax with respect to the particular class of income for which benefits are being claimed under this Convention that is at least as low as the rate applicable under this Convention; or
- ii) is a resident of a State that is a qualified person by reason of subparagraph

a), b), clause i) of subparagraph c) or subparagraph d) or e) of paragraph 2 of this Article.

For the purposes of applying paragraph 3 of Article 10 (Dividends) in order to determine whether a person, owning shares, directly or indirectly, in the company claiming the benefits of this Convention, is an equivalent beneficiary, such person shall be deemed to hold the same voting power in the company paying the dividend as the company claiming the benefits holds in such company;

g) with respect to dividends, interest or royalties arising in the Netherlands and beneficially owned by a company that is a resident of the United States, a company that is a resident of a member state of the European Union will be treated as satisfying the requirements of subparagraph f) i) B) for purposes of determining whether such United States resident is entitled to benefits under this paragraph if a payment of dividends, interest or royalties arising in the Netherlands and paid directly to such resident of a member state of the European Union would have been exempt from tax pursuant to any directive of the European Union, notwithstanding that the income tax convention between the Netherlands and that other member state of the European Union would provide for a higher rate of tax with respect to such payment than the rate of tax applicable to such United States company under Article 10 (Dividends), 12 (Interest), or 13 (Royalties) of this Convention;

h) for the purposes of paragraph 2 of this Article, the shares in a class of shares are considered to be regularly traded on one or more recognized stock exchanges in a taxable year if the aggregate number of shares of that class traded on such stock exchange or

exchanges during the twelve months ending on the day before the beginning of that taxable year is at least six percent of the average number of shares outstanding in that class during that twelve-month period.”

ARTICLE 8

Article 32 (Limitation of Articles 30 and 31) is omitted and the following Article is substituted:

"Article 32

LIMITATION OF ARTICLES 30 AND 31

1. In no case shall the provisions of Articles 30 (Exchange of Information and Administrative Assistance) and 31 (Assistance and Support in Collection) be construed so as to impose on one of the States the obligation:
  - a) to carry out administrative measures at variance with the laws and 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.
2. Notwithstanding paragraph 1, the competent authority of each State shall have the authority to obtain and provide information held by financial institutions, nominees or persons acting in an agency or fiduciary capacity or information about persons holding interests,

including bearer shares, in another person, regardless of any laws or practices of the State that might otherwise preclude the obtaining of such information.

3. The provisions of this Convention shall not impose on a State the obligation to obtain or provide information which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

- a) produced for the purposes of seeking or providing legal advice; or
- b) produced for the purposes of use in existing or contemplated legal proceedings.”

#### ARTICLE 9

(a) Article 2 (Taxes Covered) is modified by omitting "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) hereinafter referred to as 'profit share'" in the first paragraph and substituting "the Mining Act (Mijnbouwwet) hereinafter referred to as 'profit share'".

(b) Article 18 (Artistes and Athletes) is modified by omitting "Netherlands guilders" in the first paragraph and substituting "euro".

(c) Article 22 (Students and Trainees) is modified by omitting "Netherlands guilders" and substituting "euro" in subparagraph 1 b) ii) and subparagraph 2 b).

ARTICLE 10

1. This Protocol shall enter into force on the later of the dates on which the respective Governments have notified each other in writing that the formalities constitutionally required in their respective States have been complied with, and its provisions shall have effect:

a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of the second month next following the date on which the Protocol enters into force, and

b) in respect of other taxes, for taxable periods beginning on or after the first day of January in the year following the date of entry into force of the Protocol.

2. Notwithstanding paragraph 1, where any person entitled to benefits under the Convention as unmodified by this Protocol would have been entitled to greater benefits thereunder than under the Convention as modified by this Protocol, the Convention as unmodified shall, at the election of such person, continue to have effect in its entirety with respect to such person for a twelve-month period from the date on which the provisions of this Protocol would have effect under paragraph 1 of this Article.

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

DONE in duplicate at Washington, this 8th day of March, 2004, in the English and Netherlands languages, the two texts being equally authentic.

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE  
KINGDOM OF THE NETHERLANDS: