

**SYNTHESISED TEXT OF THE MLI AND THE CONVENTION BETWEEN
THE REPUBLIC OF AUSTRIA AND THE KINGDOM OF THE NETHERLANDS FOR THE
AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND CAPITAL**

General disclaimer on the Synthesised text document

This document presents the synthesised text for the application of the Convention between the Republic of Austria and the Kingdom of the Netherlands for the Avoidance of Double Taxation with respect to Taxes on Income and Capital signed on 1 September 1970 as amended by the Protocol signed on 18 December 1989, the Protocol signed on 26 November 2001, the Protocol signed on 8 October 2008 and the Protocol and the Additional Protocol signed on 8 September 2009 (the “Convention”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by the Republic of Austria and by the Kingdom of the Netherlands on 7 June 2017 (the “MLI”).

The document was prepared on the basis of the MLI position of the Republic of Austria submitted to the Depository upon ratification on 22 September 2017 and of the Kingdom of the Netherlands submitted to the Depository upon ratification on 29 March 2019. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on this Convention.

The authentic legal texts of the Convention and the MLI take precedence and remain the legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Convention are included in boxes throughout the text of this document in the context of the relevant provisions of the Convention. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the OECD Model Tax Convention.

Changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Convention (such as “Covered Tax Agreement” and “Convention”, “Contracting Jurisdictions” and “Contracting States”), to ease the comprehension of the provisions of the MLI. The changes in terminology are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI. Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Convention: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

In all cases, references made to the provisions of the Convention or to the Convention must be understood as referring to the Convention as modified by the provisions of the MLI, provided such provisions of the MLI have taken effect.

References

The authentic legal texts of the MLI and the Convention can be found on the webpage of the Federal Ministry of Finance (<https://www.bmf.gv.at/>).

The MLI position of the Republic of Austria submitted to the Depository upon ratification on 22 September 2017 and the MLI position of the Kingdom of the Netherlands submitted to the Depository upon ratification on 29 March 2019 can be found on the MLI Depository (OECD) webpage (<http://www.oecd.org/tax/treaties/beps-ml-signatories-and-parties.pdf>).

Disclaimer on the entry into effect of the provisions of the MLI

Entry into Effect of the MLI Provisions

The provisions of the MLI applicable to this Convention do not take effect on the same dates as the original provisions of the Convention. Each of the provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by the Republic of Austria and the Kingdom of the Netherlands in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval: 22 September 2017 for the Republic of Austria and 29 March 2019 for the Kingdom of the Netherlands.

Entry into force of the MLI: 1 July 2018 for the Republic of Austria and 1 July 2019 for the Kingdom of the Netherlands.

This document provides specific information on the dates on or after which each of the provisions of the MLI has effect with respect to the Convention throughout this document.

**CONVENTION BETWEEN
THE REPUBLIC OF AUSTRIA AND
THE KINGDOM OF THE NETHERLANDS
FOR THE AVOIDANCE OF DOUBLE TAXATION
WITH RESPECT TO TAXES ON INCOME AND CAPITAL**

The President of the Republic of Austria and Her Majesty, Queen of the Netherlands,

[REPLACED by paragraph 1 of Article 6 of the MLI] [desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,]

*The following paragraph 1 of Article 6 of the MLI replaces the text referring to an intent to eliminate double taxation in the preamble of this Convention:*¹

ARTICLE 6 OF THE MLI – PURPOSE OF A COVERED TAX AGREEMENT

Intending to eliminate double taxation with respect to the taxes covered by this Convention without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Convention for the indirect benefit of residents of third jurisdictions),

have appointed the following plenipotentiaries:

[following the names of the plenipotentiaries]

who, after having exchanged their powers of attorney and approved them in due form, have agreed as follows:

**Chapter I
Scope of the Convention**

**Article 1
Personal scope**

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

**Article 2
Taxes covered**

1. This Convention shall apply to taxes on income and on capital imposed on behalf of each State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

¹ In accordance with paragraphs 1 and 3 of Article 35 of the MLI, paragraph 1 of Article 6 of the MLI has effect in the Republic of Austria with respect to this Convention:

- a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2020; and
- b) with respect to all other taxes levied by the Republic of Austria, for taxes levied with respect to taxable periods beginning on or after 1 January 2020;

and,

In accordance with paragraph 1 of Article 35 of the MLI, paragraph 1 of Article 6 of the MLI has effect in the Kingdom of the Netherlands with respect to this Convention:

- a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2020; and
- b) with respect to all other taxes levied by the Kingdom of the Netherlands, for taxes levied with respect to taxable periods beginning on or after 1 January 2020.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply, are in particular:

(a) in respect of the Netherlands:

- (i) the income tax (de inkomstenbelasting);
- (ii) the wages tax (de loonbelasting);
- (iii) the company tax (de vennootschapsbelasting);
- (iv) the dividend tax (de dividendbelasting);
- (v) the tax on directors' fees (de commissarissenbelasting);
- (vi) the capital tax (de vermogensbelasting);
- (vii) the land tax (de grondbelasting);
- (viii) the local taxes on the increase in value of certain plots of land (de gemeentelijke baatbelastingen);
- (ix) the local building plot tax (de gemeentelijke bouwterreinbelastingen);
- (x) the road, street and waterway taxes (de wegen-, straat- en vaartbelastingen);
- (xi) the mine tax (het recht op mijnen);

(b) in respect of Austria:

- (i) the individual income tax (including the wage tax and the tax on income from capital) (die Einkommensteuer (einschliesslich der Lohnsteuer und der Kapitalertragsteuer));
- (ii) the corporation tax (including the tax on income from capital) (die Körperschaftsteuer (einschliesslich der Kapitalertragsteuer));
- (iii) the capital tax (die Vermögensteuer);
- (iv) the contribution from income for the promotion of residential building and for the equalization of family burdens (der Beitrag vom Einkommen zur Foerderung des Wohnbaues und für Zwecke des Familienlastenausgleiches);
- (v) the contribution from income to the emergency fund (der Katastrophenfondsbeitrag vom Einkommen);
- (vi) the special tax on income (die Sonderabgabe vom Einkommen);
- (vii) the directors' tax (die Aufsichtsratsabgabe);
- (viii) the business tax (including the tax levied on the sum of wages (die Gewerbesteuer (einschliesslich der Lohnsummensteuer));
- (ix) the land tax (die Grundsteuer);
- (x) the tax on agricultural and forestry enterprises (die Abgabe von land- und forstwirtschaftlichen Betrieben);
- (xi) the tax on the value of vacant plots (die Abgabe vom Bodenwert bei unbebauten Grundstuecken);
- (xii) the contribution from capital to the emergency fund (der Katastrophenfondsbeitrag vom Vermögen);
- (xiii) the special tax on capital (die Sonderabgabe vom Vermögen);
- (xiv) the tax on property excluding death duties (die Abgabe von Vermögen, die der Erbschaftssteuer entzogen sind);
- (xv) the contributions from agricultural and forestry enterprises to the fund for the equalization of family burdens (die Beiträge von land- und forstwirtschaftlichen Betrieben zum Ausgleichsfonds für Familienbeihilfen).

4. The Convention 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 major changes which have been made in their respective taxation laws.

Chapter II **Definitions**

Article 3 **General definitions**

1. In this Convention, unless the context otherwise requires:

- (a) the terms "one of the States" and "the other State" mean the Netherlands or Austria, as the context requires;
- (b) the term "the Netherlands" comprises the part of the Kingdom of the Netherlands that is situated in Europe and the part of the sea bed and its subsoil under the North Sea, over which the Kingdom of the Netherlands has sovereign rights in conformity with international law;

- (c) the term "Austria" means the territory of the Republic of Austria;
- (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 States" and "enterprise of the other State" mean respectively an enterprise carried on by a resident of one of the States and an enterprise carried on by a resident of the other State;
- (g) the term "competent authority" means:

1. in the Netherlands: the Minister of Finance or his authorized representative;
2. in Austria: the Federal Minister of Finance.

2. As regards the application of the Convention by one of the States any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that State relating to the taxes which are the subject of the Convention.

Article 4 **Fiscal domicile**

1. For the purposes of this Convention, the term "resident of one of the 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 Convention an individual, who is a member of a diplomatic or consular mission of one of the 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.

3. Where by reason of paragraph 1 an individual is a resident of both States, then the following shall apply:

(a) the person 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 the person 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 the person has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national.

4. Where, by reason of the provisions of paragraph 1, a person other than an individual 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.

Article 5 **Permanent establishment**

1. For the purpose of this Convention, 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 mine, quarry or other place of extraction of natural resources;
- (g) a building site or construction or assembly project which exists for more than twelve months.

3. **[MODIFIED by paragraph 2 of Article 13 of the MLI]** [The term "permanent establishment" shall not be deemed to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or 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.]

The following paragraph 2 of Article 13 of the MLI modifies paragraph 3 of Article 5 of this Convention :²

ARTICLE 13 OF THE MLI - ARTIFICIAL AVOIDANCE OF PERMANENT ESTABLISHMENT STATUS THROUGH THE SPECIFIC ACTIVITY EXEMPTIONS (*Option A*)

Notwithstanding Article 5 of this Convention, the term “permanent establishment” shall be deemed not to include:

- a) the activities specifically listed in paragraph 4~~3~~ of Article 5 of this Convention as activities deemed not to constitute a permanent establishment, whether or not that exception from permanent establishment status is contingent on the activity being of a preparatory or auxiliary character;
- b) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any activity not described in subparagraph a);
- c) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) and b),

provided that such activity or, in the case of subparagraph c), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

4. A person acting in one of the States on behalf of an enterprise of the other State -- other than an agent of an independent status to whom paragraph 5 applies -- shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that 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.

5. An enterprise of one of the 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.

6. The mere fact that a company which is a resident of one of the 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**

² In accordance with paragraphs 1 and 3 of Article 35 of the MLI, paragraph 2 of Article 13 of the MLI has effect in the Republic of Austria with respect to this Convention:

- a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2020; and
- b) with respect to all other taxes levied by the Republic of Austria, for taxes levied with respect to taxable periods beginning on or after 1 January 2020;

and,

In accordance with paragraph 1 of Article 35 of the MLI, paragraph 2 of Article 13 of the MLI has effect in the Kingdom of the Netherlands with respect to this Convention:

- a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2020; and
- b) with respect to all other taxes levied by the Kingdom of the Netherlands, for taxes levied with respect to taxable periods beginning on or after 1 January 2020.

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, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

Article 7
Business profits

1. The profits of an enterprise of one of the 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.
2. Where an enterprise of one of the 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. In so far as it has been customary under the law of one of the 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. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles of 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 which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8
Shipping, inland waterways transport and air transport

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the State in which the place of effective management of the enterprise is situated.
2. Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the State in which the place of effective management of the enterprise is situated.

3. If the place of effective management of a shipping enterprise or of an inland waterways transport enterprise is aboard a ship or boat, then it shall be deemed to be situated in the State in which the home port of the ship or boat is situated, or, if there is no such home port, in the State of which the operator of the ship or boat is a resident.

Article 9 Associated enterprises

Where

(a) an enterprise of one of the 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 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.

*The following paragraph 1 of Article 17 of the MLI applies and supersedes the provisions of this Convention:*³

ARTICLE 17 OF THE MLI – CORRESPONDING ADJUSTMENTS

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

Article 10 Dividends

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

³ In accordance with paragraphs 1 and 3 of Article 35 of the MLI, paragraph 1 of Article 17 of the MLI has effect in the Republic of Austria with respect to this Convention:

- a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2020; and
- b) with respect to all other taxes levied by the Republic of Austria, for taxes levied with respect to taxable periods beginning on or after 1 January 2020;

and,

In accordance with paragraph 1 of Article 35 of the MLI, paragraph 1 of Article 17 of the MLI has effect in the Kingdom of the Netherlands with respect to this Convention:

- a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2020; and
- b) with respect to all other taxes levied by the Kingdom of the Netherlands, for taxes levied with respect to taxable periods beginning on or after 1 January 2020.

2. However, such dividends may be taxed in the State of which the company paying the dividends is a resident, and according to the law of that State, but the tax so charged shall not exceed 15% of the gross amount of the dividends.

3. Notwithstanding the provisions of paragraph 2, the tax on dividends paid by a company resident in one of the Contracting States to a company resident in the other Contracting State shall not exceed 5% of the gross amount of the dividends if the company receiving the dividends holds directly or indirectly at least 25% of the capital of the company paying the dividends.

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

5. The provisions of paragraphs 2 and 3 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 Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights -- excluding 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.

7. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient of the dividends, being a resident of one of the 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.

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 to persons who are not resident of that other State, or 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.

Article 11

Interest

1. Interest arising in one of the States and paid to a resident of the other State shall be taxable only in that other State.

2. 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 participation in profits made by the debtor, and, in particular, income from government securities and bonds or debentures, including premiums and prizes attaching to such securities. For purposes of this Article, penalty charges for late payment shall not be deemed to be interest. The term "interest" shall, however, not include shares of profits as referred to in paragraph 1 of Article 12.

3. The provisions of paragraph 1 shall not apply if the recipient of the interest, being a resident of one of the 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.

4. 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 Convention.

Article 12

Silent partnerships

1. Where a resident of one of the States derives as a silent partner shares of profits from a participation in an enterprise the effective management of which is in the other State, such shares of profits may be taxed in that other State if such participation does not carry with it a share in the property of the enterprise.

2. The provisions of Article 7 shall apply to the shares of profits derived from a participation as a silent partner if the participation carries with it a share in the property of the enterprise.

Article 13 Royalties

1. Subject to the provisions of paragraph 2 of this Article, royalties arising in one of the States and paid to a resident of the other State shall be taxable only in that other State.

2. Royalties paid by a company which is a resident of one of the States to a resident of the other State who controls directly or indirectly more than 50% of the capital of the company paying the royalties, may also be taxed in the first-mentioned State, but the tax so charged shall not exceed one half of the statutory rate of tax, and in no case shall it exceed 10% of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as consideration for the use of, or the right to use, any copyright of literary, artistic or scientific works including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of one of the 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 a case, the provisions of Article 7 shall apply.

5. 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 Convention.

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 States has in the other State or of movable property pertaining to a fixed base available to a resident of one of the States in the other State for the purpose of performing professional services, including 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 that other State.

3. Notwithstanding the provisions of paragraph 2, gains from the alienation of ships and aircraft, operated in international traffic and of boats engaged in inland waterways transport as well as of movable property pertaining to the operation of such ships and aircraft shall be taxable only in the State in which the place of effective management of the enterprise is situated. In such a case, the provisions of Article 8, paragraph 3 shall apply.

4. Gains from the alienation of all property other than that mentioned in the preceding paragraphs shall be taxable only in the State of which the alienator is a resident.

5. The provisions of paragraph 4 shall not affect the right of each of the States to levy according to its own law a tax on gains from the alienation of shares or "jouissance" rights in a company the capital of which is wholly or partly divided into shares and which is a resident of that State, derived by an individual who is a resident of the other State and has been a resident of the first-mentioned State in the course of the last five years preceding the alienation of the shares or "jouissance" rights.

Article 15 Independent personal services

1. Income derived by a resident of one of the States in respect of professional services or other independent activities of a similar character shall be taxable only in that State when he has a fixed base regularly available to him in the other State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects and accountants.

Article 16 **Dependent personal services**

1. Subject to the provisions of Articles 17, 19, 20 and 21, paragraph 2, salaries, wages and other similar remuneration derived by a resident of one of the States in respect of employment shall be taxable only in that State unless those services are rendered in the other State. If those services are so rendered, 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 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 the calendar 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 States in respect of an employment exercised aboard a ship or aircraft in international traffic or aboard a boat engaged in inland waterways transport shall be taxable only in that State.

Article 17 **Directors' fees**

1. Directors' fees and similar payments derived by a resident of the Netherlands in his capacity as a member of the board of directors ("Aufsichtsrat" and "Verwaltungsrat") of a company which is a resident of Austria, may be taxed in Austria.

2. Remuneration and other payments derived by a resident of Austria in his capacity as a director ("bestuurder" or "commissaris") of a company which is a resident of the Netherlands, may be taxed in the Netherlands.

Article 18 **Artistes and sportsmen**

1. Notwithstanding the provisions of Articles 7, 15 and 16, income derived by a resident of a State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16, be taxed in the State in which the activities of the entertainer or sportsman are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income derived from activities referred to in paragraph 1 performed under a cultural agreement or arrangement between the two States or derived by a non-profit making organization approved as such in a mutual agreement procedure under Article 26 of this Convention, or derived by an entertainer or sportsman in respect of services provided to such an organization, shall be exempt from tax in the State in which those activities are exercised.

Article 19 **Pensions**

Subject to the provisions of subparagraph (a) of paragraph 2 and paragraph 4 of Article 20, pensions and other similar remuneration paid to a resident of one of the States in consideration of past employment shall be taxable only in that State.

Article 20
Government service and social security

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by a State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority may be taxed in that State.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority may be taxed in that State.

(b) However, such pension shall be taxable only in the other State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 16, 17, 18 and 19 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a State or a political subdivision or a local authority thereof.

4. Notwithstanding the provisions of paragraphs 2 and 3, pensions and other payments made to a resident of a State under the provisions of the social security system of the other State may be taxed in that other State.

Article 21
Students

1. Payments which a student or business apprentice who is or was formerly a resident of one of the States and who is present in the other State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that other State, provided that such payments are made to him from sources outside that other State.

2. Remunerations which a student or business apprentice who is or was formerly a resident of one of the States derives from activities which he exercises in the other State for the purpose of practical training for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned shall not be taxed in that other State.

Article 22
Income not expressly mentioned

Items of income of a resident of one of the States which are not expressly mentioned in the foregoing Articles of this Convention shall be taxable only in that State.

Chapter IV
Taxation of capital

Article 23
Capital

1. Capital represented by immovable property, as defined in paragraph 2 of Article 6, may be taxed in the State in which such property is situated.

2. Capital represented by movable property forming part of the business property of a permanent establishment of an enterprise or by movable property forming part of a fixed base for the purpose of performing professional services may be taxed in the State in which the permanent establishment or the fixed base is situated.

3. Ships and aircraft operated in international traffic and boats engaged in inland waterways transport as well as movable property pertaining to the operation of such ships and aircraft shall be taxable only in the State in which the place of effective management of the enterprise is situated. In such a case the provisions of Article 8, paragraph 3 shall apply.

4. All other elements of capital of a resident of one of the States shall be taxable only in that State.

Chapter V Method for the elimination of double taxation

Article 24

1. The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed all items of income or capital, which according to the provisions of this Convention may be taxed in Austria.

2. Without prejudice to the application of the provisions concerning the compensation of losses in the national regulations for the avoidance of double taxation, the Netherlands shall allow a deduction from the amount of tax computed in conformity with paragraph 1 of this Article. **[MODIFIED by paragraph 2 of Article 5 of the MLI]** [This deduction is equal to such part of that tax which bears the same proportion to the aforesaid tax, as the part of the income or capital, which is included in the basis mentioned in paragraph 1 of this Article and which may be taxed in Austria according to Articles 6, 7, 10 (paragraph 7), 11 (paragraph 3), 13 (paragraph 4), 14 (paragraphs 1 and 2), 15, 16 (paragraph 1), 17 (paragraph 1), subparagraph (a) of paragraph 1, subparagraph (a) of paragraph 2 and paragraph 4 of Article 20 and Article 23 (paragraphs 1 and 2) of this Convention, bears to the total income or capital which forms the basis mentioned in paragraph 1 of this Article.]

*The following paragraph 2 of Article 5 of the MLI applies to the second sentence of paragraph 2 of Article 24 of this Convention with respect to the residents of the Netherlands:*⁴

ARTICLE 5 OF THE MLI – APPLICATION OF METHODS FOR ELIMINATION OF DOUBLE TAXATION (Option A)

The second sentence of paragraph 2 of Article 24 of this Convention shall not apply where Austria applies the provisions of this Convention to exempt such income or capital from tax or to limit the rate at which such income or capital may be taxed. In the latter case, the Netherlands shall allow as a deduction from the tax on the income or capital of that resident an amount equal to the tax paid in Austria. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income or capital which may be taxed in Austria.

Further, the Netherlands shall allow a deduction from the tax so computed in conformity with paragraph 1 for such items of income, as may be taxed in Austria according to Articles 10 (paragraph 2), 12 (paragraph 1), 13

⁴ In accordance with paragraphs 1 and 3 of Article 35 of the MLI, paragraph 2 of Article 5 of the MLI has effect in the Republic of Austria with respect to this Convention:

- a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2020; and
- b) with respect to all other taxes levied by the Republic of Austria, for taxes levied with respect to taxable periods beginning on or after 1 January 2020;

and,

In accordance with paragraph 1 of Article 35 of the MLI, paragraph 2 of Article 5 of the MLI has effect in the Kingdom of the Netherlands with respect to this Convention:

- a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2020; and
- b) with respect to all other taxes levied by the Kingdom of the Netherlands, for taxes levied with respect to taxable periods beginning on or after 1 January 2020.

(paragraph 2), 14 (paragraph 5) and 18 (paragraphs 1 and 2), and are included in the basis mentioned in the first paragraph of this Article. The amount of this deduction shall be the lesser of the following amounts:

- (a) the amount equal to the Austrian tax;
- (b) the amount of the Netherlands tax which bears the same proportion to the amount of tax computed in conformity with the first paragraph of this Article, as the amount of the said items of income bears to the amount of income which forms the basis mentioned in the first paragraph of this Article.

3. **[MODIFIED by paragraph 2 of Article 5 of the MLI]** [Where a resident of Austria derives income or owns capital which in accordance with the provisions of this Convention, may be taxed in the Netherlands, Austria shall, subject to the provisions of paragraph 4 exempt such income or capital from tax; however, Austria may, in calculating tax on the remaining income or the remaining capital of that person, apply the rate of tax which would have been applicable if the income or the capital concerned had not been so exempted.

*The following paragraph 2 of Article 5 of the MLI applies to paragraph 3 of Article 24 of this Convention with respect to the residents of Austria:*⁵

ARTICLE 5 OF THE MLI – APPLICATION OF METHODS FOR ELIMINATION OF DOUBLE TAXATION (Option A)

Paragraph 3 of Article 24 of this Convention shall not apply where the Netherlands apply the provisions of this Convention to exempt such income or capital from tax or to limit the rate at which such income or capital may be taxed. In the latter case, Austria shall allow as a deduction from the tax on the income or capital of that resident an amount equal to the tax paid in the Netherlands. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income or capital which may be taxed in the Netherlands.

4. Where a resident of Austria derives income which, in accordance with the provisions of Articles 10 (paragraph 2), 12 (paragraph 1), 13 (paragraph 2), 14 (paragraph 5) and 18 (paragraphs 1 and 2), may be taxed in the Netherlands, then Austria shall allow a deduction from the tax on the income of that person of an amount equal to the tax paid in the Netherlands. Such deduction shall not, however, exceed that part of the tax so computed for such deduction which is appropriate to the income derived from the Netherlands.

**Chapter VI
Special provisions**

**Article 25
Non-discrimination**

1. The nationals of one of the States, whether they are residents of that State or not, 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.

2. The term "nationals" means:

- (a) all individuals possessing the nationality of one of the States;
- (b) all legal persons, partnerships and associations deriving their status as such from the law in force in one of the States.

3. The taxation on a permanent establishment which an enterprise of one of the States has in the other State shall not be less favourable in that other State than the taxation on enterprises of that other State carrying on the same activities.

⁵ See footnote 4.

This provision shall not be construed as obliging one of the 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.

4. Enterprises of one of the 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 that first-mentioned State are or may be subjected.

5. In this Article the term "taxation" means taxes of every kind and description.

Article 26 Mutual agreement procedure

1. Where a resident of one of the States considers that the actions of one or both of the States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the State of which he is a resident.

*The following second sentence of paragraph 1 of Article 16 of the MLI applies and supersedes the provisions of this Convention:*⁶

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. This 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 the Convention.

*The following second sentence of paragraph 2 of Article 16 of the MLI applies to this Convention:*⁷

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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 Convention. They may also consult together for the avoidance of double taxation in cases not provided for in this Convention.

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.

*The following part VI of the MLI applies to this Convention:*⁸

PART VI OF THE MLI (ARBITRATION)

⁶ In accordance with paragraph 4 of Article 35 of the MLI, Article 16 of the MLI has effect with respect to this Convention for a case presented to the competent authority of a Contracting State on or after 1 July 2019, except for cases that were not eligible to be presented as of that date under the Convention prior to its modification by the MLI, without regard to the taxable period to which the case relates.

⁷ See footnote 6.

⁸ In accordance with paragraph 1 of Article 36 of the MLI, the provisions of Part VI (Arbitration) of the MLI have effect with respect to this Convention with respect to cases presented to the competent authority of a Contracting State on or after 1 July 2019.

In accordance with paragraph 2 of Article 36 of the MLI, Part VI (Arbitration) of the MLI will apply to a case presented to the competent authority of a Contracting State prior to 1 July 2019 only to the extent that the competent authorities of both Contracting States agree that it will apply to that specific case.

Paragraphs 1 to 10 and 12 of Article 19 (Mandatory Binding Arbitration) of the MLI

1. Where:

a) under paragraph 1 of Article 26 of this Convention, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention; and

b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 of Article 26 of the Convention, within a period of three-years beginning on the start date referred to in paragraph 8 or 9 of Article 19 of the MLI, as the case may be (unless, prior to the expiration of that period the competent authorities of the Contracting States have agreed to a different time period with respect to that case and have notified the person who presented the case of such agreement),

any unresolved issues arising from the case shall, if the person so requests in writing, be submitted to arbitration in the manner described in this Part, according to any rules or procedures agreed upon by the competent authorities of the Contracting States pursuant to the provisions of paragraph 10 of Article 19 of the MLI.

2. Where a competent authority has suspended the mutual agreement procedure referred to in paragraph 1 of Article 19 of the MLI because a case with respect to one or more of the same issues is pending before court or administrative tribunal, the period provided in subparagraph b) of paragraph 1 of Article 19 of the MLI will stop running until either a final decision has been rendered by the court or administrative tribunal or the case has been suspended or withdrawn. In addition, where a person who presented a case and a competent authority have agreed to suspend the mutual agreement procedure, the period provided in subparagraph b) of paragraph 1 of Article 19 of the MLI will stop running until the suspension has been lifted.

3. Where both competent authorities agree that a person directly affected by the case has failed to provide in a timely manner any additional material information requested by either competent authority after the start of the period provided in subparagraph b) of paragraph 1 of Article 19 of the MLI, the period provided in subparagraph b) of paragraph 1 of Article 19 of the MLI shall be extended for an amount of time equal to the period beginning on the date by which the information was requested and ending on the date on which that information was provided.

4. a) The arbitration decision with respect to the issues submitted to arbitration shall be implemented through the mutual agreement concerning the case referred to in paragraph 1 of Article 19 of the MLI. The arbitration decision shall be final.

b) The arbitration decision shall be binding on both Contracting States except in the following cases:

i) if a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision. In such a case, the case shall not be eligible for any further consideration by the competent authorities. The mutual agreement that implements the arbitration decision on the case shall be considered not to be accepted by a person directly affected by the case if any person directly affected by the case does not, within 60 days after the date on which notification of the mutual agreement is sent to the person, withdraw all issues resolved in the mutual agreement implementing the arbitration decision from consideration by any court or administrative tribunal or otherwise terminate any pending court or administrative proceedings with respect to such issues in a manner consistent with that mutual agreement.

ii) if a final decision of the courts of one of the Contracting States holds that the arbitration decision is invalid. In such a case, the request for arbitration under paragraph 1 of Article 19 of the MLI shall be considered not to have been made, and the arbitration process shall be considered not to have taken place (except for the purposes of Articles 21 (Confidentiality of Arbitration Proceedings) and 25 (Costs of Arbitration Proceedings) of the MLI). In such a case, a new request for arbitration may be made unless the competent authorities agree that such a new request should not be permitted.

iii) if a person directly affected by the case pursues litigation on the issues which were resolved in the mutual agreement implementing the arbitration decision in any court or administrative tribunal.

5. The competent authority that received the initial request for a mutual agreement procedure as described in subparagraph a) of paragraph 1 of Article 19 of the MLI shall, within two calendar months of receiving the request:

a) send a notification to the person who presented the case that it has received the request; and

b) send a notification of that request, along with a copy of the request, to the competent authority of the other Contracting State.

6. Within three calendar months after a competent authority receives the request for a mutual agreement procedure (or a copy thereof from the competent authority of the other Contracting State) it shall either:

- a) notify the person who has presented the case and the other competent authority that it has received the information necessary to undertake substantive consideration of the case; or
- b) request additional information from that person for that purpose.

7. Where pursuant to subparagraph b) of paragraph 6 of Article 19 of the MLI, one or both of the competent authorities have requested from the person who presented the case additional information necessary to undertake substantive consideration of the case, the competent authority that requested the additional information shall, within three calendar months of receiving the additional information from that person, notify that person and the other competent authority either:

- a) that it has received the requested information; or
- b) that some of the requested information is still missing.

8. Where neither competent authority has requested additional information pursuant to subparagraph b) of paragraph 6 of Article 19 of the MLI, the start date referred to in paragraph 1 of Article 19 of the MLI shall be the earlier of:

- a) the date on which both competent authorities have notified the person who presented the case pursuant to subparagraph a) of paragraph 6 of Article 19 of the MLI; and
- b) the date that is three calendar months after the notification to the competent authority of the other Contracting State pursuant to subparagraph b) of paragraph 5 of Article 19 of the MLI.

9. Where additional information has been requested pursuant to subparagraph b) of paragraph 6 of Article 19 of the MLI, the start date referred to in paragraph 1 of Article 19 of the MLI shall be the earlier of:

- a) the latest date on which the competent authorities that requested additional information have notified the person who presented the case and the other competent authority pursuant to subparagraph a) of paragraph 7 of Article 19 of the MLI; and
- b) the date that is three calendar months after both competent authorities have received all information requested by either competent authority from the person who presented the case.

If, however, one or both of the competent authorities send the notification referred to in subparagraph b) of paragraph 7 of Article 19 of the MLI, such notification shall be treated as a request for additional information under subparagraph b) of paragraph 6 of Article 19 of the MLI.

10. The competent authorities of the Contracting States shall by mutual agreement pursuant to Article 26 of this Convention settle the mode of application of the provisions contained in this Part, including the minimum information necessary for each competent authority to undertake substantive consideration of the case. Such an agreement shall be concluded before the date on which unresolved issues in a case are first eligible to be submitted to arbitration and may be modified from time to time thereafter.

12. Notwithstanding the other provisions of this Article of the MLI:

- a) any unresolved issue arising from a mutual agreement procedure case otherwise within the scope of the arbitration process provided for by the MLI shall not be submitted to arbitration, if a decision on this issue has already been rendered by a court or administrative tribunal of either Contracting State;
- b) if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the Contracting States, a decision concerning the issue is rendered by a court or administrative tribunal of one of the Contracting States, the arbitration process shall terminate.

Article 20 (Appointment of Arbitrators) of the MLI

1. Except to the extent that the competent authorities of the Contracting States mutually agree on different rules, paragraphs 2 through 4 of Article 20 of the MLI shall apply for the purposes of this Part.

2. The following rules shall govern the appointment of the members of an arbitration panel:

- a) The arbitration panel shall consist of three individual members with expertise or experience in international tax matters.
- b) Each competent authority shall appoint one panel member within 60 days of the date of the request for arbitration under paragraph 1 of Article 19 of the MLI. The two panel members so appointed shall,

within 60 days of the latter of their appointments, appoint a third member who shall serve as Chair of the arbitration panel. The Chair shall not be a national or resident of either Contracting State.

c) Each member appointed to the arbitration panel must be impartial and independent of the competent authorities, tax administrations, and ministries of finance of the Contracting States and of all persons directly affected by the case (as well as their advisors) at the time of accepting an appointment, maintain his or her impartiality and independence throughout the proceedings, and avoid any conduct for a reasonable period of time thereafter which may damage the appearance of impartiality and independence of the arbitrators with respect to the proceedings.

3. In the event that the competent authority of a Contracting State fails to appoint a member of the arbitration panel in the manner and within the time periods specified in paragraph 2 of Article 20 of the MLI or agreed to by the competent authorities of the Contracting States, a member shall be appointed on behalf of that competent authority by the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development that is not a national of either Contracting State.

4. If the two initial members of the arbitration panel fail to appoint the Chair in the manner and within the time periods specified in paragraph 2 of Article 20 of the MLI or agreed to by the competent authorities of the Contracting States, the Chair shall be appointed by the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development that is not a national of either Contracting State.

Article 21 (Confidentiality of Arbitration Proceedings) of the MLI

1. Solely for the purposes of the application of the provisions of this Part and of the provisions of this Convention and of the domestic laws of the Contracting States related to the exchange of information, confidentiality, and administrative assistance, members of the arbitration panel and a maximum of three staff per member (and prospective arbitrators solely to the extent necessary to verify their ability to fulfil the requirements of arbitrators) shall be considered to be persons or authorities to whom information may be disclosed. Information received by the arbitration panel or prospective arbitrators and information that the competent authorities receive from the arbitration panel shall be considered information that is exchanged under the provisions of this Convention related to the exchange of information and administrative assistance.

2. The competent authorities of the Contracting States shall ensure that members of the arbitration panel and their staff agree in writing, prior to their acting in an arbitration proceeding, to treat any information relating to the arbitration proceeding consistently with the confidentiality and nondisclosure obligations described in the provisions of this Convention related to exchange of information and administrative assistance and under the applicable laws of the Contracting States.

Article 22 (Resolution of a Case Prior to the Conclusion of the Arbitration) of the MLI

For the purposes of this Part and the provisions of this Convention that provide for resolution of cases through mutual agreement, the mutual agreement procedure, as well as the arbitration proceeding, with respect to a case shall terminate if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the Contracting States:

- a) the competent authorities of the Contracting States reach a mutual agreement to resolve the case; or
- b) the person who presented the case withdraws the request for arbitration or the request for a mutual agreement procedure.

*Paragraph 1 of Article 23 (Type of Arbitration Process) of the MLI
(Alternative 1 – Final offer arbitration)*

1. Except to the extent that the competent authorities of the Contracting States mutually agree on different rules, the following rules shall apply with respect to an arbitration proceeding pursuant to this Part:

a) After a case is submitted to arbitration, the competent authority of each Contracting State shall submit to the arbitration panel, by a date set by agreement, a proposed resolution which addresses all unresolved issue(s) in the case (taking into account all agreements previously reached in that case between the competent authorities of the Contracting States). The proposed resolution shall be limited to a disposition of specific monetary amounts (for example, of income or expense) or, where specified, the maximum rate of tax charged pursuant to this Convention, for each adjustment or similar issue in the case. In a case in which the competent authorities of the Contracting States have been unable to reach agreement on an issue regarding the conditions for application of a provision of this Convention (hereinafter referred to as a “threshold question”), such as whether an individual is a resident or whether a permanent establishment exists, the competent authorities may

submit alternative proposed resolutions with respect to issues the determination of which is contingent on resolution of such threshold questions.

b) The competent authority of each Contracting State may also submit a supporting position paper for consideration by the arbitration panel. Each competent authority that submits a proposed resolution or supporting position paper shall provide a copy to the other competent authority by the date on which the proposed resolution and supporting position paper were due. Each competent authority may also submit to the arbitration panel, by a date set by agreement, a reply submission with respect to the proposed resolution and supporting position paper submitted by the other competent authority. A copy of any reply submission shall be provided to the other competent authority by the date on which the reply submission was due.

c) The arbitration panel shall select as its decision one of the proposed resolutions for the case submitted by the competent authorities with respect to each issue and any threshold questions, and shall not include a rationale or any other explanation of the decision. The arbitration decision will be adopted by a simple majority of the panel members. The arbitration panel shall deliver its decision in writing to the competent authorities of the Contracting States. The arbitration decision shall have no precedential value.

Article 25 (Costs of Arbitration Proceedings) of the MLI

In an arbitration proceeding under this Part, the fees and expenses of the members of the arbitration panel, as well as any costs incurred in connection with the arbitration proceedings by the Contracting States, shall be borne by the Contracting States in a manner to be settled by mutual agreement between the competent authorities of the Contracting States. In the absence of such agreement, each Contracting State shall bear its own expenses and those of its appointed panel member. The cost of the chair of the arbitration panel and other expenses associated with the conduct of the arbitration proceedings shall be borne by the Contracting States in equal shares.

Paragraphs 2 and 3 of Article 26 (Compatibility) of the MLI

2. Any unresolved issue arising from a mutual agreement procedure case otherwise within the scope of the arbitration process provided for in this Part shall not be submitted to arbitration if the issue falls within the scope of a case with respect to which an arbitration panel or similar body has previously been set up in accordance with a bilateral or multilateral convention that provides for mandatory binding arbitration of unresolved issues arising from a mutual agreement procedure case.

3. Nothing in this Part shall affect the fulfilment of wider obligations with respect to the arbitration of unresolved issues arising in the context of a mutual agreement procedure resulting from other conventions to which the Contracting States are or will become parties.

Subparagraph a) of paragraph 2 of Article 28 (Reservations) of the MLI

Pursuant to subparagraph a) of paragraph 2 of Article 28 of the MLI, the Republic of Austria formulates the following reservation with respect to the scope of cases that shall be eligible for arbitration under the provisions of Part VI:

The Republic of Austria reserves the right to exclude from the scope of Part VI cases involving the application of its domestic general anti-avoidance rules contained in the Federal Fiscal Code (“Bundesabgabenordnung”), in particular its sections 21 and 22. Any subsequent provisions replacing, amending or updating these anti-avoidance rules would also be comprehended. The Republic of Austria shall notify the Depositary of any such subsequent provisions.

Article 27
Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. 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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

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

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 28 **Diplomatic and consular officials**

Nothing in this Convention 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 29 **Territorial extension**

1. This Convention may be extended, either in its entirety or with any necessary modifications, to either or both of the countries of Surinam or the Netherlands Antilles, if the country concerned imposes taxes substantially similar in character to those to which this Convention applies. Any such extension shall take effect from such date and be 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 this Convention under Article 31 shall not also terminate the application of this Convention to any country to which it has been extended under this Article.

The following paragraphs 1 to 3 of Article 10 of the MLI apply and supersede the provisions of this Convention:⁹

⁹ In accordance with paragraphs 1 and 3 of Article 35 of the MLI, paragraphs 1 to 3 of Article 10 of the MLI have effect in the Republic of Austria with respect to this Convention:

- a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2020; and
- b) with respect to all other taxes levied by the Republic of Austria, for taxes levied with respect to taxable periods beginning on or after 1 January 2020;

and,

In accordance with paragraph 1 of Article 35 of the MLI, paragraphs 1 to 3 of Article 10 of the MLI have effect in the Kingdom of the Netherlands with respect to this Convention:

- a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2020; and

ARTICLE 10 OF THE MLI – ANTI-ABUSE RULE FOR PERMANENT ESTABLISHMENTS SITUATED
IN THIRD JURISDICTIONS

1. Where:

a) an enterprise of a Contracting State derives income from the other Contracting State and the first-mentioned Contracting State treats such income as attributable to a permanent establishment of the enterprise situated in a third jurisdiction; and

b) the profits attributable to that permanent establishment are exempt from tax in the first-mentioned Contracting State,

the benefits of this Convention shall not apply to any item of income on which the tax in the third jurisdiction is less than 60 per cent of the tax that would be imposed in the first-mentioned Contracting State on that item of income if that permanent establishment were situated in the first-mentioned Contracting State. In such a case, any income to which the provisions of this paragraph apply shall remain taxable according to the domestic law of the other Contracting State, notwithstanding any other provisions of this Convention.

2. Paragraph 1 of Article 10 of the MLI shall not apply if the income derived from the other Contracting State described in paragraph 1 of Article 10 of the MLI is derived in connection with or is incidental to the active conduct of a business carried on through the permanent establishment (other than the business of making, managing or simply holding investments for the enterprise's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance enterprise or registered securities dealer, respectively).

3. If benefits under this Convention are denied pursuant to paragraph 1 of Article 10 of the MLI with respect to an item of income derived by a resident of a Contracting State, the competent authority of the other Contracting State may, nevertheless, grant these benefits with respect to that item of income if, in response to a request by such resident, such competent authority determines that granting such benefits is justified in light of the reasons such resident did not satisfy the requirements of paragraphs 1 and 2 of Article 10 of the MLI. The competent authority of the Contracting State to which a request has been made under the preceding sentence by a resident of the other Contracting State shall consult with the competent authority of that other Contracting State before either granting or denying the request.

*The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Convention:*¹⁰

ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE
(Principal purposes test provision)

Notwithstanding any provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention.

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- b) with respect to all other taxes levied by the Kingdom of the Netherlands, for taxes levied with respect to taxable periods beginning on or after 1 January 2020.

¹⁰ In accordance with paragraphs 1 and 3 of Article 35 of the MLI, paragraph 1 of Article 7 of the MLI has effect in the Republic of Austria with respect to this Convention:

- a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2020; and
- b) with respect to all other taxes levied by the Republic of Austria, for taxes levied with respect to taxable periods beginning on or after 1 January 2020;

and,

In accordance with paragraph 1 of Article 35 of the MLI, paragraph 1 of Article 7 of the MLI has effect in the Kingdom of the Netherlands with respect to this Convention:

- a) with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2020; and
- b) with respect to all other taxes levied by the Kingdom of the Netherlands, for taxes levied with respect to taxable periods beginning on or after 1 January 2020.

Chapter VII
Final provisions

Article 30
Entry into force

1.This Convention shall be ratified and the instruments of ratification shall be exchanged at The Hague as soon as possible.

2.The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall apply to the taxable years and periods beginning on or after January 1, 1969.

Article 31
Termination

This Convention shall remain in force until denounced by one of the Contracting States. Either Contracting State may denounce the Convention through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year.

In such event this Convention shall cease to apply with respect to the taxable years and periods beginning after the end of the calendar year in which the notice is given.

IN WITNESS WHEREOF the duly authorized Plenipotentiaries have signed this Convention and affixed thereto their seals.

DONE in duplicate this first day of September 1970 at Vienna in the German and Netherlands languages, both taxes being equally authentic.

For the Republic of Austria:
Hammerschmidt

For the Kingdom of the Netherlands:
C. W. van Boetzelaer

Protocol

On signing the Convention between the Kingdom of the Netherlands and the Republic of Austria for the avoidance of double taxation with respect to taxes on income and capital, concluded today, the undersigned Plenipotentiaries have agreed that the following provisions shall constitute an integral part of the Convention:

I.Ad Article 1

The Convention shall not apply to international organisations, organs and officials thereof nor to members of a diplomatic or consular mission of a third State resident in one of the States or with their seat there and who are not subject to tax on total income and on total capital.

II.Ad Articles 10, 11 and 13

Applications for the refund of tax levied contrary to the provisions of Article 10, 11 and 13 must be lodged within a period of three years from the end of the calendar year in which the tax was levied.

III.Ad Article 24

(a) It is understood that, insofar as the Netherlands income tax or company tax is concerned, the basis mentioned in paragraph 1 of Article 24 is the "onzuivere inkomen" or "winst" within the meaning of the Netherlands income tax law or company tax law, respectively.

(b) It is understood that for the purpose of calculating the deduction mentioned in paragraph 2 of Article 24, the value of the elements of capital referred to in paragraph 1 of Article 23 is reduced by the value of debts secured by mortgage on such capital and the value of the elements of capital referred to in paragraph 2 of Article 23 is reduced by the value of debts pertaining to the permanent establishment or fixed base.

(c) The amount of Austrian tax referred to in sub-paragraph (a) of paragraph 2 of Article 24 shall, for the purpose of the gains mentioned in paragraph 5 of Article 14, be calculated in accordance with the average of applicable rates of tax.

DONE in duplicate this first day of September 1970 at Vienna in the German and Netherlands languages, both taxes being equally authentic.

For the Republic of Austria:
Hammerschmidt

For the Kingdom of the Netherlands:
C. W. van Boetzelaer

ZUSATZPROTOKOLL

Im Zeitpunkt der Unterzeichnung des Protokolls zur weiteren Abänderung des am 1. September 1970 in Wien unterzeichneten Abkommens zur Vermeidung der Doppelbesteuerung auf dem Gebiete der Steuern vom Einkommen und vom Vermögen samt Schlussprotokoll in der Fassung des am 18. Dezember 1989 in Den Haag unterzeichneten Protokolls, des am 26. November 2001 in Den Haag unterzeichneten Protokolls und des am 8. Oktober 2008 in Wien unterzeichneten Protokolls, das heute zwischen der Republik Österreich und dem Königreich der Niederlande abgeschlossen wurde, sind die Gefertigten übereingekommen, dass die folgenden Bestimmungen einen integrierenden Bestandteil des Protokolls bilden:

Zu Artikel 27:

1. Die zuständige Behörde des ersuchenden Staates stellt der zuständigen Behörde des ersuchten Staates zur Darstellung der voraussichtlichen Erheblichkeit der Auskünfte die folgenden Informationen zur Verfügung, wenn diese ein Auskunftersuchen gemäß dem Abkommen stellt:

- a) die Bezeichnung der Person, der die Ermittlung oder Untersuchung gilt;
- b) eine Stellungnahme betreffend die gesuchten Auskünfte einschließlich der Art und der Form, in der der ersuchende Staat die Auskünfte vorzugsweise vom ersuchten Staat erhalten möchte;
- c) den steuerlichen Zweck, für den um die Auskünfte ersucht wird;
- d) die Gründe für die Annahme, dass die erbetenen Auskünfte dem ersuchten Staat vorliegen oder sich im Besitz oder in der Verfügungsmacht einer Person im Hoheitsbereich des ersuchten Staates befinden;
- e) den Namen und die Anschrift von Personen, soweit bekannt, in deren Besitz sich die erbetenen Auskünfte vermutlich befinden;
- f) eine Erklärung, dass der ersuchende Staat alle ihm in seinem eigenen Gebiet zur Verfügung stehenden Maßnahmen zur Einholung der Auskünfte ausgeschöpft hat, ausgenommen solche, die unverhältnismäßig große Schwierigkeiten mit sich bringen würden.

2. Es besteht Einvernehmen darüber, dass Ziffer 1 wichtige verfahrensrechtliche Anforderungen enthält, die dazu dienen sicherzustellen, dass Maßnahmen, die lediglich der Beweisaufklärung dienen („*fishing expeditions*“), nicht stattfinden; diese Anforderungen sind jedoch weit auszulegen, um einen effektiven Informationsaustausch nicht zu verhindern.

3. Obwohl Artikel 27 des Abkommens die möglichen Methoden für den Austausch von Informationen nicht beschränkt, besteht Einvernehmen darüber, dass Artikel 27 Absatz 5 des Abkommens die Vertragsstaaten nicht dazu verpflichtet, Informationen im Sinne dieses Absatzes auf automatischer oder spontaner Basis auszutauschen.

4. Die Bestimmungen des Artikels 27 kommen entsprechend auch für Informationen zur Anwendung, die für die Durchführung von einkunftsbezogenen Bestimmungen des niederländischen Rechts durch die niederländischen Steuerbehörden, die mit der Umsetzung, Anwendung oder Durchsetzung dieser einkunftsbezogenen Bestimmungen befasst sind, relevant sind. In diesem Fall dürfen die gemäß dem ersten Satz dieses Absatzes in Übereinstimmung mit Artikel 27 des Abkommens erhaltenen Informationen nur für Zwecke der Festsetzung und Einhebung der Abgaben und Festsetzung und Auszahlung der Leistungen gemäß der im ersten Satz erwähnten einkunftsbezogenen Bestimmungen verwendet werden.

ZU URKUND DESSEN haben die hiezu gehörig Bevollmächtigten der beiden Vertragsstaaten dieses Zusatzprotokoll unterzeichnet.

GESCHEHEN zu Den Haag am 8. September 2009 in zweifacher Ausfertigung, jede in deutscher und niederländischer Sprache, wobei jeder Text gleichermaßen authentisch ist.

Für die Republik Österreich:
Werner SENFTER m.p.

Für das Königreich der Niederlande:
Jan Kees DE JAGER m.p.

