



**PROTOCOL**

**BETWEEN**

**THE REPUBLIC OF POLAND**

**AND**

**THE KINGDOM OF THE NETHERLANDS**

**amending the Convention between the Republic of Poland 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 Warsaw on 13 February 2002 and the Protocol, signed at Warsaw on 13 February 2002**

The Republic of Poland

and

the Kingdom of the Netherlands,

desiring to conclude a Protocol amending the Convention between the Republic of Poland 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 Warsaw on 13 February 2002 (hereinafter referred to as "the Convention") and the Protocol, signed at Warsaw on 13 February 2002 (hereinafter referred to as "the Protocol to the Convention"),

Have agreed as follows:

## **Article 1**

The Title and Preamble of the Convention shall be deleted and replaced by the following:

**“CONVENTION  
BETWEEN  
THE REPUBLIC OF POLAND  
AND  
THE KINGDOM OF THE NETHERLANDS  
FOR THE ELIMINATION OF DOUBLE TAXATION WITH RESPECT TO  
TAXES ON INCOME AND THE PREVENTION OF TAX EVASION AND  
AVOIDANCE**

The Republic of Poland

and

The Kingdom of the Netherlands,

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,

Intending to eliminate double taxation with respect to the taxes covered by the 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 the Convention for the indirect benefit of residents of third jurisdictions),

Have agreed as follows:”.

## **Article 2**

Article 1 of the Convention shall be deleted and replaced by the following:

**“ARTICLE 1  
PERSONS COVERED**

1. This Convention shall apply to persons who are residents of one or both of the Contracting States.
2. For the purposes of this Convention, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State but only to the extent that the income is treated, for purposes of taxation by that State, as the income of a resident of that State. In no case shall the provisions of this paragraph be construed to affect Contracting State’s right to tax the residents of that Contracting State.

### Article 3

In Article 3 of the Convention:

1. At the end of subparagraph i) of paragraph 1 of Article 3 of the Convention the punctuation mark “.” will be deleted and replaced by the punctuation mark: “;”.

2. After subparagraph i) of paragraph 1 of Article 3 of the Convention the following new subparagraph j) shall be inserted:

“j) the term “recognized pension fund” of a State means an entity or arrangement established in that State that is treated as a separate person under the taxation laws of that State and:

(i) that is established and operated exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals and that is regulated as such by that State or one of its political subdivisions or local authorities; or

(ii) that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements referred to in subdivision (i).”.

### Article 4

In Article 4 of the Convention:

1. Paragraph 1 shall be deleted and replaced by the following:

“1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof as well as a recognized pension fund of that State. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.”;

2. Paragraph 3 shall be deleted and replaced by the following:

“3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of this Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Convention except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.”;

3. Paragraph 4 shall be deleted.

## Article 5

In Article 5 of the Convention:

1. Paragraph 4 shall be deleted and replaced by the following:

“4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e),

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

2. Paragraph 5 shall be deleted and replaced by the following:

“5. Paragraph 4 shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and

- a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of this Article, or
- b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.”.

3. Paragraph 6 shall be deleted and replaced by the following:

“6. Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 7, where a person is acting in a Contracting State on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to



the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are

- a) in the name of the enterprise, or
- b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or
- c) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business (other than a fixed place of business to which paragraph 5 would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph.”.

4. Paragraph 7 shall be deleted and replaced by the following:

“7. Paragraph 6 shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first-mentioned State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.”.

5. After paragraph 7 the following new paragraphs 8 and 9 shall be inserted:

“8. For the purposes of this Article, a person or enterprise is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person or enterprise shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company’s shares or of the beneficial equity interest in the company) or if another person or enterprise possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company’s shares or of the beneficial equity interest in the company) in the person and the enterprise or in the two enterprises.

9. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.”.

## Article 6

Article 7 of the Convention shall be deleted and replaced by the following:

## “ARTICLE 7 BUSINESS PROFITS

1. Profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits that are attributable to the permanent establishment in accordance with the provisions of paragraph 2 may be taxed in that other State.
2. For the purposes of this Article and Article 23, the profits that are attributable in each Contracting State to the permanent establishment referred to in paragraph 1 are the profits it might be expected to make, in particular in its dealings with other parts of the enterprise, if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the enterprise.
3. Where, in accordance with paragraph 2, a Contracting State adjusts the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States and taxes accordingly profits of the enterprise that have been charged to tax in the other State, the other State shall, to the extent necessary to eliminate double taxation on these profits, make an appropriate adjustment if it agrees with the adjustment made by the first-mentioned State; if the other Contracting State does not so agree, the Contracting States shall eliminate any double taxation resulting therefrom by mutual agreement.
4. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.”.

### Article 7

Paragraph 2 of Article 10 of the Convention shall be deleted and replaced by the following:

“2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

- a) 0 per cent of the gross amount of the dividends if the beneficial owner is a recognized pension fund of the other Contracting State which is generally exempt from tax in that other Contracting State;
- b) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends;
- c) 15 per cent of the gross amount of the dividends in all other cases.”.



## **Article 8**

In Article 11 of the Convention:

1. At the end of subparagraph e) of paragraph 3 of Article 11 of the Convention the punctuation mark “.” will be deleted and replaced by the punctuation mark: “;”.
2. After subparagraph e) of paragraph 3 of the Convention the following new subparagraph f) shall be inserted:  
  
“f) to a recognized pension fund of the other Contracting State which is generally exempt from tax in that other Contracting State.”.

## **Article 9**

In Article 13 of the Convention:

1. After paragraph 3 the following new paragraph 3a shall be inserted:

“3a. Gains derived by a resident of a Contracting State from the alienation of shares in a company or comparable interests, such as interests in a partnership or trust, may be taxed in the other Contracting State if, at any time during the 365 days preceding the alienation, these shares or comparable interests derived more than 75 per cent of their value directly or indirectly from immovable property as defined in Article 6, situated in that other Contracting State.

However such gains shall be taxable only in the first mentioned State where the resident is a recognized pension fund of that State which is generally exempt from tax in that State.”.

2. Paragraph 4 shall be deleted and replaced by the following:

“4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 3a shall be taxable only in the Contracting State of which the alienator is a resident.”.

## **Article 10**

Article 18 of the Convention shall be deleted and replaced by the following:

### **“ARTICLE 18**

#### **PENSIONS, ANNUITIES AND SOCIAL SECURITY PAYMENTS**

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration, as well as annuities, arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned State.
2. Pensions paid and other payments made under the provisions of the social security legislation of a Contracting State to a resident of the other Contracting State may be taxed in the first-mentioned State.

3. A pension, other similar remuneration or an annuity shall be deemed to arise in a Contracting State insofar as the contributions or payments associated with that pension or other similar remuneration or annuity, or the entitlements received from that pension or other similar remuneration or annuity qualified for relief from tax in that State. The transfer of a pension, other similar remuneration or an annuity from a pension fund or an insurance company in a Contracting State to a pension fund or insurance company in another state shall not restrict in any way the taxing rights of the first-mentioned State under this Article.

4. The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

5. The provisions of this Article shall also apply to lump sum payment in lieu of a pension or another similar remuneration or an annuity."

## **Article 11**

In Article 23 of the Convention:

1. In paragraph 2, the words "paragraphs 2 and 5 of Article 18" shall be deleted and replaced by "paragraph 1 and 2 of Article 18".

2. In paragraph 3, the words "paragraph 5 of Article 13" shall be deleted and replaced by "paragraphs 3a and 5 of article 13" and the words "paragraph 3 of Article 18" shall be deleted and replaced by "paragraph 5 of Article 18".

3. Paragraph 5 shall be deleted and replaced by the following:

"5. Where a resident of Poland derives income which may be taxed in the Netherlands in accordance with the provisions of the Convention (except to the extent that these provisions allow taxation by the Netherlands solely because the income is also income derived by a resident of the Netherlands), Poland shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in the Netherlands. Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in the Netherlands."

4. After paragraph 5 the following new paragraphs 6 and 7 shall be inserted:

"6. Where in accordance with any provision of the Convention income derived by a resident of Poland is exempt from tax in Poland, Poland may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

7. The provisions of paragraph 2 shall not apply to items of income derived by a resident of the Netherlands where Poland applies the provisions of this Convention to exempt such items of income from tax or applies the provisions of paragraph 2 of Article 10 or 11 to such items of income."



## Article 12

Article 26 of the Convention shall be deleted and replaced by the following:

### “ARTICLE 26 MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting State of which he is a national. The competent authorities of the Contracting States will implement a bilateral notification or consultation process for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer's objection to be justified. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. Where,

a) under paragraph 1, 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 within three years from the date when all the information required by the competent authorities in order to address the case has been provided to both competent authorities;

any unresolved issue arising from the case shall be submitted to arbitration if the person so requests in writing. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by an administrative court of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting

States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this paragraph."

### Article 13

Article 27 of the Convention shall be deleted and replaced by the following:

#### "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. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

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 14**

Article 28 of the Convention shall be deleted and replaced by the following:

#### **“ARTICLE 28 ASSISTANCE IN THE COLLECTION OF TAXES**

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term "revenue claim" as used in this Article means an amount owed in respect of 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 this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that



State by reason of its nature as such and, unless otherwise agreed between the competent authorities. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

- a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection; or
- b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection;

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy (ordre public);
- c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.”.

## **Article 15**

Article 29 of the Convention shall be deleted and replaced by the following:

### **“ARTICLE 29 ENTITLEMENT TO BENEFITS**

1. Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income 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.

2. Where a benefit under this Convention is denied to a person under paragraph 1, the competent authority of the Contracting State that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income, if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted in the absence of the transaction or arrangement referred to in paragraph 1.

The competent authority of a Contracting State shall consult with the competent authority of the other Contracting State before rejecting a request made under this paragraph.”.

### **Article 16**

Article 31 of the Convention shall be deleted and replaced by the following:

#### **“ARTICLE 31 TERRITORIAL EXTENSION**

1. This Convention may be extended, either in its entirety or with any necessary modifications, to any part of the Kingdom of the Netherlands which is not situated in Europe, if the part of the Kingdom of the Netherlands concerned imposes taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures.

2. Unless otherwise agreed the termination of the Convention shall not also terminate any extension of the Convention to any part to which it has been extended under this Article.”.

### **Article 17**

The Preamble of the Protocol to the Convention shall be deleted and replaced by the following:

“With respect to the Convention concluded between the Republic of Poland and the Kingdom of the Netherlands for the elimination of double taxation with respect to taxes on income and the prevention of tax evasion and avoidance, the undersigned have agreed that the following provisions shall form an integral part of the Convention.”.

### **Article 18**

Article I. of the Protocol to the Convention shall be deleted.

## **Article 19**

The existing Articles II., III., IV. and V. of the Protocol to the Convention shall be renumbered into Articles I., II., III. and IV, respectively.

## **Article 20**

After Article IV. of the Protocol to the Convention the following new Article V. shall be inserted:

### **“V. Ad Article 10**

1. The provisions of subparagraph b) of paragraph 2 of Article 10 shall not apply to dividends paid by or to a person who is a Fiscal Investment Institution (Fiscale Beleggingsinstelling) for the purposes of the company tax of the Netherlands or by or to a person who is an open ended investment fund, exempt for the purpose of the corporate income tax in Poland, respectively.
2. It is understood that income received in connection with the (partial) liquidation of a company or a purchase of own shares by a company is treated as income from shares.
3. It is understood that income received in connection with distributions on certificates or participating units of an investment fund is treated as income from shares.”.

## **Article 21**

Article VI. of the Protocol to the Convention shall be deleted and replaced by the following:

### **“VI. Ad Article 11**

1. It is understood that the term “a loan of whatever kind” as used in subparagraph c) of paragraph 3 of Article 11 also includes convertible bonds and, as a consequence, the term “interest” as used in paragraph 5 of Article 11 also includes income from non-convertible bonds and income from convertible bonds until such time as the later bonds are actually converted into shares. It is also understood that in any case the term “interest” does not include items of income which are dealt with under Article 10.
2. Paragraph 3 of Article 11 shall also apply to interest paid to and beneficially owned by:
  - a) the Netherlands Development Finance Company (de Nederlandse Financierings-Maatschappij voor Ontwikkelingslanden N.V.) or any legal successor thereof;
  - b) Atradius State Business N.V. in respect of loans granted, approved, guaranteed or insured by the Government of the Netherlands;
  - c) the Korporacja Ubezpieczeń Kredytów Eksportowych S.A. (KUKE S.A.), Bank Gospodarstwa Krajowego S.A.”.



## **Article 22**

Article VII. of the Protocol to the Convention shall be deleted.

## **Article 23**

The existing Articles VIII. and IX. of the Protocol to the Convention shall be renumbered into Articles VII. and VIII. respectively.

## **Article 24**

Article X. of the Protocol to the Convention shall be deleted.

## **Article 25**

The existing Article XI. of the Protocol to the Convention shall be renumbered into Article IX.

## **Article 26**

Article XII. of the Protocol to the Convention shall be deleted and replaced by the following:

### **"X. Ad Article 27**

It is understood that paragraph 2 of Article 27 also applies to persons or authorities concerned with the determination of cases submitted to arbitration under paragraph 5 of Article 26."

## **Article 27**

After new Article X. of the Protocol to the Convention the following new Article XI. shall be inserted:

### **"XI. Ad Articles 27 and 28**

1. The provisions of Article 27 shall apply accordingly to information that is relevant for carrying out the income-related regulations under the laws of the Contracting States by the tax authorities of the Contracting States concerned with the implementation, administration or enforcement of these income-related regulations. The provisions of Article 28 shall apply accordingly to assistance in the collection of amounts paid under the income-related regulations, insofar as these amounts are treated as revenue claims in respect of taxes by the Contracting State where these amounts arise in.

2. Any information received under paragraph 1 of this Article in connection with Article 27 shall be used only for the purpose of determining and levying the contributions and determining and granting of the benefits under the income - related regulations as meant in paragraph 1 of this Article.

3. It is understood that the income-related regulations referred to in paragraph 1, consist of regulations purporting to grant financial support by a Contracting State to individuals in respect of, for example, rental costs, cost of childcare and health care on the basis of the financial capacity of these individuals."

### Article 28

This Amending Protocol, shall enter into force on the last day of the third month following the month in which the later of the notifications has been received in 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 for taxable years and periods beginning, and taxable events occurring, on or after the first day of January in the calendar year following that in which the Amending Protocol has entered into force.

In witness whereof, the undersigned, duly authorized thereto, have signed this Amending Protocol.

Done in duplicate at Warsaw, this day of October, 2020 in the Polish, Dutch and English languages, all texts being equally authentic. In case of any divergences of interpretation, the English text shall prevail.

**For the Republic of Poland**

*Jan Sarnowski*

**For the Kingdom of the Netherlands**

*D. Bergsmo*



Oświadczam zgodność  
fotokopii z oryginałem/~~odpisem~~

Warszawa, dnia 1/12/2020....

**Konrad Marciniak**

Dyrektor

DEPARTAMENT PRAWNO-TRAKTATOWY

