

## **2008 Income and Capital Gains Tax Convention and Final Protocol**

**Treaty Partners:** Ghana; Netherlands

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**Status:** In Force

### **CONVENTION BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE REPUBLIC OF GHANA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS**

The Government of the Kingdom of the Netherlands and the Government of the Republic of Ghana, desiring that a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains be concluded by both States, have agreed as follows:

#### **Chapter I**

#### **Scope of the Convention**

##### **Article 1**

##### **Persons Covered**

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

##### **Article 2**

##### **Taxes Covered**

1. This Convention shall apply to taxes on income and on capital gains imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital gains all taxes imposed on total income, and on total capital gains or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which the Convention shall apply are in particular:
  - a) in the Netherlands:
    - de inkomstenbelasting (income tax);

- de loonbelasting (wages tax);
  - de vennootschapsbelasting (company tax) including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mijnbouwwet (the Mining Act);
  - de dividendbelasting (dividend tax);
- (hereinafter referred to as "Netherlands tax");

b) in the Republic of Ghana:

- the income tax; and
- the capital gains tax;

(hereinafter referred to as "Ghana tax").

4. The Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their respective taxation laws.

## Chapter II Definitions

### Article 3 General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:
- a) the terms "a Contracting State" and "the other Contracting State" mean the Kingdom of the Netherlands (the Netherlands) or Ghana, as the context requires;
  - b) the term "the Netherlands" means the part of the Kingdom of the Netherlands that is situated in Europe, including its territorial sea, and any area beyond the territorial sea within which the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights;
  - c) the term "Ghana" means the territory of the Republic of Ghana including the territorial sea and any area outside the territorial sea within which, in accordance with international law, the Republic of Ghana has sovereign rights for the purpose of exploring and exploiting the natural resources of the seabed and its subsoil and the superjacent waters;

- d) the term "person" includes an individual, a company and any other body of persons;
- e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- h) the term "competent authority" means:
  - (i) in the Netherlands, the Minister of Finance or his authorised representative;
  - (ii) in the case of Ghana, the Commissioner of the Internal Revenue or his authorised representative.
- i) the term "national" means:
  - any individual possessing the nationality of a Contracting State;
  - any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
- j) the term "pension fund" means any person that:
  - (i) is established under the laws of a Contracting State;
  - (ii) is operated primarily to administer or provide pensions, retirement benefits or other similar remuneration or earn income for the benefit of such persons; and
  - (iii) is exempt from taxes on income in that Contracting State with respect to itself and its income derived from activities described in clause (ii).

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

#### **Article 4**

#### **Resident**

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. This term, however, does not include any person who is liable to tax in that State in respect only of income and capital gains from sources in that State.
2. The term "resident of a Contracting State" also includes that State, any political subdivision or local authority thereof and a pension fund established and regulated under the laws of that Contracting State.
3. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
  - a) he shall be deemed to be a resident only 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 only of the State with which his personal and economic relations are closer (centre of vital interests);
  - b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
  - c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
  - d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
4. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

#### **Article 5**

#### **Permanent Establishment**

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
  - a) a place of management;

- b) a branch;
- c) an office;
- d) a factory;
- e) a workshop, and
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term "permanent establishment" likewise encompasses:

- a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than nine months;
- b) the provision of supervisory activities unconnected with a building site, a construction, assembly or installation project referred to in subparagraph a) of this paragraph, but only where such activities continue for more than nine months.

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

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

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the 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, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

### Chapter III Taxation of Income

#### **Article 6 Income From Immovable Property**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

**Article 7**  
**Business Profits**

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are reasonably 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.

However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment.

Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Insofar as it has been customary in a Contracting State 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 Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

### **Article 8** **Shipping and Air Transport**

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the enterprise is situated. Those profits shall include profits derived by the enterprise from the use, maintenance or rental of containers used for the transport of goods or merchandise in international traffic where such use, maintenance or rental as the case may be, are incidental to the operation of ships or aircraft in international traffic.
2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

### **Article 9** **Associated Enterprises**

1. Where
  - a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
  - b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.
2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first mentioned State if the conditions

made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this 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 a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:
  - a) 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;
  - b) 10 per cent of the gross amount of the dividends in all other cases.
3. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraph 2.
4. The provisions of paragraph 2 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
5. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident and also includes any other item which, under the laws of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of dividends of a company.
6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

## **Article 11**

### **Interest**

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 8 per cent of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2, interest referred to in paragraph 1 shall be exempt from tax in the Contracting State where the interest arises if the recipient is the beneficial owner of the interest and if:
  - a) the payer or the recipient of the interest is the Government of a Contracting State itself, a public body, a political subdivision or local authority thereof or the central bank of a Contracting State; or
  - b) the interest is paid in connection with a loan granted, approved, guaranteed or insured by the Government of a Contracting State, the central bank of a Contracting State, or any agency or instrumentality (including a financial institution) owned or controlled by the Government of a Contracting State.
4. Notwithstanding the provisions of paragraph 2, interest as referred to in paragraph 1 may be taxed only in the Contracting State of which the recipient is a resident if the recipient is the beneficial owner of the interest and the interest is paid in connection with:
  - a) a loan granted by a bank or any other financial institution (including an insurance company) or a pension fund;
  - b) the sale on credit of any industrial, commercial or scientific equipment;
  - c) the sale on credit of any goods by one enterprise to another enterprise.
5. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraphs 2, 3 and 4.

6. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
7. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14 as the case may be, shall apply.
8. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
9. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

## **Article 12**

### **Royalties and Technical Service Fees**

1. Royalties or technical service fees arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties or technical service fees may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties or technical service fees is a resident of the other Contracting State, the tax so charged shall not exceed 8 per cent of the gross amount of the royalties or technical service fees.
3. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraph 2.

4. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use information concerning industrial, commercial or scientific experience.
5. The term "technical service fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a managerial, technical or consultancy nature. Provided that the term "technical service fees" shall not include any payments in consideration for supervisory activities in connection with a building site or construction, assembly or installation project or for supervisory activities in connection with installation incidental to the sale of machinery or parts thereof and income referred to in paragraph 1 of Article 14.
6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties or technical service fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or technical service fees arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties or technical service fees are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
7. Royalties or technical service fees shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties or technical service fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties or technical service fees was incurred, and such royalties or technical service fees are borne by such permanent establishment or fixed base, then such royalties or technical service fees shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
8. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties or technical service fees, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

### **Article 13**

#### **Capital Gains**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.
4. Gains derived by a resident of a Contracting State from the alienation of shares in a company deriving more than 90 per cent of their value, directly or indirectly, from immovable property situated in the other Contracting State (other than shares listed on a stock exchange of either Contracting State) may be taxed in that other State provided that the resident owns, directly or indirectly, a minimum of 5 per cent of the issued shares.
5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident.
6. Notwithstanding the provisions of paragraph 5, the Netherlands may, in accordance with its own laws, including the interpretation of the term "alienation", levy tax on gains derived by an individual who is a resident of Ghana from the alienation of shares in, "jouissance" rights or debt-claims on a company whose capital is divided into shares and which, under the laws of the Netherlands, is a resident of the Netherlands, and from the alienation of part of the rights attached to the said shares, "jouissance" rights or debt-claims, if that individual - either alone or with his or her spouse - or one of their relations by blood or marriage in the direct line directly or indirectly holds at least 5 per cent of the issued capital of a particular class of shares in that company. This provision shall apply only if the individual who derives the gains has been a resident of the Netherlands in the course of the last ten years preceding the year in which the gains are derived and provided that, at the time he became a resident of Ghana, the above-mentioned conditions regarding share ownership in the said company were satisfied.

In cases where, under the domestic laws of the Netherlands, an assessment has been issued to the individual in respect of the alienation of the aforesaid shares deemed to have taken place at the time of his emigration from the Netherlands, the above shall apply only insofar as part of the assessment is still outstanding.

7. Notwithstanding the provisions of paragraph 5, gains from the alienation of any property within the meaning of paragraph 5 situated in Ghana derived by an individual who has been a resident of Ghana and who has become a resident of the Netherlands, may be taxed in Ghana if the alienation of the property occurs within any period of five years next following the date on which the individual ceased to be a resident of Ghana.

#### **Article 14** **Independent Personal Services**

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State, unless:
  - a) he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
  - b) his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate of nine months in any twelve month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other Contracting State may be taxed in that other State.
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, dentists and accountants.

#### **Article 15** **Dependent Personal Services**

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
  - a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and
  - b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

- c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State shall be taxable only in that State if the remuneration is paid in respect of an employment exercised in the other Contracting State in connection with a building site, a construction, assembly or installation project or supervisory activities in connection therewith, for the period of nine months during which such site, project or activities do not constitute a permanent establishment in that other State.
4. Notwithstanding the provision of paragraph 3 of this Article, remuneration derived by a resident of a Contracting State shall be taxable only in that State if the remuneration is paid in respect of an employment exercised in the other Contracting State in connection with supervisory activities unconnected with a building site, construction, assembly or installation project for the period of nine months during which such activities do not constitute a permanent establishment in that other State.
5. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed in the Contracting State in which the enterprise is situated.

#### **Article 16 Directors' Fees**

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

#### **Article 17 Artistes and Sportspersons**

1. Notwithstanding the provisions of Articles 7, 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.
3. The provisions of paragraphs 1 and 2 shall not apply to income derived by a resident of a Contracting State from activities exercised in the other Contracting State, if the visit to that other State is wholly or mainly supported by public funds of one or both

of the Contracting States or political subdivisions or local authorities thereof, or takes place within the framework of a cultural or sports exchange programme between the Governments of the Contracting States. In such a case, the income shall be taxable only in the Contracting State of which the entertainer or sportsman is a resident.

**Article 18**  
**Pensions, Annuities and Social Security Payments**

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment, as well as annuities paid to a resident of a Contracting State, shall be taxable only in that State. Any pension and other payment paid out under the provisions of a social security system of a Contracting State to a resident of the other Contracting State shall be taxable only in that other State.
2. Notwithstanding the provisions of paragraph 1, a pension or other similar remuneration, annuity, or any pension and other payment paid out under the provisions of a social security system of a Contracting State, may also be taxed in the Contracting State from which it is derived, in accordance with the laws of that State:
  - (a) insofar as the entitlement to this pension or other similar remuneration or annuity in the Contracting State from which it is derived is exempt from tax, or the contributions associated with the pension or other similar remuneration or annuity made to the pension scheme or insurance company were deducted in the past when calculating taxable income in that State or qualified for other tax relief in that State; and
  - (b) insofar as this pension or other similar remuneration or annuity or this pension or other payment paid out under the provisions of a social security system of a Contracting State is in the Contracting State of which the recipient thereof is a resident not taxed at the generally applicable rate for income derived from dependent personal services, or less than 90 per cent of the gross amount of the pension or other similar remuneration or annuity is taxed; and
  - (c) if the total gross amount of the pensions and other similar remuneration and annuities, and any pension and other payment paid out under the provisions of a social security system of a Contracting State, in any calendar year exceeds the sum of twenty thousand (20,000) Euro.
3. Notwithstanding the provisions of paragraphs 1 and 2, if this pension or other similar remuneration is not periodic in nature, is paid in respect of past employment in the other Contracting State and is paid out before the date on which the pension commences, or if a lump sum payment is made in lieu of the right to an annuity before the date on which the annuity commences, the payment or this lump sum may also be taxed in the Contracting State from which it is derived.

4. A pension or other similar remuneration or annuity is deemed to be derived from a Contracting State insofar as the contributions or payments associated with the pension or other similar remuneration or annuity, or the entitlements received from it qualified for tax relief in that State. The transfer of a pension from a pension fund or an insurance company in a Contracting State to a pension fund or an insurance company in another State shall not restrict in any way the taxing rights of the first-mentioned State under this Article.
5. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraph 2. They shall also decide what details the resident of a Contracting State must submit for the purpose of the proper application of the Convention in the other Contracting State, in particular so that it can be established whether the conditions referred to in subparagraphs (a), (b) and (c) of paragraph 2 have been met.
6. 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.
7. Whether and to what extent a pension or similar remuneration falls under this Article or under Article 19, is determined by the nature of the past employment, as private or governmental, during which the entitlement to that part of the pension or similar remuneration was built up.
8. Contributions made by or on behalf of an individual who renders services in a Contracting State to a pension scheme recognised for tax purposes in the other Contracting State,
  - i) in which the individual participated immediately before beginning to provide services in the first-mentioned State,
  - ii) in which the individual participated at a time when that individual was providing services in, or was a resident of, the other State, and
  - iii) that is accepted by the competent authority of the first-mentioned State as corresponding to a pension scheme recognised as such for tax purposes by that State, shall, for the purposes of determining the individual's tax payable in the first-mentioned State and the profits of an enterprise which may be taxed in the first-mentioned State, be treated in that State in the same way and subject to the same conditions and limitations as contributions made to a pension scheme that is recognised for tax purposes in that State.

For the purposes of this paragraph:

- a) the term "a pension scheme" means an arrangement in which the individual participates in order to secure retirement benefits payable in respect of the services referred to in this paragraph; and

- b) a pension scheme is recognised for tax purposes in a State if the contributions to the scheme would qualify for tax relief in that State.

**Article 19**  
**Government Service**

1.
  - a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
  - b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting 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) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
  - b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered paid in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

**Article 20**  
**Professors, Researchers and Teachers**

1. An individual who visits a Contracting State solely for the purpose of teaching or carrying out research at a university, college, school or any other officially recognised educational institution in that State and who is or was immediately before that visit a resident of the other Contracting State, shall be exempt from taxation in the first-mentioned Contracting State on remuneration for such teaching or research for a period not exceeding two years from the date of his first visit for that purpose, provided that such remuneration arises from sources outside that State.

2. This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

#### **Article 21 Students**

1. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.
2. In respect of grants, scholarships and remuneration from employment not covered by paragraph 1, a student or business apprentice referred to in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the Contracting State which he is visiting.

#### **Article 22 Other Income**

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

#### **Article 23 Remittances**

1. Where under any provision of this Convention a Contracting State reduces the rate of tax on, or exempts from tax, income or capital gains and, under the law in force in the other Contracting State a person, in respect of that income or capital gains, is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the reduction or exemption to be allowed under this convention in the first-mentioned Contracting State shall apply only to so much of the income or capital gains as is taxed in the other Contracting State.

2. However, the provision of paragraph 1 of this Article does not apply to income or capital gains derived by the Government, a political subdivision or local authority, or an agency of a Contracting State or the Central Bank of a Contracting State.

## Chapter IV Elimination of Double Taxation

### **Article 24 Elimination of Double Taxation**

1. The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed the items of income which, according to the provisions of this Convention, may be taxed or shall be taxable only in Ghana.
2. However, where a resident of the Netherlands derives items of income which according to paragraphs 1, 3 and 4 of Article 6, paragraph 1 of Article 7, paragraph 6 of Article 10, paragraph 7 of Article 11, paragraph 6 of Article 12, paragraphs 1, 2 and 4 of Article 13, paragraph 1 of Article 14, paragraphs 1 and 5 of Article 15, paragraph 2 of Article 18, paragraphs 1 (subparagraph a) and 2 (subparagraph a) of Article 19 and paragraph 2 of Article 22 of this Convention may be taxed in Ghana and are included in the basis referred to in paragraph 1, the Netherlands shall exempt such items of income by allowing a reduction of its tax. This reduction shall be computed in conformity with the provisions of the Netherlands law for the avoidance of double taxation. For that purpose the said items of income shall be deemed to be included in the amount of the items of income which are exempt from Netherlands tax under those provisions.
3. Further, the Netherlands shall allow a reduction from the Netherlands tax so computed for the items of income which according to paragraph 2 of Article 10, paragraph 2 of Article 11, paragraph 2 of Article 12, paragraph 7 of Article 13, Article 16, paragraphs 1 and 2 of Article 17 and paragraph 3 of Article 18 of this Convention may be taxed in Ghana to the extent that these items are included in the basis referred to in paragraph 1. The amount of this reduction shall be equal to the tax paid in Ghana on these items of income, but shall, in case the provisions of the Netherlands law for the avoidance of double taxation provide so, not exceed the amount of the reduction which would be allowed if the items of income so included were the sole items of income which are exempt from Netherlands tax under the provisions of the Netherlands law for the avoidance of double taxation.

This paragraph shall not restrict allowance now or hereafter accorded by the provisions of the Netherlands law for the avoidance of double taxation, but only as far as the calculation of the amount of the reduction of Netherlands tax is concerned with respect to the aggregate of income from more than one country and the carry forward of the tax paid in Ghana on the said items of income to subsequent years.

4. Notwithstanding the provisions of paragraph 2, the Netherlands shall allow a reduction from the Netherlands tax for the tax paid in Ghana on items of income

which according to paragraph 1 of Article 7, paragraph 6 of Article 10, paragraph 7 of Article 11, paragraph 6 of Article 12, paragraph 1 of Article 14 and paragraph 2 of Article 22 of this Convention may be taxed in Ghana to the extent that these items are included in the basis referred to in paragraph 1, insofar as the Netherlands under the provisions of the Netherlands law for the avoidance of double taxation allows a reduction from the Netherlands tax of the tax levied in another country on such items of income. For the computation of this reduction the provisions of paragraph 3 of this Article shall apply accordingly.

5. In Ghana, double taxation shall be eliminated as follows:
  - a) Netherlands tax payable under the laws of the Netherlands and in accordance with the provisions of the Convention, whether directly (by assessment) or by deduction (withholding), on profits, income or chargeable gains from sources within the Netherlands (excluding in the case of dividends, tax payable in respect of the profits out of which the dividends are paid) shall be allowed as a credit against any Ghana tax computed by reference to the same profits, income or chargeable gains by reference to which Netherlands tax is computed;
  - b) In the case of dividends paid by a company which is a resident of the Netherlands to a company which is resident in Ghana and which controls directly at least 10 per cent of the capital of the company paying the dividends, the credit shall take into account (in addition to any Netherlands tax for which credit may be allowed under the provisions of subparagraph a) the Netherlands tax payable by the company in respect of the profits out of which such dividends are paid;
  - c) In any case the amount of tax credit to be granted under this paragraph shall not exceed the proportion of the Ghana tax which such profits, income or chargeable gains bear to the entire profits, income or chargeable gains as the case may be chargeable to Ghana tax.

## Chapter V Special Provisions

### **Article 25 Non-Discrimination**

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

2. Stateless persons who are residents of a Contracting State shall not be subjected in either Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of the State concerned in the same circumstances, in particular with respect to residence, are or may be subjected.
3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
4. Except where the provisions of paragraph 1 of Article 9, paragraph 9 of Article 11, or paragraph 8 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.
5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

#### **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 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 by mutual agreement settle the mode of application of the Convention and, especially, the requirements to which the residents of a Contracting State shall be subjected in order to obtain, in the other Contracting State, the tax reductions or exemptions and other advantages provided for by the Convention.
5. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.
6. If any difficulty or doubt arising as to the interpretation or application of the Convention cannot be resolved by the competent authorities of the Contracting States in a mutual agreement procedure pursuant to the previous paragraphs of this Article within a period of two years after the question was raised, the case may, at the request of either Contracting State, be submitted for arbitration, but only after fully exhausting the procedures available under paragraphs 1 to 5 of this Article and provided the taxpayer or taxpayers involved agree in writing to be bound by the decision of the arbitration board.

The decision of the arbitration board in a particular case shall be binding on both Contracting States and the taxpayer or taxpayers involved with respect to that case.

## **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.

3. In no case shall the provisions of the previous paragraphs 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 the case of the Netherlands, paragraph 3 of this Article shall in no case be construed to permit the Netherlands 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.
6. In the case of Ghana, Ghana shall at the request of the Netherlands supply information to the Netherlands if such information is obtained by Ghana in the course of court proceedings in relation to a prosecution involving acts of tax fraud in the Courts of Ghana.

## **Article 28**

### **Assistance in the Collection of Taxes**

The competent authorities of the Contracting States may by mutual agreement prescribe rules and conditions in order to lend each other assistance and support in the collection of the taxes to which this Convention applies and of any interest, administrative penalties and costs of collection related to such amount.

**Article 29**  
**Members of Diplomatic Missions and Consular Posts**

1. Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.
2. The Convention shall not apply to international organisations, organs and officials thereof and to persons who are members of a diplomatic mission or consular post of a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income and on capital gains.

**Article 30**  
**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 the Netherlands Antilles and Aruba, if the country 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.
2. Unless otherwise agreed the termination of the Convention shall not also terminate any extension of the Convention to any country to which it has been extended under this Article.

Chapter VI  
Final Provisions

**Article 31**  
**Entry Into Force**

Each of the Contracting States shall notify to the other through diplomatic channels the completion of the procedures required by its law for the bringing into force of this Convention. The provisions of the Convention shall enter into force on the thirtieth day after the date of receipt of the later of these notifications and shall have effect in both Contracting States:

- a) in the case of taxes withheld at source, in respect of amounts paid on or after the first day of January of the calendar year next following that in which the Convention entered into force;

- b) in the case of other taxes, in respect of taxes levied for periods beginning on or after the first day of January of the calendar year next following that in which the Convention entered into force.

**Article 32**  
**Termination**

1. This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the fifth year from the date of entry into force of the Convention.
2. In such event the Convention shall cease to apply in respect of years of assessment beginning after the end of the calendar year in which notice is given.

In witness whereof the undersigned, duly authorised thereto, have signed this Convention.

Done at Accra this 10th day of March 2008, in duplicate, in the English language.

**FOR THE GOVERNMENT OF THE KINGDOM OF  
THE NETHERLANDS:**

*Jan Kees De Jager*

**FOR THE GOVERNMENT OF THE REPUBLIC OF  
GHANA:**

*Anthony Akoto Osei*

**PROTOCOL**

At the moment of signing the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, this day concluded between the Kingdom of the Netherlands and the Republic of Ghana, the undersigned have agreed that the following provisions shall form an integral part of the Convention.

**I. General**

1. The benefits of the Convention are not applicable to companies or other persons which are wholly or partly exempted from tax by a special regime under the laws of either one of the Contracting States. They are also not applicable to income from such companies or other persons derived by a resident of the other State, nor to shares, 'jouissance' rights or interests in such companies or other persons.

2. The provisions of paragraph 1 of this Protocol provision are also applicable in case a company or other person is treated under the administrative practice of that State in the same or similar way as a company or person as meant in that paragraph.
3. The competent authorities of the States shall by mutual agreement decide which special regime is meant in the provisions of paragraph 1 of this Protocol provision. The provisions of paragraph 1 are also applicable to any identical or substantially similar legislation in addition to or replacing such a special regime enacted after 1 January 2007 unless the competent authorities of the States decide otherwise by mutual agreement.
4. It is understood that either Contracting State may rely on the use of generally accepted tax principles with a view to preventing abuse of the Convention. In any case where a Contracting State intends to apply this paragraph, its competent authority shall in advance consult with the competent authority of the other Contracting State.

#### II. Ad Article 3, paragraph 1, subparagraph e

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

#### III. Ad Article 3, paragraph 2 and Article 26

It is understood that, if the competent authorities of the Contracting States have, by mutual agreement, reached a solution within the context of the Convention for cases in which

- a) application of paragraph 2 of Article 3 with respect to the interpretation of a term not defined in the Convention; or
- b) differences in qualification (for example of an element of income or of a person)

would result in double taxation or double exemption, this solution, after publication thereof by both competent authorities, shall also be binding for the application of the provisions of the Convention in other similar cases.

#### IV. Ad Article 4

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

#### V. Ad Articles 5, 6, 7 and 13

It is understood that rights to the exploration and exploitation of natural resources shall be regarded as immovable property located in the Contracting State to whose seabed - and subsoil thereof - these rights apply, and that these rights are regarded as assets of a permanent establishment in that State. Furthermore, it is understood that the aforementioned rights include rights to interests in, or benefits from assets that arise from, that exploration or exploitation.

#### VI. Ad Article 7

In respect of paragraphs 1 and 2 of Article 7, where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of that portion of the income of the enterprise that is attributable to the actual activity of the permanent establishment in respect of such sales or business.

Specifically, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits attributable to such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract that is effectively carried out by the permanent establishment in the Contracting State where the permanent establishment is situated. The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the Contracting State of which the enterprise is a resident.

#### VII. Ad Article 8

It is understood that the provisions of Article 8 shall also apply to taxes levied on the basis of the gross receipts in respect of the carriage of passengers and cargo in international traffic.

#### VIII. Ad Article 9

It is understood that the fact that associated enterprises have concluded arrangements, such as cost sharing arrangements or general services agreements, for or based on the allocation of executive, general administrative, technical and commercial expenses, research and development expenses and other similar expenses, shall not by itself constitute a condition as stated in paragraph 1 of Article 9.

#### IX. Ad Article 10

1. Notwithstanding paragraph 2 of Article 10, the Contracting State of which the company is a resident shall not levy a tax on dividends paid by that company, if the beneficial owner of the dividends is a pension fund referred to in paragraph 2 of Article 4.
2. It is understood that, for the purposes of this Convention,

- a) the term "jouissance shares" means securities that grant the right to participate in the net profit of the company and do not represent capital of the company but represent a non financial contribution, such as a contribution in know how;
- b) the term "jouissance rights" means rights, whether or not documented by official papers, to participate in the net profit of the company, that do not represent capital of the company but represent a non financial contribution, such as a contribution in know how;
- c) the term "mining shares" means shares in a mining company subject to mining law and organised in a specific legal form;
- d) the term "founders' shares" means shares that are issued as remuneration for services rendered by founders during the constitution of a company and do not represent capital of the company.

#### X. Ad Articles 10, 11 and 12

Where tax has been levied at source in excess of the amount of tax chargeable under the provisions of Articles 10, 11 or 12, applications for the refund of the excess amount of tax have to be lodged with the competent authority of the State having levied the tax, within a period of three years after the expiration of the calendar year in which the tax has been levied.

#### XI. Ad Articles 10 and 13

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 and not as capital gains.

#### XII. Ad Article 13, paragraph 4

It is understood that the provision of paragraph 4 of Article 13 shall not apply if the gain is derived in the course of a corporate reorganisation, amalgamation, division or similar transaction.

Furthermore, it is understood that for the Netherlands paragraph 4 of Article 13 shall apply to shares listed on any other stock exchange subject to regulation by the Authority for the Financial Markets (or its successor) in the Netherlands.

#### XIII. Ad Article 16

It is understood that a "bestuurder" or "commissaris" of a company resident in the Netherlands shall be considered to be a member of the board of directors as meant in article 16. Where a resident of the Netherlands derives fees and other remuneration in his capacity as a member of the board of directors of a company resident in Ghana, such fees

and other remuneration may be taxed in Ghana. It is further understood that the provisions of this Article shall apply notwithstanding the provisions of Article 15.

#### XIV. Ad Article 26

The competent authorities of the States may also agree, with respect to any agreement reached as a result of a mutual agreement procedure as meant in Article 26 that the State in which there is an additional tax charge as a result of the aforementioned agreement shall not impose any administrative penalties, surcharges, interest and costs with respect to this additional tax charge, if the other State in which there is a corresponding reduction of tax as a result of the agreement refrains from the payment of any interest due with respect to such a reduction of tax.

#### XV. Ad Article 27

The Contracting States may release to the arbitration board, established under the provisions of paragraph 6 of Article 26, such information as is necessary for carrying out the arbitration procedure. The members of the arbitration board shall be subject to the limitations on disclosure described in paragraph 2 of this Article with respect to any information so released.

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

Done at Accra this 10th day of March 2008, in duplicate, in the English language.

**FOR THE GOVERNMENT OF THE KINGDOM OF  
THE NETHERLANDS:**

*Jan Kees de Jager*

**FOR THE GOVERNMENT OF THE REPUBLIC OF  
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