

No. 498

**NETHERLANDS
and
UNITED STATES OF AMERICA**

Convention with respect to taxes on income and certain other taxes (with protocol of exchange of instruments of ratification). Signed at Washington, on 29 April 1948

Dutch and English official texts communicated by the Permanent Representative of the Netherlands to the United Nations. The registration took place on 7 July 1949.

**PAYS-BAS
et
ETATS-UNIS D'AMERIQUE**

Convention touchant les impôts sur le revenu et certains autres impôts (avec protocole d'échange des instruments de ratification). Signée à Washington, le 29 avril 1948

Textes officiels néerlandais et anglais communiqués par le représentant permanent des Pays-Bas auprès de l'Organisation des Nations Unies. L'enregistrement a eu lieu le 7 juillet 1949.

No. 498. CONVENTION¹ BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE UNITED STATES OF AMERICA WITH RESPECT TO TAXES ON INCOME AND CERTAIN OTHER TAXES. SIGNED AT WASHINGTON, ON 29 APRIL 1948.

The Government of the Kingdom of the Netherlands and the Government of the United States of America desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and certain other taxes, have appointed for that purpose as their respective Plenipotentiaries:

The Government of the Kingdom of the Netherlands:

Mr. E. N. van Kleffens, Ambassador Extraordinary and Plenipotentiary of the Kingdom of the Netherlands, and

The Government of the United States of America:

Mr. George C. Marshall, Secretary of State,

who, having communicated to each other their full powers, found in good and due form, have agreed upon the following Articles:

Article I

(1) The taxes which are the subject of the present Convention are:

(a) In the case of the United States; the Federal income taxes.

(b) In the case of the Netherlands:

(i) for the application of the provisions of the Convention other than Article XX, the income tax and the Netherlands taxes credited against it, the corporation tax and the Netherlands taxes credited against it, the property tax and the tax on fees of directors and managers of corporations; and

(ii) for the application of Articles XX to XXVIII inclusive (except Articles XXIV and XXVII), the capital accretions tax and the extraordinary capital tax.

¹ Became effective on 1 January 1947, in accordance with article XXVIII (2). The exchange of the instruments of ratification took place at Washington on 1 December 1948.

(2) The present Convention shall apply also to any other taxes of a substantially similar character imposed by either Contracting State subsequently to the date of signature of the present Convention, or, by the government of any overseas part of the Kingdom (in the case of the Netherlands) or overseas territory (in the case of the United States) to which the present Convention is extended under Article XXVII, subsequently to the date of the notification of extension.

(3) In the event of appreciable changes in the fiscal laws of either of the Contracting States the competent authorities of the Contracting States will consult together.

Article II

(1) In the present Convention, unless the context otherwise requires:

(a) The term "United States" means the United States of America, and when used in a geographical sense means the States, the Territories of Alaska and of Hawaii, and the District of Columbia.

(b) The term "Netherlands" means only the Kingdom of the Netherlands in Europe.

(c) The term "United States corporation" means a corporation, association or other organization or juridical entity created in the United States or under the laws of the United States or of any State or territory of the United States.

(d) The term "Netherlands corporation" means a corporation, association or other organization or juridical entity created in the Netherlands or under the laws of the Netherlands.

(e) The terms "corporation of one Contracting State" and "corporation of the other Contracting State" mean a United States corporation or a Netherlands corporation, as the context requires.

(f) The term "United States enterprise" means an industrial or commercial enterprise or undertaking carried on in the United States by a citizen or resident of the United States or by a United States corporation.

(g) The term "Netherlands enterprise" means an industrial or commercial enterprise or undertaking carried on in the Netherlands by a citizen or resident of the Netherlands or by a Netherlands corporation.

(h) The terms “enterprise of one of the Contracting States” and “enterprise of the Contracting State” mean a United States enterprise or a Netherlands enterprise, as the context requires.

(i) The term “permanent establishment”, when used with respect to an enterprise of one of the Contracting States, means a branch, factory, or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he regularly fills orders on behalf of such enterprise. An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business dealings in such other Contracting State through a *bona fide* commission agent, broker or custodian acting in the ordinary course of his business as such. The fact that an enterprise of one of the Contracting States maintains in the other Contracting State a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute such fixed place of business a permanent establishment of such enterprise. When a corporation of one Contracting State has a subsidiary corporation which is a corporation of the other Contracting State or which is engaged in trade or business in such other Contracting State, such subsidiary corporation shall not, merely because of that fact, be deemed to be a permanent establishment of its parent corporation.

(j) The term “competent authority” or “competent authorities” means, in the case of the United States, the Commissioner of Internal Revenue or his duly authorized representative; in the case of the Netherlands, the Directeur-Generaal der Belastingen or his duly authorized representative; and, in the case of any part or territory to which provisions of the present Convention are extended under Article XXVII, the competent authority for the administration in such part or territory of the taxes to which such provisions apply.

(2) In the application of the provisions of the present Convention by either of the Contracting States, any term which is not defined in the present Convention shall, unless the context otherwise requires, have the meaning which that term has under the laws of such Contracting State relating to the taxes which are the subject of the present Convention.

Article III

(1) An enterprise of one of the Contracting States shall not be subject to taxation by the other Contracting State in respect of its industrial or commercial profits unless it is engaged in trade or business in the other Contracting State through a permanent establishment situated therein. If it is so engaged the other Contracting State may impose the tax only upon the income of such enterprise from sources within such other State.

(2) Where an enterprise of one of the Contracting States is engaged in trade or business in the other Contracting State through a permanent establishment situated therein, there shall be attributed to such permanent establishment the industrial or commercial profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment, and the profits so attributed shall, subject to the law of such other Contracting State, be deemed to be income from sources within such other Contracting State.

(3) In determining the industrial or commercial profits from sources within one of the Contracting States of an enterprise of the other Contracting State, no profits shall be deemed to arise from the mere purchase of goods or merchandise within the former Contracting State by such enterprise.

(4) The competent authorities of the Contracting States may lay down rules by agreement for the apportionment of industrial or commercial profits.

Article IV

Where an enterprise of one of the Contracting States, by reason of its participation in the management, control or capital of an enterprise of the other Contracting State, makes with or imposes on the latter enterprise, in their commercial or financial relations, conditions different from those which would be made with an independent enterprise, any profits which would, but for those conditions, have accrued to one of the enterprises, may be included in the taxable profits of that enterprise.