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

The Government of the Kingdom of the Netherlands and the Government of the Republic of Chile,

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

Intending to conclude a Convention for the elimination of double taxation with respect to taxes on income and on capital without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Convention for the indirect benefit of residents of third States),

Have agreed as follows:

CHAPTER I

SCOPE OF THE CONVENTION

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. For the purpose of this paragraph, the term "fiscally transparent" means situations where, under the law of a Contracting State, income or part thereof of an entity or arrangement is not taxed at the level of the entity or arrangement but at the level of the persons who have interest in that entity or arrangement as if that income or part thereof were directly derived by such persons at the time when that income or part thereof is realised whether or not that income or part thereof is distributed by that entity or arrangement to such persons.

3. This Convention shall not affect the taxation, by a Contracting State, of its residents except with respect to the benefits granted under paragraphs 1 and 2 of Article 9, paragraph 6 of Article 13, and Articles 19, 20, 21, 23, 24, 25 and 29.

Article 2

TAXES COVERED

1. This Convention shall apply to taxes on income and on capital 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 all taxes imposed on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

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

a) in Chile, the taxes imposed under the Income Tax Act, "Ley sobre Impuesto a la Renta" (hereinafter referred to as "Chilean tax"); and

b) in the Netherlands the taxes imposed under:
- the income tax (de inkomstenbelasting);
- the wages tax (de loonbelasting);
- the company tax (de vennootschapsbelasting) including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mijnbouwwet (the Mining Act);
- the dividend tax (de dividendbelasting);
- the withholding tax (de bronbelasting);

(hereinafter referred to as "Netherlands tax").

4. The Convention shall apply also to any identical or substantially similar taxes and to taxes on capital which 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 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, as the context requires, the Republic of Chile or the Kingdom of the Netherlands, hereinafter "Chile" or "the Netherlands", respectively;

b) the term "the Netherlands" means the European part of the Kingdom of the Netherlands, including its territorial sea, and any area beyond and adjacent to that territorial sea within which the Kingdom of the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights;

c) the term "Chile" means the Republic of Chile, including its territorial sea, and any area beyond its territorial sea within which the Republic of Chile, in accordance with international law, exercises jurisdiction or sovereign rights;

d) the term "person" includes an individual, a company and any other body of persons, as well as a recognised pension fund;

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 except when such transport is operated solely between places in a Contracting State and the enterprise that operates the transport is not an enterprise of that State;

h) the term "competent authority" means:

(i) in the case of the Netherlands: the Minister of Finance or his authorised representative;

(ii) in the case of Chile: the Minister of Finance, the Commissioner of the Revenue Service or their authorised representatives;

i) the term "national" means:

(i) in the case of the Netherlands: any individual possessing the nationality of the Kingdom of the Netherlands and any legal person, partnership or association deriving its status as such from the laws in force in the Netherlands;

(ii) in the case of Chile:

A) any individual possessing the nationality of Chile;

B) any legal person or association constituted in accordance with the laws in force in Chile;

j) the term "recognised pension fund" of a Contracting State means any person, entity or arrangement established in that State and that is:

(i) generally exempt from taxation on its income in that State; and

(ii) established and operated exclusively or almost exclusively to administer or provide retirement benefits or similar benefits, also in case these benefits are ancillary or incidental, to individuals and that is regulated as such by that State or one of its political subdivisions or local authorities; or

(iii) established and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements referred to in subdivision (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, place of incorporation 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 recognised 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. 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 procedure.

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 the Convention, having regard to its place of effective management, the place where it is incorporated 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.

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 or exploitation of natural resources.

3. The term "permanent establishment" shall also include:

a) a building site or construction or installation project and the supervisory activities in connection therewith, but only if it lasts or the activity continues for more than six months;

b) an installation, a drilling rig, a ship used for the exploration of natural resources, or exploration activities and other activities related to the extraction or exploitation of natural resources in the other Contracting State, but only if the activities continue or are carried on in the other State for a period or periods of in the aggregate 30 days or more in any twelve-month period;

c) the furnishing of services, including consultancy services, by an enterprise through employees or other individuals engaged by the enterprise for such purpose but only if activities of that nature continue within a Contracting State for a period or periods

aggregating more than 183 days within any twelve month period commencing or ending in the taxable year concerned.

The duration of activities under the subparagraphs (a), (b) and (c) shall be determined by aggregating the periods during which activities are carried on in a Contracting State by closely related enterprises, provided that the activities of such closely related enterprise in that Contracting State are connected with the activities carried on in that Contracting State by its closely related enterprises. The period during which two or more closely related enterprises are carrying on concurrent activities shall be counted only once for the purpose of determining the duration of activities.

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 advertising, supplying information or carrying on scientific research, for the enterprise;

provided that such activity is of a preparatory or auxiliary character.

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.

6. Notwithstanding the provisions of paragraphs 1, 2 and 3 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.

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.

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.

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. For the purposes of this Convention, 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 or has carried 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 incurred for the purposes of the permanent establishment, including executive

and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

4. 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.

5. 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.

6. Notwithstanding the provisions of this Article, premiums in respect of insurance policies issued by an enterprise of a Contracting State to a resident of the other Contracting State may be taxed in the other State in accordance with its domestic law. However, except where the premium is attributable to a permanent establishment of the enterprise situated in that other Contracting State, the tax so charged shall not exceed:

a) 2 per cent of the gross amount of the premiums in the case of policies of reinsurance; and

b) 5 per cent of the gross amount of the premiums in the case of all other policies of insurance.

Article 8

SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. For the purposes of this Article:

a) the term "profits" includes:

(i) gross revenues derived directly from the operation of ships or aircraft in international traffic, and
(ii) interest over the amounts derived directly from the operation of ships or aircraft in international traffic, only if such interest is incidental to the operation.

b) the expression "operation of ships or aircraft" by an enterprise, also includes:

(i) the charter or rental on a bareboat basis of ships and aircraft;

(ii) the rental of containers and related equipment,

if that charter or rental is incidental to the operation by the enterprise of ships or aircraft in international traffic.

3. 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, if it agrees that the adjustment made by the first mentioned State is justified both in principle and as regard the amount, 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.

3. A Contracting State shall not include in the profits of an enterprise, and tax accordingly, profits that would have accrued to the enterprise but by reason of the conditions referred to in paragraph 1 have not so accrued, after six years from the end of the taxable year in which the profits would have accrued to the enterprise.

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 which holds directly at least 25 per cent of the capital of the company paying the dividends, throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividend), and

b) 15 per cent of the gross amount of the dividends in all other cases.

3. Notwithstanding the provisions of paragraph 2, such dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is a recognised pension fund of the other Contracting State.

4. The provisions of paragraph 2 and 3 shall not limit the application of the Additional Tax payable in Chile provided that the First Category Tax is creditable in computing the amount of Additional Tax.

5. The provisions of paragraphs 2, 3 and 4 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

6. The term "dividends" as used in this Article means income from shares, or other rights, not being debt-claims, participating in profits, as well as income from other 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.

7. 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.

8. 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.

9. Notwithstanding the other paragraphs of this Article, dividends paid by a company which under the laws of a Contracting State is a resident of that State, to an individual who is a resident of the other Contracting State and who upon ceasing to be a resident of the first-mentioned State is taxed on the appreciation of capital as meant in paragraph 6 of Article 13, may also be taxed in that State in accordance with the laws of that State, but only insofar as the revenue claim on the appreciation of capital is still outstanding.

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:

a) 4 per cent of the gross amount of the interest if the interest is beneficially owned by a resident of the other Contracting State that is either:

i) a bank or an insurance company;

ii) an enterprise substantially deriving its gross income from the active and regular conduct of a lending or finance business involving transactions with unrelated parties, where the enterprise is unrelated to the payer of the interest;

iii) an enterprise that sold machinery or equipment, where the interest is paid in connection with the sale on credit of such machinery or equipment;

b) 10 per cent of the gross amount of the interest in all other cases.

3. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and in particular, income from government securities and income from bonds or debentures, including premiums attaching to such securities, bonds or debentures as well as income which is subjected to the same taxation treatment as income from money lent by

the laws of the State in which the income arises. The term interest shall not include income dealt with in Article 10.

4. 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.

5. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether 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.

6. 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, exceeds, for whatever reason, 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

1. Royalties 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 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 is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 2 per cent of the gross amount of the royalties received as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment, but not including ships, aircraft or containers as dealt with in Article 8; and

b) 10 per cent of the gross amount of other royalties.

3. 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 cinematographic films, or films, tapes and other means of image or sound reproduction, patent, trade mark, design or model, plan, secret formula or process or other similar intangible

property, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties 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 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.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether 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 obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. 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 for whatever reason 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 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 a fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic, or from movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State of which the alienator is a resident.

4. (a) Gains derived by a resident of a Contracting State from the alienation of shares, comparable interests or other rights representing, directly or indirectly, the capital of a company that is resident of the other Contracting State may be taxed in that other Contracting State if:

(i) the alienator at any time during the 365 days preceding such alienation owned, directly or indirectly, shares, comparable interests or other rights representing 20 per cent or more of the capital of the company that is a resident of that other Contracting State; or

(ii) at any time during the 365 days preceding such alienation, such shares, comparable interests or other rights derived 50 per cent or more of their value, directly or indirectly, from immovable property situated in that other Contracting State.

(b) Any other gains derived by a resident of a Contracting State from the alienation of shares, comparable interests or other rights representing the capital of a company that is a resident of the other Contracting State may also be taxed in that other Contracting State but the tax so charged shall not exceed 16 per cent of the amount of the gains.

(c) Subject to the provisions of clause (ii) of subparagraph (a), gains derived by a recognised pension fund of a Contracting State from the alienation of shares, comparable interests or other rights referred to in subparagraphs (a) and (b) shall be taxable only in that Contracting State.

5. Gains from the alienation of any property other than that referred to in the preceding paragraphs of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

6. Where an individual has been a resident of a Contracting State and has become a resident of the other Contracting State, the first-mentioned State shall not be prevented from collecting tax imposed under its domestic law on the capital appreciation of shares, profit sharing certificates, call options and usufruct on shares and profit sharing certificates, in and debt-claims on a company for the period of residency of that individual in the first-mentioned State. In such case, the appreciation of capital taxed in the first-mentioned State shall not be included in the tax base when determining the appreciation of capital by the other State. However, the other Contracting State shall not be obliged to recognise any loss determined upon actual alienation and is not restricted in its taxing rights by this paragraph in respect of property situated in that State.

Article 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State. However, such income may also be taxed in the other Contracting State:

a) if the individual has a fixed base regularly available in the other Contracting State for purpose of performing the activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or

b) if the individual is present in the other Contracting State for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve month period commencing or ending in the calendar year concerned; in that case, only so much of the income as is derived from the activities performed in that other State may be taxed in that 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

INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other 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, a person who is 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 person who is the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment, as a member of the regular complement of a ship or aircraft, that is exercised aboard a ship or aircraft operated in international traffic, other than aboard a ship or aircraft operated solely within the other Contracting State, shall be taxable only in the first-mentioned State.

Article 16

DIRECTORS' FEES

1. Directors' fees and other remuneration and similar payments 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.

2. The term "member of the board of directors" includes persons who are charged with the general management of the company and persons who are charged with the supervision thereof.

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 that resident's personal activities as such exercised in the other Contracting State, may be taxed in that other State, except where the amount of the gross receipts derived by such artist or sportsperson, including expenses reimbursed to that person or borne on that person's behalf, from such activities does not exceed annually five thousand Euro (€ 5,000) or its equivalent in Chilean pesos for the taxable year concerned. The income referred to in this paragraph shall include any income derived from any personal activity exercised in the other State related with that person's renown as an artiste or sportsperson.

2. Notwithstanding the provisions of Articles 7, 14 and 15, 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 be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. Notwithstanding the provisions of paragraph 1 and 2, where income accrues from the exercise of activities by entertainers or sportspersons in a Contracting State and the visit to that State is financed wholly or mainly from public funds of the other Contracting State, the first-mentioned State shall not tax entertainers or sportspersons on income provided from such public funds paid from the other Contracting State.

Article 18

PENSIONS, RETIREMENT ANNUITIES AND SOCIAL SECURITY PAYMENTS

1. Pensions and other similar retirement remuneration (including retirement 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 and other payments made under a 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 or other similar retirement remuneration shall be deemed to arise in a Contracting State insofar as the contributions or payments associated with that pension or other similar retirement remuneration, or the entitlement to such pension or similar retirement remuneration qualified for relief from tax in that State.

4. The provisions of this Article shall also apply in case a lump sum payment is made in lieu of a pension or other similar retirement remuneration.

5. The term "retirement annuity" means a stated sum payable in respect of retirement and paid 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 from funds out of a retirement plan, including a retirement savings plan.

6. Contributions in a year in respect of services rendered in that year paid by, or on behalf of, an individual who exercises employment or self-employment in a Contracting State to a pension fund that is recognised for tax purposes in the other Contracting State shall, during a period not exceeding in the aggregate 60 months, be treated in the same way for tax purposes in the first-mentioned State as a contribution paid to a pension fund that is recognised for tax purposes in that first-mentioned State, if:

a) such individual was contributing on a regular basis to the pension fund before that individual became a resident of or temporarily present in the first-mentioned State; and

b) the competent authority of the first-mentioned State agrees that the pension fund generally corresponds to a pension fund recognised for tax purposes by that State.

For the purposes of this paragraph, "pension fund" includes a pension plan created under the social security system of a Contracting State.

7. Alimony and other maintenance payments paid to a resident of a Contracting State shall be taxable only in that State. However, any alimony or other maintenance payments paid by a resident of one of the Contracting States to a resident of the other Contracting State, shall, to the extent it is not allowable as a relief to the payer, be taxable only in the first-mentioned State.

8. Where the first-mentioned State in paragraph 1 or 2 applies either of those provisions, the tax rates applicable shall not be higher than those normally imposed on such pension payments on individuals that are residents of that State. However, the Contracting State may take into account other taxable income from sources in that State as well as disallow personal allowances or other deductions or exemptions when calculating the applicable tax rate.

Article 19

GOVERNMENT SERVICE

1. a) Salaries, wages and other remuneration, other than a pension, 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 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. The provisions of Articles 15, 16 and 17 shall apply to salaries, wages and other remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20

STUDENTS

Students or business apprentices who are present in a Contracting State solely for the purpose of their education or training and who are, or immediately before being so present were residents of the other Contracting State, shall be exempt from tax in the first-mentioned State on payments received from outside that first-mentioned State for the purpose of their maintenance, education or training.

Article 21

OTHER INCOME

1. Items of income beneficially owned by 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 beneficial owner 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.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other State.

CHAPTER IV

TAXATION OF CAPITAL

Article 22

CAPITAL

1. Capital represented by immovable property owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by 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 by 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, may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic, and by movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State of which the enterprise operating such ships or aircraft is resident.

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

CHAPTER V

METHODS FOR ELIMINATION OF DOUBLE TAXATION

Article 23

ELIMINATION OF DOUBLE TAXATION

1. In Chile, double taxation shall be avoided as follows:

a) residents in Chile, obtaining income or owning capital which has, in accordance with the provisions of this Convention, been subject to taxation in the Netherlands, may credit the tax so paid against any Chilean tax payable in respect of the same income or capital, subject to the applicable provisions of the law of Chile. This paragraph shall apply to all income or capital referred to in this Convention;

b) where, in accordance with any provision of the Convention, income derived or capital owned by a resident of Chile is exempt from tax in Chile, Chile may nevertheless, in calculating the amount of tax on other income or capital, take into account the exempted income or capital.

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

a) However, where a resident of the Netherlands derives items of income or owns items of capital which according to paragraphs 1, 3 and 4 of Article 6, paragraph 1 of Article 7, paragraph 7 of Article 10, paragraph 4 of Article 11, paragraph 4 of Article 12, paragraphs 1 and 2 of Article 13, paragraph 1 of Article 14, paragraph 1 of Article 15, paragraphs 1 and 2 of Article 18, paragraph 1 (subparagraph a) of Article 19, paragraph 2 of Article 21, and paragraphs 1, 2 and 3 of Article 22 of this Convention may be taxed or shall be taxable only in Chile and are included in the basis referred to in the first sentence of this paragraph, the Netherlands shall exempt such items of income or capital 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 or capital shall be deemed to be included in the amount of the items of income or capital which are exempt from Netherlands tax under those provisions.

b) Further, the Netherlands shall allow a reduction from the Netherlands tax so computed for the items of income which according to paragraph 6 of Article 7, paragraphs 2 and 9 of Article 10, paragraph 2 of Article 11, paragraph 2 of Article 12, paragraph 4 of Article 13, Article 16, paragraphs 1 and 2 of Article 17 and paragraphs 4 and 7 of Article 18 of this Convention may be taxed or shall be taxable only in Chile to the extent that these items are included in the basis referred to in the first sentence of this paragraph. The amount of this reduction shall be equal to the tax paid in Chile 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 for which the Netherlands gives a reduction 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 aggregation of income from more than one jurisdiction and the carry forward of the tax paid in Chile on the said items of income to subsequent years.

c) Notwithstanding the provisions of subparagraph a) of this paragraph, the Netherlands shall allow a reduction from the Netherlands tax for the tax paid in Chile on items of income which according to paragraph 1 of Article 7, paragraph 7 of Article 10, paragraph 4 of Article 11, paragraph 4 of Article 12 and paragraph 2 of Article 21 of this Convention may be taxed in Chile to the extent that these items are included in the basis referred to in the first sentence of this paragraph, 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 jurisdiction on such items of income. For the

computation of this reduction the provisions of subparagraph b of this paragraph shall apply accordingly.

d) The provisions of subparagraph a) shall not apply to items of income derived by a resident of the Netherlands where Chile applies the provisions of this Convention to exempt such items of income from tax or applies the provisions of Article 10, 11 and 12 to such items of income. In such case, the provisions of subparagraph b of this paragraph shall apply accordingly.

3. Where a resident of a Contracting State derives income or owns capital which may be taxed or shall be taxable only in the other Contracting State in accordance with the provisions of this Convention, the first-mentioned State shall not exempt such income or capital from tax, solely because the income or capital is also income derived or capital owned by a resident of that other State.

CHAPTER VI

SPECIAL PROVISIONS

Article 24

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. 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.

3. Nothing in this Article shall 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 6 of Article 11, or paragraph 6 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. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable

capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

5. Companies which are residents 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 companies which are residents of the first-mentioned State are or may be subjected.

6. In this Article, the term "taxation" means taxes that are subject of this Convention.

Article 25

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 24, 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 a mutual agreement procedure 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, provided that the competent authority of the other Contracting State has received notification that such a case exists within seven years from the end of the taxable year to which the case relates.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement procedure 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, 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 two years from the presentation of the case to the competent authority of the other Contracting State,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests and the competent authorities of the Contracting States so agree. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either Contracting State. Unless a person directly affected by the case does not accept the mutual agreement that implement the arbitration decision, that decision shall be binding on both Contracting State and shall be implemented notwithstanding any time limits in the domestic laws of these Contracting State. The competent authorities of the Contracting State shall by mutual agreement settle the mode of application of this paragraph.

Article 26

EXCHANGE OF INFORMATION

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

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

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

a) to carry out administrative measures at variance with the laws and the 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.

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 27

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. 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 28

ENTITLEMENT TO BENEFITS

1. Except as otherwise provided in this Article, a resident of a Contracting State shall not be entitled to a benefit that would otherwise be accorded under this Convention unless such resident is a qualified person, as defined in paragraph 2, at the time when the benefit would otherwise be accorded.

2. A resident of a Contracting State shall be a qualified person at a time when a benefit would otherwise be accorded under this Convention if, at that time, the resident is:

(a) an individual;

(b) that Contracting State, a political subdivision or local authority thereof, the central bank of that Contracting State, or an agency or instrumentality of that Contracting State or political subdivision or local authority;

(c) a company or other entity, if, throughout the taxable period that includes that time,

i) the principal class of its shares is listed on a recognised stock exchange and is regularly traded on one or more recognised stock exchanges, if the company or entity has a substantial presence in the Contracting State of which it is a resident; or

ii) shares representing at least 50 percent of the aggregate voting power and value of the company are owned directly or indirectly by five or fewer companies entitled to benefits under clause i) of this subparagraph, provided that, in the case of indirect ownership, each intermediate owner is a resident of either Contracting State;

(d) a recognised pension fund, if, at the beginning of the taxable year for which the claim to the benefit is made, at least 50 per cent of its beneficiaries, members or participants are individuals who are residents of either Contracting State; or

(e) a person other than an individual, if, at that time and on at least half of the days of a twelve month period that includes that time, persons that are residents of that Contracting State and that are qualified persons under subparagraph (a), (b), (c) or (d) own, directly or indirectly, at least 50 per cent of the shares of the person.

3. (a) A resident of a Contracting State shall be entitled to benefits to this Convention with respect to an item of income derived from the other Contracting State, regardless of whether the resident is a qualified person, if the resident is engaged in the active conduct of a business in the first-mentioned Contracting State, and the income derived from the other Contracting State emanates from, or is incidental to, that business. For purposes of this Article, the term "active conduct of a business" shall not include the following activities or any combination thereof:

(i) operating as a holding company or holding intangible property;

(ii) providing group financing (including cash pooling), unless provided by a company performing the main treasury functions within the group;

(iii) making or managing investments, unless these activities are carried on by a bank, insurance enterprise or registered securities dealer in the ordinary course of its business as such.

A holding company or a company holding intangible property shall, however, be considered to be engaged in the active conduct of a business if the company has the human and material resources to actively provide overall supervision of a group of companies or to be able to develop and enhance the intangible property.

(b) If a resident of a Contracting State derives an item of income from a business activity conducted by that resident in the other Contracting State, or derives an item of income arising in the other Contracting State from a connected person, the conditions described in subparagraph (a) shall be considered to be satisfied with respect to such item of income only if the business activity carried on by the resident in the first-mentioned Contracting State to which the item of income is related is substantial in relation to the same or complementary business activity carried on by the resident or such connected person in the other Contracting State. Whether a business activity is substantial for the purposes of this paragraph shall be determined based on all the facts and circumstances.

(c) For purposes of applying this paragraph, with respect to a resident of a Contracting State, business activities conducted in that Contracting State by connected persons shall be deemed to be conducted by such resident.

4. The competent authority of a Contracting State shall consult with the competent authority of the other Contracting State before denying a treaty benefit pursuant to paragraph 3.

5. A company that is a resident of a Contracting State shall also be entitled to a benefit that would otherwise be accorded under Article 10, if at the time when the benefit otherwise would be accorded and on at least half of the days of any twelve-month period that includes that time, at least 95 per cent of the aggregate vote and value of its shares (and at least 50 per cent of the aggregate vote and value of any disproportionate class of shares) is owned, directly or indirectly, by seven or fewer persons that are equivalent beneficiaries, provided that in the case of indirect ownership, each intermediate owner is a qualifying intermediate owner.

6. If a resident of a Contracting State is neither a qualified person, nor entitled to a benefit under paragraph 3 or 5, the competent authority of the Contracting State in which a benefit is denied under the preceding paragraphs of this Article may, nevertheless, grant a benefit of this Convention, taking into account the object and purpose of this Convention, but only if such resident demonstrates to the satisfaction of such competent authority that neither its establishment, acquisition or maintenance, nor the conduct of its operations, had as one of its principal purposes the obtaining of such benefit. The competent authority of the Contracting State to which a request

has been made under this paragraph by a resident of the other Contracting State shall consult with the competent authority of that other Contracting State before either granting or denying the request.

7. For the purposes of this Article:

(a) the term "principal class of shares" means the class or classes of shares of a company or entity which represents the majority of the aggregate vote and value of the company or entity;

(b) with respect to entities that are not companies, the term "shares" means interests that are comparable to shares;

(c) two persons shall be "connected persons" if one owns, directly or indirectly, at least 50 per cent of the beneficial interest in the other (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company's shares) or another person owns, directly or indirectly, at least 50 per cent of the beneficial interest (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company's shares) in each person; in any case, a person shall be connected to another if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons;

(d) the term "equivalent beneficiary" means any person who would be entitled to benefits with respect to an item of income accorded by a Contracting State under the domestic law of that Contracting State, this Convention or any other international agreement which are equivalent to, or more favourable than, the benefits to be accorded to that item of income under the provisions of the Convention; for the purposes of determining whether a person is an equivalent beneficiary with respect to dividends received by a company, the person shall be deemed to be a company and to hold the same voting power of the company paying the dividends as such voting power which the company claiming the benefits with respect to the dividends holds;

(e) the term "recognised stock exchange" means:

i) any stock exchange established and regulated as such under the laws of either Contracting State;

ii) any of the stock exchanges in the member states of the European Union, the NASDAQ System and any stock exchange in the United States of America which is registered with the U.S. Securities and Exchange Commission as a national securities exchange under the U.S. Securities and Exchange Act of 1934, the Peruvian Stock Exchange (Bolsa de Valores de Lima), the Mexican Stock Exchange (Bolsa Mexicana de Valores), the Colombian Stock Exchange (Bolsa de Valores de Colombia) and MILA (Mercado Integrado Latino Americano); and

iii) any other stock exchange agreed upon by the competent authorities of the Contracting States;

(f) the term "disproportionate class of shares" means any class of shares of a company or entity resident in one of the Contracting States that entitles the shareholder to disproportionately higher participation, through dividends, redemption payments or otherwise, in the earnings generated in the other Contracting State by particular assets or activities of the company;

(g) the term "qualifying intermediate owner" means an intermediate owner that is either:

(i) a resident of a State that has in effect with the Contracting State from which a benefit under this Convention is being sought a convention for the avoidance of double taxation; or

(ii) a resident of the same Contracting State as the company applying the test under paragraph 5 to determine whether it is eligible for benefits under the Convention;

(h) for purposes of subparagraph (c) of paragraph 2 of this Article, a company or entity has a substantial presence in the Contracting State of which it is a resident if:

(i) its principal class of shares is primarily traded on one or more recognised stock exchanges located in the primary economic zone of the Contracting State of which the company or entity is a resident; or

(ii) the company's or entity's primary place of management and control is in the Contracting State of which it is a resident;

(i) in making the determinations in subparagraph (h) of this paragraph,

(i) the company's primary place of management and control will be in the State of which it is a resident only if executive officers and senior management employees of that company exercise day-to-day responsibility for more of the strategic, financial and operational policy decision making for the company (including its direct and indirect subsidiaries) in that State than in any other state and the staffs of such persons conduct more of the day-to-day activities necessary for preparing and making those decisions in that State than in any other state; and

(ii) the primary economic zone of the Netherlands includes the member states of the European Union or the European Economic Area. The primary economic zone of Chile includes the member states of the *Alianza del Pacifico*.

8. Where an enterprise of a Contracting State derives income from the other Contracting State, and the first-mentioned Contracting State treats that income as attributable to a permanent establishment of that enterprise in a third jurisdiction, the tax benefits that otherwise would apply under the other provisions of this Convention shall not apply to that income if:

(a) the combined tax that is actually paid with respect to such income in the first-mentioned Contracting State and in that third jurisdiction is less than 60 per cent of the tax that would have been payable on that income in the first mentioned Contracting State

if the income were accrued or received in the first-mentioned Contracting State by the enterprise and were not attributable to the permanent establishment in that third jurisdiction; or

(b) the permanent establishment is situated in a third jurisdiction that does not have a comprehensive convention with respect to taxes on income in force with the other Contracting State from which the benefits of this Convention are being claimed, unless the income attributable to the permanent establishment is included in the tax base of the enterprise in the first- mentioned Contracting State.

Any income to which the provisions of this paragraph apply may be taxed in accordance with the domestic law of the other Contracting State, notwithstanding any other provisions of this Convention. However, any interest or royalties to which the provisions of this paragraph apply shall remain taxable in that other Contracting State but the tax so charged shall not exceed 25 per cent of the gross amount thereof.

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

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. For the purposes of the Convention, an individual who is a member of a diplomatic mission or consular post of a Contracting State in the other Contracting State or in a third State and who is a national of the sending State shall be deemed to be a resident of the sending State if he is subjected therein to the same obligations in respect of taxes on income as are residents of that State.

3. The Convention shall not apply to international organisations, organs and officials thereof and members of a diplomatic mission or consular post of a third State, being present in a Contracting State, if they are not subjected therein to the same obligations in respect of taxes on income as are residents of that State.

Article 30

MISCELLANEOUS RULES

1. With respect to pooled investment accounts or funds that are subject to a remittance tax and are required to be administered by a resident of Chile, the provisions of this Convention shall not be interpreted to restrict imposition by Chile of the tax on remittances (currently at 10 percent) from such accounts or funds in respect of the investment in assets situated in Chile.

2. For the purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Convention may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 3 of Article 25 or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

3. Nothing in this Convention shall affect the application of the existing provisions of the Chilean legislation DL 600 (Foreign Investment Statute) and Law N°20.848, as they are in force at the time of signature of this Convention and as they may be amended from time to time without changing the general principle thereof.

4. Nothing in this Convention shall affect the taxation in Chile of a resident in the Netherlands in respect of profits attributable to a permanent establishment situated in Chile, in accordance with the provisions of Article 7, under both the First Category Tax and the Additional Tax but only as long as the First Category Tax is deductible in computing the Additional Tax.

5. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of the provisions of this Convention.

CHAPTER VII

FINAL PROVISIONS

Article 31

ENTRY INTO FORCE

1. This Convention shall enter into force on the last day of the month following the month in which the later of the notifications has been received in which the respective Contracting States have notified each other in writing through diplomatic channels that the formalities constitutionally required in their respective States have been complied with.

2. The provisions of this Convention shall have effect:

a) in Chile, in respect of taxes on income obtained and amounts paid, credited to an account, put at the disposal or accounted as an expense, on or after the first day of January in the calendar year next following that in which this Convention enters into force, and in respect of taxes on capital, if and to the extent such tax will be imposed by Chile after the date of signature of this Convention, for tax levied in relation to capital owned on or after the first day of January of the year next following the date on which tax on capital has been introduced; and

b) in the Netherlands, 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 Convention has entered into force.

3. Notwithstanding the provisions of paragraph 2 of this Article, the provisions of Article 27 shall enter into effect on the date of the later note completing an exchange of diplomatic notes between the Contracting States indicating that each State is able to implement that Article.

Article 32

TERMINATION

1. This Convention shall remain in force until terminated by a Contracting State. A Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination. Notice of termination shall be regarded as having been given by a Contracting State on the date of receipt of such notice by the other Contracting State.

2.The provisions of this Convention shall cease to have effect:

a) in Chile,

(i) in respect of taxes on income obtained and amounts paid, credited to an account, put at the disposal or accounted as an expense, on or after the first day of January in the calendar year next following that in which the notice is given; and

(ii) in respect of taxes on capital, for taxes for any taxable years beginning on or after the first day of January in the calendar year next following that in which the notice is given; and

b) in the Netherlands,

(i) with respect to taxes levied on the basis of a taxable year, for taxes for any taxable years beginning on or after the first day of January in the calendar year next following that in which the notice is given; and

(ii) with respect to taxes not levied on the basis of a taxable year, for taxes levied on or after the first day of January in the calendar year next following that in which the notice is given; and

(c) with respect to the provisions of Article 26, on the first day of January in the calendar year next following that in which the notice is given. Requests for information received before the effective date of termination will be dealt with in accordance with the terms of this Convention. The Contracting States shall remain bound by the confidentiality duties provided for in Article 26 with respect to any information obtained under the Convention.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Convention.

DONE in duplicate at Santiago, Chile, this twenty-fifth day of January 2021, in the Spanish, Dutch and English languages, all texts being equally authentic. In case of divergence of interpretation the English text shall prevail.

For the Government of the Kingdom of the Netherlands

For the Government of the Republic of Chile

PROTOCOL

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

I. General

1. It is understood that the Commentaries on the Model Conventions of the OECD and UN – as they may be revised from time to time – constitute a means of interpretation in the sense of the Vienna Convention on the Law of Treaties of 23 May 1969 as far as the provisions of this Convention correspond to the OECD and UN Model Conventions and are subject to any contrary interpretations stipulated in this Protocol, any contrary interpretation agreed to by the competent authorities after the entry into force of this Convention and any future reservations or observations to the OECD and UN Model or their Commentaries made by either Contracting State.

2. The Contracting States may agree to extend this Convention either in its entirety or with any necessary modifications, to Aruba, Curaçao or Sint Maarten, if the Contracting States agree that such parts of the Kingdom of the Netherlands impose taxes similar or sufficiently similar in character and rates to those to which the Convention applies.

II. 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 natural resources 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.

III. Ad Article 10 of the Convention,

(a) Where in any other convention Chile agrees to limit the application of the Additional Tax payable in Chile, the Contracting States shall consult with each other with a view to amending the Convention in order to re-establish the balance of benefits under the Convention.

(b) Where

(i) the rate of the Additional Tax imposed under the domestic law of Chile exceeds 35 per cent; or

(ii) the First Category Tax ceases to be fully creditable in determining the amount of Additional Tax to be paid,

then paragraph 4 of Article 10 of the Convention shall not apply and the tax charged under subparagraphs (a) and (b) of paragraph 2 of Article 10 of the Convention shall not exceed 20 per

cent of the gross amount of dividends paid by a company which is a resident of a Contracting State and beneficially owned by a resident of the other Contracting State. In this case the Contracting States shall consult with each other with a view to amending the Convention in order to re-establish the balance of benefits under the Convention.

IV. 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.

V. Ad Article 11, paragraph 2, Article 12, paragraph 2, and Article 13.

If Chile agrees, in a tax treaty with any other State that enters into force after the date of entry into force of this Convention;

a) to limit the tax charged in Chile on interest arising in Chile to a rate lower than that specified in paragraph 2 of Article 11 of this Convention, or

b) to limit the tax charged in Chile on royalties arising in Chile to a rate below that provided for in paragraph 2 of Article 12 of this Convention, or

c) that payments for industrial, commercial or scientific equipment will not be treated as royalties for the purposes of that treaty, or

d) terms that further limit the right of Chile to tax gains under Article 13 of this Convention,

the Contracting States shall, at the request of the Netherlands, consult with a view to amending the Convention to incorporate such lower taxes or limiting terms into the Convention.

VI. Ad Articles 10 and 13

For the purpose of this convention, 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.

VII. Ad paragraph 3 of Article 25 of the Convention,

It is understood that the term "difficulties or doubts arising as to the interpretation or application of this Convention" in paragraph 3 of Article 25 of the Convention includes cases where the provisions of the Convention are used in a manner as to provide benefits not contemplated or not intended, considering that the object and purpose of the Convention is to avoid international double taxation and the prevention of tax evasion and avoidance.

VIII. Ad Articles 26 and 27

The contributions levied and benefits granted under income-related regulations of a Contracting State shall be considered taxes and revenue claims for purposes of the application of Articles 26 and 27.

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

DONE in duplicate at Santiago, Chile, this twenty-fifth day of January 2021, in the Spanish, Dutch and English languages, all texts being equally authentic. In case of divergence of interpretation the English text shall prevail.

For the Government of the Kingdom of the Netherlands

For the Government of the Republic of Chile