AGREEMENT

BETWEEN

THE SOCIALIST REPUBLIC OF VIETNAM

AND

THE KINGDOM OF BELGIUM

FOR THE AVOIDANCE OF DOUBLE TAXATION

AND THE PREVENTION OF FISCAL EVASION

WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM

AND

THE GOVERNMENT OF THE KINGDOM OF BELGIUM,

DESIRING to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, have agreed as follows :

CHAPTER I. - SCOPE OF THE AGREEMENT

Article 1

PERSONAL SCOPE

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

Article 2

TAXES COVERED

1. This Agreement 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 Agreement shall apply are in particular :

   (a) in the case of Vietnam :

   (1) the individual income tax;
   (2) the profits tax (included the foreign petroleum sub-contractor and the foreign contractor tax);
   (3) the profit remittance tax ;

   (hereinafter referred to as "Vietnamese tax");

   (b) in the case of Belgium :

   (1) the individual income tax;
   (2) the corporate income tax;
   (3) the income tax on legal entities;
   (4) the income tax on non-residents;
   (5) the special levy assimilated to the individual income tax;
   (6) the supplementary crisis tax,

   including the prepayments, the surcharges on these taxes and prepayments, and the supplements to the individual income tax;

   (hereinafter referred to as "Belgian tax").

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

CHAPTER II. - DEFINITIONS

Article 3

GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires :

(a) (1) the term "Vietnam" means the Socialist Republic of Vietnam; when used in a geographical sense, it means all its national territory, including its territorial sea, and any area beyond its territorial sea, within which Vietnam, in accordance with international law has sovereign rights with respect to the exploration and exploitation of natural resources of the sea-bed and subsoil and of the superjacent waters;

(2) the term "Belgium" means the Kingdom of Belgium; when used in a geographical sense, it means the national territory, the territorial sea and any other area in the sea within which Belgium, in accordance with international law, exercises sovereign rights or its jurisdiction;

(b) the terms "a Contracting State" and "the other Contracting State" mean Vietnam or Belgium, as the context requires;

(c) the term "person" includes an individual, a company and any other body of persons;

(d) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(e) 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;

(f) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(g) the term "competent authority" means :

(1) in the case of Vietnam, the Minister of Finance or his authorised representative, and

(2) in the case of Belgium, the Minister of Finance or his authorised representative;

(h) the term "nationals" means :

(1) all individuals possessing the nationality of a Contracting State;

(2) all legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State.

2. As regards the application of the Agreement by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Agreement applies.

Article 4

RESIDENT

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term 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 of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are 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 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 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.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, 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;
   (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
   (g) a warehouse.

3. The term "permanent establishment" likewise encompasses:

   (a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six months;

   (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than six months within any twelve-month period.

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 or display 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 or display;

   (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such a person:

(a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or

(b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

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

CHAPTER III. - TAXATION OF INCOME

Article 6

INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Contracting State but only so much of them as is attributable to:

   (a) that permanent establishment;
   (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or
   (c) other business activities carried on in that other State of the same or similar kind as those effected through 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 the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person in cases where the information available to the competent authority of that State is inadequate to determine the profits to be attributed to a permanent establishment, provided that such law shall be applied, so far as the information available to the competent authority permits, consistently with the principles laid down in this Article.

5. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles laid down in this Article.

6. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

7. 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.

8. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

SHIPPING AND AIR TRANSPORT

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

2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

ASSOCIATED ENTERPRISES

1. Where

   (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

   (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

   and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

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

Article 10

DIVIDENDS

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

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

   (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly or indirectly at least 50 per cent of the capital of the company paying the dividends;

   (b) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly or indirectly at least 25 per cent but less than 50 per cent of the capital of the company paying the dividends;

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

   This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income - even paid in the form of interest - which is treated as income from shares by the internal tax legislation of the State of which the paying company is a resident.

4. 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.

5. 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 in so far as such dividends are paid to a resident of that other State or in so far 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 to the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

INTEREST

1 Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2 However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3 Notwithstanding the provisions of paragraph 2, interest shall be exempted from tax in the Contracting State in which it arises if it is interest paid to the other Contracting State, a political subdivision or a local authority of that State, the National Bank of that State or any institution the capital of which is wholly owned by that State or the political subdivisions or local authorities of that State.

4 The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures; however, the term "interest" shall not include for the purpose of this Article penalty charges for late payment nor interest regarded as dividends under the first sentence of paragraph 3 of Article 10.

5. The provisions of paragraphs 1, 2 and 3 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.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable in the Contracting State in which the interest arises according to the law of that State.

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) 5 per cent of the gross amount of the royalties if they are paid as consideration for the use of, or the right to use, any patent, design or model, plan, secret formula or process, or for information concerning industrial or scientific experience;

   (b) 10 per cent of the gross amount of the royalties if they are paid as consideration for the use of, or the right to use, a trade mark or for information concerning commercial experience; and

   (c) 15 per cent of the gross amount of the royalties in all other cases.

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 cinematograph films and films or tapes for television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process 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 that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties 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, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable in the Contracting State in which the royalties arise, according to the law of that State.

Article 13

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

4. Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests in a company, the assets of which consist wholly or principally of immovable property situated in the other Contracting State, may be taxed in that other State. For the purpose of this paragraph the term "immovable property" does not include immovable property in which the business of the company is carried on. This paragraph shall not apply if such gain is derived in the course of a corporate reorganization, merger, division or similar transaction.

5. Gains derived by an individual who is a resident of a Contracting State from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of the other Contracting State may be taxed in that other State if this individual holds, alone or together with other individuals who are not residents of the other Contracting State, directly or indirectly at least 25 per cent of the capital of the company at any moment during the five year period preceding the alienation.

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

INDEPENDENT PERSONAL SERVICES

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

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

Article 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if :

   (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned, and

   (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

   (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State, may be taxed in that State.

Article 16

MANAGERS OF COMPANIES

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

   This provision shall also apply to payments derived in respect of the discharge of functions which under the laws of the Contracting State of which the company is a resident are treated as functions analogous to those exercised by a person referred to in the said provision.

2. Remuneration derived by a person referred to in paragraph 1 from the company, with regard to the discharge of day-to-day functions of a managerial or technical nature and remuneration derived by a resident of a Contracting State from his personal activity as a partner of a company, other than a company with share capital, which is a resident of the other Contracting State, may be taxed in accordance with the provisions of Article 15.

Article 17

ARTISTES AND SPORTSMEN

1. Notwithstanding the provisions of Articles 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 sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

Article 18

PENSIONS

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, pensions and other allowances, periodic or non periodic, paid under the social security legislation of a Contracting State or under a public scheme organised by a Contracting State in order to supplement the benefits of that legislation may be taxed in that State.

Article 19

GOVERNMENT SERVICE

1. (a) 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 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 :

(1) is a national of that State; or
(2) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a 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 pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions 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.

4. Remuneration paid by a Contracting State to an individual in respect of an activity exercised in the other Contracting State under any assistance or cooperation agreement concluded between both Contracting States may only be taxed in the first State.

Article 20

STUDENTS

1. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. Remuneration which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training, derives from an employment in that first-mentioned State shall not be taxed in that State provided that such employment is exercised in connection with the education or training during the normal duration of this education or training and provided that the remuneration does not exceed in any calendar year 120,000 Belgian francs or its equivalent in Vietnamese currency, as the case may be.

Article 21

OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement and which are taxed in that State shall be taxable only in that State.

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

CHAPTER IV. - TAXATION OF CAPITAL

Article 22

CAPITAL

1. Capital represented by immovable property referred to in Article 6, 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 by an enterprise of a Contracting State or by movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State

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

CHAPTER V. - METHODS OF ELIMINATION OF DOUBLE TAXATION

Article 23

1. In the case of Vietnam, double taxation shall be avoided as follows :

   Where a resident of Vietnam derives income or owns elements of capital which in accordance with the provisions of this Agreement, may be taxed in Belgium, Vietnam shall allow

   (a) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Belgium;

   (b) as a deduction from the tax on the elements of capital of that resident, an amount equal to the capital tax paid in Belgium.

   Such deduction in either case shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the elements of capital which may be taxed in Belgium.

2. In the case of Belgium, double taxation shall be avoided as follows :

   (a) Where a resident of Belgium derives income or owns elements of capital which may be taxed in Vietnam in accordance with the provisions of the Agreement, other than those of paragraph 2 of Article 10, of paragraphs 2 and 7 of Article 11 and of paragraphs 2 and 6 of Article 12, Belgium shall exempt such income or such elements of capital from tax but may, in calculating the amount of tax on the remaining income or capital of that resident, take into account the exempted income or elements of capital.

(b) Where a resident of Belgium derives items of his aggregate income for Belgian tax purposes which are dividends taxable in accordance with paragraph 2 of Article 10, and not exempt from Belgian tax according to sub-paragraph (c), interest taxable in accordance with paragraphs 2 or 7 of Article 11, or royalties taxable in accordance with paragraphs 2 or 6 of Article 12, the Vietnamese tax levied on that income shall be allowed as a credit against Belgian tax relating to such income in accordance with the existing provisions of Belgian law regarding the deduction from Belgian tax of taxes paid abroad, subject to any subsequent modification of those provisions. However, Belgium shall allow against its tax a credit with respect to interest and royalties derived from direct investment and included in the aggregate income for Belgian tax purposes of its residents, when Vietnamese tax may be charged on these items of income according to the provisions of the Agreement but no Vietnamese tax is effectively levied or Vietnamese tax is exempted or levied at a lower rate than those provided in Articles 11 and 12, under special measures of the internal law of Vietnam to promote the economic development of Vietnam. Such credit shall be calculated at a rate of 10 per cent but shall only apply for the first ten years for which the Agreement is effective. The competent authorities of the Contracting States may consult each other to determine whether this period shall be extended. The term " interest and royalties derived from direct investment" means interest paid in respect of loans, or royalties paid in respect of contracts, which are directly and durably connected with industrial or commercial development projects in Vietnam.

(c) Dividends derived by a company which is a resident of Belgium from a company which is a resident of Vietnam, and which may be taxed in Vietnam in accordance with paragraph 2 of Article 10, shall be exempt from the corporate income tax in Belgium under the conditions and within the limits provided for in Belgian law. However, dividends derived by a company which is a resident of Belgium from a company which is a resident of Vietnam and paid out of profits which are temporarily exempt from the tax on profits of the enterprise under special measures of the internal law of Vietnam to promote the economic development of Vietnam, shall also be exempt from the corporate income tax in Belgium during the first ten years for which the Agreement is effective. The competent authorities of the Contracting States may consult each other to determine whether this period shall be extended.

(d) Where, in accordance with Belgian law, losses incurred by an enterprise carried on by a resident of Belgium in a permanent establishment situated in Vietnam, have been effectively deducted from the profits of that enterprise for its taxation in Belgium, the exemption provided for in sub-paragraph (a) shall not apply in Belgium to the profits of other taxable periods attributable to that establishment to the extent that those profits have also been exempted from tax in Vietnam by reason of compensation for the said losses.

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. This paragraph shall not prevent that other State from imposing on the profits attributable to a permanent establishment in that State of a company which is a resident of the first-mentioned Staste further tax not exceeding 10 per cent on such profits as far as they are remitted from the permanent establishment to the head office. Moreover, this paragraph shall not apply to the taxation of permanent establishments in Vietnam of enterprises in respect of oil exploration or production activities or in respect of activities which in the case of Vietnamese enterprises are subject to tax under the Law on Agriculture Land Using Tax. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 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.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The provisions of this Article shall apply only to the taxes which are the subject of this Agreement.

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 Agreement 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 Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement.

4. The competent authorities of the Contracting States shall agree on administrative measures necessary to carry out the provisions of the Agreement and particularly on the proofs to be furnished by residents of either Contracting State in order to benefit in the other State from the exemptions or reductions in tax provided for in the Agreement.

5. The competent authorities of the Contracting States shall communicate directly with each other for the application of the Agreement.

Article 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. Any information received 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) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. 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.

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

   (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

   (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

   (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public) or national security.

Article 27

AID IN RECOVERY

1. The Contracting States shall lend aid and assistance to each other in order to notify and recover the taxes mentioned in Article 2 as well as surcharges, additions, interest, costs and fines of a non penal nature.

2. On the request of the competent authority of a Contracting State, the competent authority of the other Contracting State shall secure, in accordance with the legal provisions and regulations applicable to the notification and recovery of the said taxes of the latter State, the notification and the recovery of fiscal debt-claims referred to in paragraph 1 which are due in the first mentioned State. Such debt-claims shall not be considered as preferential claims in the requested State and that State shall not be obliged to apply any means of enforcement which are not authorised by the legal provisions and regulations of the requesting State.

3. Requests referred to in paragraph 2 shall be supported by an official copy of the instrument permitting the execution, accompanied where appropriate, by an official copy of any final administrative or judicial decision.

4. With regard to fiscal debt-claims which are open to appeal, the competent authority of a Contracting State may, in order to safeguard its rights, request the competent authority of the other Contracting State to take the protective measures provided for in the legislation of that other State; the provisions of paragraphs 1 to 3 shall apply, mutatis mutandis, to such measures.

5. The provisions of paragraph 1 of Article 26 shall also apply to any information which, by virtue of this Article, is supplied to the competent authority of a Contracting State.

Article 28

MEMBERS OF A DIPLOMATIC MISSION OR CONSULAR POST

Nothing in this Agreement shall affect the fiscal privileges of members of a diplomatic mission or consular post under the general rules of international law or under the provisions of special agreements.

CHAPTER VII. - FINAL PROVISIONS

Article 29

ENTRY INTO FORCE

1. Each of the Contracting States shall notify to the other in writing through the diplomatic channel the completion of the procedures required by its legislation for the entry into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications.

2. The Agreement shall have effect :

   (a) in Vietnam:

      (1) in respect of taxes withheld at source, in relation to taxable amount paid on or after January 1 of the year next following the calendar year in which the Agreement enters into force, and in subsequent calendar years;

      (2) in respect of other Vietnamese taxes, in relation to income, profits or gains arising in the calendar year next following the calendar year in which the Agreement enters into force, and in subsequent calendar years;

      (3) in respect of taxes on capital charged on elements of capital existing on January 1 of the calendar year next following that in which the Agreement enters into force, and in subsequent calendar years;

   (b) in Belgium:

      (1) with respect to taxes due at source on income credited or payable on or after January 1 in the year next following the year in which the Agreement enters into force;

      (2) with respect to other taxes charged on income of taxable periods beginning on or after January1 of the year next following the year in which the Agreement enters into force;

      (3) with respect to taxes on capital charged on elements of capital existing on January 1 in any year next following the year in which the Agreement enters into force.

Article 30

TERMINATION

This Agreement shall remain in force until terminated by a Contracting State; but either Contracting State may terminate the Agreement, through diplomatic channels, by giving to the other Contracting State, written notice of termination not later than the 30th June of any calendar year from the fifth year following that in which the Agreement enters into force. In the event of termination before July 1 of such year, the Agreement shall cease to have effect:

(a) in Vietnam:

(1) in respect of taxes withheld at source, in relation to taxable amount paid on or after January 1 of the year next following the calendar year in which the notice of termination is given, and in subsequent calendar years;

(2) in respect of other Vietnamese taxes, in relation to income, profits or gains arising in the calendar year next following the calendar year in which the notice of termination is given, and in subsequent calendar years;

(3) in respect of taxes on capital charged on elements of capital existing on January 1 of the calendar year next following that in which the notice of termination is given, and in subsequent calendar years;

(b) in Belgium:

(1) with respect to taxes due at source on income credited or payable on or after January 1 of the year next following the year in which the notice of termination is given;

(2) with respect to other taxes charged on income of taxable periods beginning on or after December 31 of the same year;

(3) with respect to taxes on capital charged on elements of capital existing on January 1 of the same year.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Hanoi, this 28th day of February of the year one thousand nine hundred and ninety six , in the English language.

FOR THE GOVERNMENT OF
THE SOCIALIST REPUBLIC OF VIETNAM

H.E. NGUYEN MANH CAM
MINISTER OF FOREIGN AFFAIRS

FOR THE GOVERNMENT OF
THE KINGDOM OF BELGIUM

H.E. ERIK DERYCKE
MINISTER OF FOREIGN AFFAIRS

PROTOCOL

At the moment of signing the Agreement between the Socialist Republic of Vietnam and the Kingdom of Belgium for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, the undersigned have agreed that the following provisions shall form an integral part of the Agreement

I. Ad Article 7 :

1. In respect of paragraph 1 of Article 7, profits derived from the sale of goods or merchandise of the same or similar kind as those sold, or from other business activities of the same or similar kind as those effected, through a permanent establishment, may be considered attributable to that permanent establishment if it is proved that this transaction has been resorted to in order to avoid taxation in the State where the permanent establishment is situated.

2. In respect of paragraphs 1 and 2 of Article 7, in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, the profits attributable to a permanent establishment situated in a Contracting State through which an enterprise of the other Contracting State carries on business shall be determined only on the basis of that part of the contract that is effectively carried out by the permanent establishment in the Contracting State where it is situated.

II. Ad Article 10:

1. For so long as, under the provisions of Belgian law referred to in paragraph 2 (c), first sentence of Article 23, dividends derived by a company which is a resident of Belgium from a company which is a resident of Vietnam are exempt from corporate income tax in Belgium, the percentage provided for in paragraph 2 (b) of Article 10 shall be reduced to 7 per cent of the gross amount of the dividends.

2. The limitation provided for in paragraph 2 of Article 10 includes in the case of Vietnam the profit remittance tax.

III. Ad Article 12:

It is understood that the provisions of Articles 7 and 14 shall apply to services performed by a resident of a Contracting State in the other Contracting State. Notwithstanding the preceding sentence, in case there is no permanent establishment or fixed base, payments for technical services performed by a resident of a Contracting State in the other Contracting State shall be deemed to be payments to which the provisions of sub-paragraph (a) of paragraph 2 of Article 12 apply.

IV. Ad Article 23:

It is understood that the second sentence of paragraph 2 (c) of Article 23 will only apply if dividends are paid out of profits generated by substantive business operations carried on in Vietnam by the company paying the dividends.

V. Ad Article 24:

1. Notwithstanding the provisions of paragraph 2 of Article 24, the percentage provided for in that paragraph shall be reduced to 7 per cent of the profits remitted from the permanent establishment to the head office as long as the profits remitted are exempt from tax in Belgium under sub-paragraph (a) of paragraph 2 of Article 23 of the Agreement.

2. For so long as Vietnam continues to grant to investors licenses under the Law on Foreign Investment in Vietnam, which specify the taxation to which the investors shall be subjected, such taxation shall not be regarded as breaching the terms of paragraphs 2 and 3 of Article 24.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Protocol.

DONE in duplicate at Hanoi, this 28th day of February of the year one thousand nine hundred and ninety six , in the English language.

FOR THE GOVERNMENT OF
THE SOCIALIST REPUBLIC OF VIETNAM

H.E. NGUYEN MANH CAM
MINISTER OF FOREIGN AFFAIRS

FOR THE GOVERNMENT OF
THE KINGDOM OF BELGIUM

H.E. ERIK DERYCKE
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