1490

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM

AND

THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS

FOR

THE AVOIDANCE OF DOUBLE TAXATION

AND

THE PREVENTION OF FISCAL EVASION

WITH RESPECT TO TAXES ON INCOME

The Government of the Socialist Republic of Vietnam and the Government of the Kingdom of the Netherlands,

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

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

3. The existing taxes to which the Agreement shall apply are:

(a) in Vietnam:

(i) the personal income tax;
(ii) the profit tax;

(iii) the profit remittance tax;

(hereinafter referred to as "Vietnamese tax");

(b) in the Netherlands:

(i) the income tax;
(ii) the wages tax;
(iii) the company tax including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mining Act of 1810 with respect to concessions issued from 1967, or pursuant to the Netherlands Continental Shelf Mining Act of 1965;
(iv) the dividend tax;

(hereinafter referred to as "Netherlands tax").

4. The Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this 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.

ARTICLE 3

General Definitions

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

(a) the terms "a Contracting State" and "the other Contracting State" mean Vietnam or the Netherlands as the context requires; the term "Contracting States" means Vietnam and the Netherlands;

(b) 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 and adjacent to its territorial sea, within which Vietnam, by Vietnamese legislation and in accordance with international law, has sovereign rights of exploration for and exploitation of natural resources of the sea bed and its sub-soil and superjacent watermass;

(c) the term "the Netherlands" means the part of the Kingdom of the Netherlands that is situated in Europe including the part of the sea bed and its sub-soil under the North Sea, to the extent that that area in accordance with international law has been or may hereafter be designated under Netherlands laws as an area within which the Netherlands may exercise sovereign rights with respect to the exploration and exploitation of the natural resources of the sea bed or its sub-soil;

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

(e) the term "company" means any body corporate or any entity which 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 "nationals" means:

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

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

(h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State; and

(i) the term "competent authority" means:

(i) in the case of Vietnam, the Minister of Finance or his authorized representative; and

(ii) in the case of the Netherlands, the Minister of Finance or his authorized representative.

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.

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 no 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 the enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop; and

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term "permanent establishment" likewise encompasses:

(a) a building site, 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 12-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 and that in their commercial or financial relations with the enterprise no conditions are made or imposed that differ from those generally agreed to by independent agents.

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.

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 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 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 banking enterprise by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

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

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

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this 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 from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbor of the ship is situated, or, if there is no such home harbor, in the Contracting State of which the operator or the ship is a resident.

3. For the purposes of this Article, profits derived from the operation in international traffic of ships and aircraft include profits derived from the rental on a bareboat basis of ships and aircraft if operated in international traffic if such rental profits are incidental to the profits described in paragraph 1.

4. 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 the reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly. It is understood that the fact that associated enterprises have concluded arrangements, such as costsharing arrangements or general services agreements, for or based on the allocation of executive, general administrative, technical and commercial expenses, research and development expenses and other similar expenses, is not in itself a condition as meant in the preceding sentence.

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxed accordingly - profits on which an enterprise of the other 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 than that other State, if it agrees to such adjustment, 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 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, but 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 or has invested more than 10 million US-dollars, or the equivalent in Netherlands or Vietnamese currency, in 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.

3. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraph 2.

4. The provisions of paragraph 2 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

5. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders', shares or other rights participating in profits, as well as income from debt-claims participating in profits and income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

ARTICLE 11

Interest

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

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of such interest 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 arising in a Contracting State shall be taxable only in the other Contracting State to the extent that such interest is:

(i) derived by the Government of the other Contracting State, including political subdivisions and local authorities thereof;

(ii) derived by the Central Bank of the other Contracting State;

(iii) derived by a financial institution owned or controlled by the Government of the other Contracting State, including political subdivisions and local authorities thereof;

(iv) paid in respect of a loan made by or guaranteed or insured by the Government of that other State including political subdivisions or local authorities thereof, the Central Bank of that other State or any other financial institution owned or controlled by the Government of that other State.

4. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraphs 2 and 3.

5. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, but not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

6. 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.

7. 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 a fixed base is situated.

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

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 recipient is the beneficial owner of such royalties 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 competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraph 2.

4. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

5. 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.

6. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, or 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 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.

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 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 according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

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 from the alienation of ships or aircraft operated in international traffic or movable property pertaining to such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated. For the purposes of this paragraph the provisions of paragraph 2 of Article 8 shall apply.

4. Where a resident of a Contracting State owns all or virtually all of the shares in a company which is a resident of the other Contracting State (other than a company of which the shares are quoted on a stock exchange) and the property of such company consists principally of immovable property situated in that other State, any gain derived by such resident from the alienation of shares in that company 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. The provisions of this paragraph shall not apply if such gain is derived in the course of a corporate reorganization, amalgamation, division or similar transaction.

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

6. The provisions of paragraph 5 shall not affect the right of each of the Contracting States to levy according to its own law a tax on gains from the alienation of shares or "jouissance" rights in a company, the capital of which is wholly or partly divided into shares and which under the laws of that State in a resident of that State, derived by an individual who is a resident of the other Contracting State.

ARTICLE 14

Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless 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 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

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

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

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

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 16

Directors' Fees

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 of a company which is a resident of the other Contracting State may be taxed in that other State.

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 theater, 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.

3. The provisions of paragraphs 1 and 2 shall not apply to remuneration or profits derived from activities exercised in a Contracting State if the visit to that State is directly supported wholly from public funds of the other Contracting State according to a cultural exchange program between the Contracting States.

ARTICLE 18

Pensions and Annuities

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 and any annuity shall be taxable only in that State.

2. However, where such remuneration is not of a periodical nature and it is paid in consideration of past employment in the other Contracting State, or where instead of the right to annuities a lump sum is paid, this remuneration or this lump sum may be taxed in the Contracting State where it arises.

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

ARTICLE 19

Government Service and Social Security Payments

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 may be taxed 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:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) 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 may be taxed 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 other State.

3. The provisions of Articles 15, 16, 17 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. Any pension and other payment paid out under the provisions of a social security system of a Contracting State to a resident of the other Contracting State may be taxed in the first-mentioned State.

ARTICLE 20

Students and Apprentices

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.

ARTICLE 21

Teachers, Professors and Researchers

1. Payments which a professor, researcher or teacher who is a resident of a Contracting State and who is present in the other Contracting State for the purpose of teaching or scientific research for a maximum period of two years in a university, college or other establishment for teaching or scientific research in that other State, receives for such teaching or research, shall be taxable only in the first-mentioned State.

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

ARTICLE 22

Other Income

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

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

ARTICLE 23

Methods for Elimination of Double Taxation

1. In Vietnam, double taxation shall be eliminated as follows:

Where a resident of Vietnam derives income, profits or gains which under the law of the Netherlands and in accordance with this Agreement may be taxed in the Netherlands, Vietnam shall allow as a credit against its tax on the income, profits or gains an amount equal to the tax paid in the Netherlands. The amount of credit, however, shall not exceed the amount of Vietnamese tax on that income, profits or gains computed in accordance with the taxation laws and regulations of Vietnam.

2. In the Netherlands, double taxation shall be eliminated as follows:

a) The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed the items of income which, according to the provisions of this Agreement, may be taxed in Vietnam;

b) However, where a resident of the Netherlands derives items of income which according to Article 6, Article 7, paragraph 6 of Article 10, paragraph 6 of Article 11, paragraph 5 of Article 12, paragraphs 1 and 2 of Article 13, Article 14, paragraphs 1 and 3 of Article 15, paragraphs 1 (subparagraph a), 2 (subparagraph a) and 4 of Article 19 and paragraph 2 of Article 22 of this Agreement may be taxed in Vietnam and are included in the basis referred to in subparagraph (a), the Netherlands shall exempt such items of income by allowing a reduction of its tax. This reduction shall be computed in conformity with the provisions of Netherlands law for the avoidance of double taxation. For that purpose the said items of income shall be deemed to be included in the total amount of the items of income which are exempt from Netherlands tax under those provisions;

c) Further, the Netherlands shall allow a deduction from Netherlands tax so computed for the items of income which according to paragraph 2 of Article 10, paragraph 2 of Article 11, paragraph 2 of Article 12, paragraphs 4 and 6 of Article 13, Article 16, Article 17 and paragraph 2 of Article 18 of this Agreement may be taxed in Vietnam to the extent that these items are included in the basis referred to in subparagraph (a). The amount of this deduction shall be equal to the tax paid in Vietnam on these items of income, but shall not exceed the amount of the reduction which would be allowed if the items of income so included were the sole items of income which are exempt from Netherlands tax under the provisions of Netherlands law for the avoidance of double taxation;

d) Where, by reason of the relief given under the provisions of Vietnamese laws for the purpose of encouraging investment in Vietnam, or by the relief given under the Agreement, the Vietnamese tax actually levied on interest arising in Vietnam or on royalties arising in Vietnam is lower than 10 per cent, then the amount of the tax paid in Vietnam on such interest and royalties shall be deemed to have been paid at the rate of 10 per cent. However, if the general tax rates under Vietnamese laws applicable to the aforementioned interest and royalties are reduced below those mentioned in this subparagraph, these lower rates shall apply for the purposes of this subparagraph. The provisions of this subparagraph shall only apply for a period of ten years after the date on which the Agreement entered into force. This period may be extended by mutual agreement between the competent authorities.

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 to which nationals of that other State in the same circumstances 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, provided that 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 State further tax not exceeding 10 per cent on such profits as far as they are remitted from the permanent establishment to the head office. Moveover, 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.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 8 of Article 11, or paragraph 7 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.

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 Contracting 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. Contributions paid by, or on behalf of, an individual who is a resident of a Contracting State to a pension plan that is recognized for tax purposes in the other Contracting State will be treated in the same way for tax purposes in the first-mentioned State as a contribution paid to a pension plan that is recognized for tax purposes in that first-mentioned State, provided that

(a) such individual was contributing to such pension plan before he became a resident of the first-mentioned State; and

(b) the competent authority of the first-mentioned State agrees that the pension plan corresponds to a pension plan recognized for tax purposes by that State.

For the purpose of this paragraph, "pension plan" includes a pension plan created under a public social security system.

6. Nothing in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs or deductions for tax purposes on account of civil status or family responsibilities which are granted to individuals so resident.

7. 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 who is a resident of a Contracting State considers that the actions of the competent authority 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 the person is a resident or if his case comes under paragraph 1 of Article 24, to that 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 this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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

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.

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).

ARTICLE 27

Diplomatic Agents and Consular Officers

1. Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

2. For the purposes of the Agreement an individual, who is a member of a diplomatic of consular mission 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 submitted therein to the same obligations in respect of taxes on income as are residents of that State.

3. The Agreement shall not apply to international organizations, organs and officials thereof and members of a diplomatic or consular mission 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 28

Territorial Extension

This Agreement may be extended, either in its entirety or with any necessary modifications, to either or both of the countries of the Netherlands Antilles or Aruba, if the country concerned imposes taxed substantially similar in character to those to which the Agreement applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed in notes to be exchanged through diplomatic channels.

ARTICLE 29

Entry into Force

This Agreement shall enter into force on the thirtieth day after the latter of the dates on which the respective Governments have notified each other in writing that the formalities constitutionally required in their respective States have been complied with, and its provisions shall have effect for taxable years and periods beginning on or after the first day of January in the calendar year following that in which the Agreement has entered into force.

ARTICLE 30

Termination

This Agreement shall remain in force until terminated by one of the Contracting States. Either State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the expiration of a period of five years from the date of its entry into force. In such event, the Agreement shall cease to have effect for taxable years and periods beginning after the end of the calendar year in which the notice of termination has been given.

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

DONE in duplicate at The Hague this 24 day of January of the year one thousand nine hundred and ninety five in the English language.

FOR THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM

Phan Van Khai
irst Deputy Prime Minister

FOR THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS

H.A.F.M.O. van Mierlo
Deputy Prime Minister and Minister of Foreign Affairs

W.A.F.G. Vermeend
State Secretary of Finance

PROTOCOL

At the moment of signing the Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxed on income, this day concluded between the Government of the Socialist Republic of Vietnam and the Government of the Kingdom of the Netherlands, the undersigned have agreed that the following provisions shall form an integral part of the Agreement.

I. Ad Article 1

It is understood that for the purposes of this Agreement a pension fund recognized as such in one of the Contracting States and of which the income is generally exempt from tax in that State, shall be regarded as resident of that State. As such pension fund shall be regarded, in the case of Vietnam, any pension fund recognized and controlled according to statutory provisions and in the case of the Netherlands, any pension fund recognized and controlled according to statutory provisions.

II. Ad Article 2

It is understood that the profit tax as mentioned in Article 2, paragraph 3, subparagraph (a), includes the foreign petroleum subcontractor tax and the foreign contractor tax.

III. Ad Article 3, paragraph 1, subparagraph (c)

It is understood that the term "the Netherlands" shall include the exclusive economic zone within which the Netherlands may exercise sovereign rights in accordance with its domestic law and international law, if the Netherlands, under Netherlands law, have designated or will designate such a zone and exercises or will exercise taxation rights therein.

IV. Ad Article 4

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

V. Ad Article 5, 6, 7 and 13

It is understood that exploration and exploitation rights of natural resources shall be regarded as immovable property situated in the Contracting State the sea bed and sub-soil of which they are related to, and that these rights shall be deemed to pertain to the property of a permanent establishment in that State. Furthermore, it is understood that the aforementioned rights include rights to interests in, or to the benefits of, assets to be produced by such exploration or exploitation.

VI. 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, where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the bases of that portion of the income of the enterprise that is attributable to the actual activity of the permanent establishment in respect of such sales or business. Specifically, in the case of contracts for the survey, supply, installation or constructions of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits attributable to such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract that is effectively carried out by the permanent establishment in the Contracting State where the permanent establishment is situated. The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the Contracting State of which the enterprise is a resident.

3. Notwithstanding the provisions of Article 7, the competent authority of a Contracting State may determine the tax liability of an enterprise of a Contracting State under its national legislation in case the enterprise did not supply that competent authority with adequate information and a request under Article 26 of the Agreement did not result in the supply of that information; the determination of the tax liability, however, shall be such that the result shall be in accordance with the principles contained in this Article.

VII. Ad Article 10, paragraph 2

Notwithstanding the provisions of subparagraph (b) of paragraph 2 of Article 10, as long as, under the provisions of the Netherlands Company Tax Act and to the future amendments thereto, a company which is a resident of the Netherlands is not charged to Netherlands company tax with respect to dividends the company receives from a company which is a resident of Vietnam the percentage provided for in this subparagraph shall be reduced to 7 per cent of the gross amount of the dividends.

VIII. Ad Article 11, paragraph 2

1. Notwithstanding the provisions of paragraph 2 of Article 11, as long as, under the provisions of the Netherlands taxation laws and to the future amendments thereto, the Netherlands does not levy a tax at source on interest paid to a resident of Vietnam, the percentage provided for in this paragraph shall be reduced to 7 per cent of the gross amount of the interest.

2. If Vietnam after 1 July 1993 has signed an Agreement for the avoidance of double taxation with a member State of the Organization for Economic Cooperation and Development which provides for a lower rate on interest (including a zero rate) then this lower rate will apply to residents of the Netherlands.

IX. Ad Article 12, paragraph 2

1. 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 subparagraph (a) of paragraph 2 of Article 12 apply.

2. If Vietnam after 1 July 1993 has signed an Agreement for the avoidance of double taxation with a member State of the Organisation for Economic Cooperation and Development which provides for a lower rate (including a zero rate) on payments for technical services as meant in paragraph 1 of this provision then this lower rate will apply to residents of the Netherlands.

X. Ad Article 10, 11, 12 and 24, paragraph 2

Where tax has been levied at source in excess of the amount of tax chargeable under the provisions of Article 10, 11, 12 or 24, paragraph 2, applications for the refund of the excess amount of tax have to be lodged with the competent authority of the State having levied the tax, within a period of three years after the expiration of the calendar year in which the tax has been levied.

XI. Ad Article 16

It is understood that in the case of the Netherlands the term "member of the board of directors" of a Netherlands company includes in any case a "bestuurder" or "commissaris". These persons are nominated as such by the general meeting of shareholders or by any other competent body of such company and are charged with the general management of the company and the supervision thereof, respectively.

XII. Ad Article 24

1. 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 investor shall be subject, the imposition of such taxation shall not be regarded as breaching the terms of paragraph 2 of Article 24.

2. If Vietnam after 1 July 1993 has signed an Agreement for the avoidance of double taxation with a member State of the Organization for Economic Cooperation and Development with a provision which provides for a treatment in conformity with or comparable to that as provided for in Article 24 of the Model Tax Convention of the afore-mentioned organization, as published in 1992, then such provision will apply to residents of both Contracting States; in that case the foregoing paragraph shall no longer apply.

3. 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 the Netherlands under subparagraph (b) of paragraph 2 of Article 23 of the Agreement.

4. If Vietnam after 1 July 1993 has signed an Agreement for the avoidance of double taxation with a member State of the Organisation for Economic Cooperation and Development which provides for a lower rate on profits remitted from the permanent establishment to the head office (including a zero rate) then this lower rate will apply to residents of the Netherlands.

BỘ NGOẠI GIAO

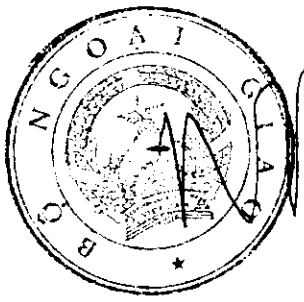
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SAO Y BẢN CHÍNH

"Để báo cáo,
Để thực hiện".

Hà Nội, ngày 21 tháng 10 năm 1995

TL. BỘ TRƯỞNG BỘ NGOẠI GIAO
Vụ trưởng Vụ Luật pháp và Điều ước quốc tế



Nguyễn Quý Bính

Nơi gửi:

- VPCP,
- Bộ Tài chính,
- Bộ Thương mại,
- Bộ Tư pháp,
- Uỷ ban Kế hoạch NN,
- Uỷ ban NN về HT-ĐT,
- Ngân hàng NN,
- Tổng cục Hải quan,
- ĐSQ VN tại Pháp,
- Vụ Tây Bắc Âu,
- Vụ LPQT,
- LT (12b)

(Hiệp định này có hiệu lực từ ngày 22 tháng 10 năm 1995)