

PROTOCOL
AMENDING
THE CONVENTION
BETWEEN
THE REPUBLIC OF MOLDOVA
AND
THE KINGDOM OF THE NETHERLANDS
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME AND CAPITAL

The Republic of Moldova

and

The Kingdom of the Netherlands,

Desiring to conclude a Protocol amending the Convention between the Republic of Moldova and the Kingdom of the Netherlands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital, with Protocol, signed at Chisinau on 3 July 2000 (hereinafter referred to as “the Convention”),

Have agreed as follows:

Article 1

The Preamble shall be replaced by the following:

"The Republic of Moldova

and

The Kingdom of the Netherlands,

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters,

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

Have agreed as follows:"

Article 2

Article 1 (Personal scope) shall be replaced by the following article:

*"Article 1
Personal scope*

1. This Convention shall apply to persons who are residents of one or both of the Contracting States.
2. For the purposes of this Convention, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State but only to the extent that the income is treated, for purposes of taxation by that State, as the income of a resident of that State.

3. In no case shall the provisions of paragraph 2 be construed to affect the right of a Contracting State to tax the residents of that Contracting State.”.

Article 3

Paragraph 3, subparagraph a), of Article 2 (Taxes covered) shall be replaced by the following:

“a) in the Netherlands:

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

(hereinafter referred to as “Netherlands tax”);”.

Article 4

Paragraph 3 of Article 4 (Resident) shall be replaced by the following:

- “3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Convention except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.”.

Article 5

In Article 5 (Permanent establishment):

1. Immediately after paragraph 3 shall be added the following paragraph:

“3.1. For the sole purpose of determining whether the twelve-month period referred to in paragraph 3, subparagraph a), has been exceeded,

a) where an enterprise of a Contracting State carries on activities in the other Contracting State at a place that constitutes a building site, construction, installation or assembly project, or supervisory activities in connection therewith, and these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days without exceeding twelve months, and

b) connected activities are carried on at the same building site, or construction, installation or assembly project, or supervisory activities in connection therewith, during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise,

these different periods of time shall be added to the period of time during which the first-mentioned enterprise has carried on activities at that building site or construction, installation or assembly project or supervisory activities in connection therewith.”.

2. In paragraph 4:

1. Subparagraph f) shall be replaced by the following:

“f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e),”;

2. At the end of the paragraph the following shall be added:

“provided that such activity or, in the case of subparagraph f, the overall activity of the fixed place of business, is of a preparatory or auxiliary character.”.

3. Immediately after paragraph 4 the following paragraph shall be added:

“4.1 Paragraph 4 shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and:

a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of this Article; or

b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.”.

4. Paragraphs 5 and 6 shall be replaced by the following paragraphs:

“5. Notwithstanding the provisions of paragraphs 1 and 2 but subject to the provisions of paragraph 6, where a person is acting in a Contracting State on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the enterprise, and these contracts are

a) in the name of the enterprise, or

- b) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or
- c) for the provision of services by that enterprise,

that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business (other than a fixed place of business to which paragraph 4.1 would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

- 6. Paragraph 5 shall not apply where the person acting in a Contracting State on behalf of an enterprise of the other Contracting State carries on business in the first-mentioned State as an independent agent and acts for the enterprise in the ordinary course of that business. Where, however, a person acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related, that person shall not be considered to be an independent agent within the meaning of this paragraph with respect to any such enterprise.”.
5. The following paragraph shall be inserted after paragraph 7:
- “8. For the purposes of this Article, a person or an enterprise is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person or an enterprise shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company’s shares or of the beneficial equity interest in the company) or if another person or enterprise possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a

company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise or in the two enterprises.”.

Article 6

Paragraph 2 subparagraph a) of Article 10 (Dividends) shall be replaced by the following:

- “a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 per cent of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividend);”.

Article 7

1. The following paragraph shall be added after paragraph 2 of Article 23 (Elimination of double taxation) and the following paragraphs shall be renumbered accordingly:

- “3. The provisions of paragraph 2 shall not apply to items of income derived or capital owned by a resident of the Netherlands where Moldova applies the provisions of this Convention to exempt such items of income from tax or applies the provisions of paragraph 2 or 3 of Article 10 or paragraph 2 or 3 of Article 11 or paragraph 2 of Article 12 to such items of income. In such case, the provisions of paragraph 4 shall apply accordingly.”.

2. The following paragraph shall be added after renumbered paragraph 6:

- “7. The provisions of this Article that require a Contracting State to exempt from income tax or capital tax or that require to provide a deduction or credit equal to the income tax or capital tax paid with respect to income derived or capital owned by a resident of that

Contracting State which may be taxed in the other Contracting State according to the provisions of this Convention shall not apply to the extent that such provisions allow taxation by that other Contracting State solely because the income or capital is also income derived or capital owned by a resident of that other Contracting State. ”.

Article 8

In Article 26 (Mutual agreement procedure):

1. Paragraph 1 shall be replaced by the following paragraph:

“1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.”;

2. Paragraph 5 shall be replaced by the following paragraph:

“5. Where,

a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention; and

b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the date when all the information required by the competent authorities in order to address the case has been provided to both competent authorities,

any unresolved issue arising from the case shall be submitted to

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

Article 9

Article 27 (Exchange of information) shall be replaced by the following Article:

“Article 27

Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting

State may be used for other purposes when such information may be used for such other purposes under the law of both States and the competent authority of the supplying State authorises such use.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
 - a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
 - c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).
4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.”

Article 10

The following Article shall be added after Article 28 (Members of diplomatic missions and consular posts) and the following Articles shall be

renumbered accordingly:

*“Article 29
Entitlement to benefits*

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

Article 11

Article IV (Ad Article 5) of the Protocol to the Convention shall be deleted and the following Articles shall be renumbered accordingly.

Article 12

The following Article shall be added after renumbered Article XIII (Ad Article 23) of the Protocol:

“XIV. Ad Article 27

The provisions of Article 27 shall apply accordingly to the income-related regulations of both Contracting States.”.

*Article 13
Entry into force*

This Amending Protocol shall enter into force on the last day of the month following the month in which the later of the notifications has been received in which the respective Contracting States have notified each other in writing, through diplomatic channels, that the formalities constitutionally required in

their respective States have been complied with, and its provisions shall apply:

- a) in respect of taxes withheld at source, on income derived on or after the first day of January in the calendar year following the year in which the Protocol enters into force;
- b) in respect of other taxes on income and taxes on capital, to taxes chargeable for any taxable year or period beginning on or after the first day of January in the calendar year following the year in which the Amending Protocol enters into force.

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

DONE at The Hague this 4th day of September 2023, in duplicate, in the Romanian, Dutch and English languages, the three texts being equally authentic. In case there is any divergence of interpretation between the Romanian and Dutch texts, the English text shall prevail.

**FOR THE
REPUBLIC OF MOLDOVA**



**FOR THE
KINGDOM OF THE NETHERLANDS**

