SYNTHESISED TEXT OF THE MULTILATERAL AGREEMENT TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING (MLI) AND THE AGREEMENT BETWEEN THE GOVERNMENT OF GEORGIA 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

General disclaimer on the Synthesised text document

This document presents the synthesised text for the application of the Agreement between the Government of Georgia 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 signed on 21 March 2002 (the "Agreement"), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by Georgia and the Netherlands on 7 June 2017 (the "MLI").

This document was prepared in consultation with the competent authority of the Netherlands and represents a shared understanding of the modifications made to the Agreement by the MLI.

The document was prepared on the basis of the MLI position of Georgia submitted to the Depositary upon ratification on 29 March 2019 and of the MLI position of the Netherlands submitted to the Depositary upon acceptance on 29 March 2019. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the Agreement.

The authentic legal texts of the Agreement and the MLI take precedence and remain the legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Agreement are included in boxes throughout the text of this document in the context of the relevant provisions of the Agreement. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the 2017 OECD Model Tax Convention.

Changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Agreement (such as "Covered Tax Agreement" and "Agreement", "Contracting Jurisdictions" and "Contracting States"), to ease the comprehension of the provisions of the MLI. The changes in terminology are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI. Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Agreement: descriptive language has been replaced by legal references of the existing provisions to ease the readability. In all cases, references made to the provisions of the Agreement or to the Agreement must be understood as referring to the Agreement as modified by the provisions of the MLI, provided such provisions of the MLI have taken effect.

References

The copies of the legal texts of the MLI and the Agreement can be found at the following links:

http://www.oecd.org/tax

https://mof.ge

The MLI position of Georgia submitted to the Depositary upon ratification on 29 March 2019 and of the MLI position of the Netherlands submitted to the Depositary upon acceptance on 29 March 2019 can be found on the MLI Depositary (OECD) webpage.

Disclaimer on the entry into effect of the provisions of the MLI

The provisions of the MLI applicable to this Agreement do not take effect on the same dates as the original provisions of the Agreement. Each of provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by Georgia and the Netherlands in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval: 29 March 2019 for Georgia and 29 March 2019 for the Netherlands.

Entry into force of the MLI: 1 July 2019 for Georgia and 1 July 2019 for the Netherlands.

Unless it is stated otherwise elsewhere in this document, the provisions of the MLI have effect with respect to the Agreement:

- with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2020; and
- with respect to all other taxes, for taxes levied with respect to taxable periods beginning on or after 1 January 2020.

AGREEMENT BETWEEN THE GOVERNMENT OF GEORGIA 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 Georgia

And

the Government of the Kingdom of the Netherlands,

[REPLACED by paragraph 1 of Article 6 of the MLI] [Desiring that an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income be concluded,]

The following paragraph 1 and paragraph 3 of Article 6 of the MLI replace the text referring to an intent to eliminate double taxation in the preamble of this Agreement:

ARTICLE 6 OF THE MLI –

PURPOSE OF A COVERED TAX AGREEMENT

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

Intending to eliminate double taxation with respect to the taxes covered by [*this Agreement*] 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 [*the Agreement*] for the indirect benefit of residents of third jurisdictions),

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 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 in particular:

a) in Georgia:
   – the companies profits (income) tax,
   – the natural persons income tax,
   (hereinafter referred to as "Georgian tax");
b) 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 Mijnwet 1810 (the Mining Act of 1810) with respect to concessions issued from 1967, or pursuant to the Mijnwet Continentaal Plat 1965 (the Netherlands Continental Shelf Mining Act of 1965),
   – de dividendbelasting (dividend tax),
   (hereinafter referred to as Netherlands 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 any substantial 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) the term "a Contracting State" means Georgia or the Kingdom of the Netherlands (the Netherlands), as the context requires; the term "Contracting States" means Georgia and the Kingdom of the Netherlands (the Netherlands);
b) the term "Georgia" means the territory within the state borders of Georgia, including land territory, internal waters and territorial sea and the air space above them, in respect

of which Georgia exercises its sovereignty, as well as the exclusive economic zone and continental shelf adjacent to its territorial sea in respect of which Georgia exercises its sovereign rights in accordance with international law;

c) the term "the Netherlands" means the part of the Kingdom of the Netherlands that is situated in Europe, including its territorial sea, and any area beyond the territorial sea within which the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights with respect to the sea bed, its sub-soil and its superjacent waters, and their natural resources;
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 "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;
h) the term "nationals" means:
    1. all individuals possessing the nationality of a Contracting State;
    2. all legal persons, and in the case of the Netherlands all partnerships and associations, deriving their status as such from the laws in force in a Contracting State;
i) the term "competent authority" means:
    1. in Georgia the Ministry of Finance or its duly authorized representative;
    2. in the Netherlands the Minister of Finance or his duly 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. 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.

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 neither of the States, 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.

4. A Contracting State, its political subdivisions or local authorities thereof, an instrumentality of that State, political subdivision or authority as well as a pension fund or charitable organisation recognised as such in a Contracting State and of which the income is generally exempt from tax in that State, shall be regarded as a resident of that State. As a recognised pension fund of a Contracting State shall be regarded any pension fund recognised and controlled according to statutory provisions of that State.

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 pipeline, and
g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than 6 months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
b) the sale, after an exhibition or a fair, of goods or merchandise displayed belonging to the enterprise;
c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
d) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
e) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information or disseminating information or of marketing of a preparatory or auxiliary character, for the enterprise;
f) the performance of planning, development and scientific research activities (including joint activities), engineering, testing, technical services, or supervisory or consultancy activities;
g) 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;
h) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to g), 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, the following types of activities of a resident of a Contracting State shall also be deemed not to be carried on through a permanent establishment in the other Contracting State: the maintenance of a fixed place of business solely for the purpose of the facilitation of the conclusion or the mere signing of contracts concerning loans, the delivery of goods or merchandise or technical services, whether or not these activities are activities of a preparatory or auxiliary character or main activities for that person.

6. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 7 applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the 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 paragraphs 4 and 5 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.

7. 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.

8. 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 State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

4. 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 contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of

a) the mere purchase by that permanent establishment of goods or merchandise for the enterprise of which it is a permanent establishment;
b) the activities mentioned in paragraph 5 of Article 5.

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. Income from international 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 harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of 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 reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly. It is understood, however, 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 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 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) 0 percent of the gross amounts of the dividends if the beneficial owner is a company which holds directly or indirectly at least 50 percent of the capital of the company paying the dividends and has invested more than 2 million US-Dollars, or the equivalent in Euro or Georgian currency, in the capital of the company paying the dividends;
b) 5 percent of the gross amounts of the dividends if the beneficial owner is a company

which holds directly or indirectly at least 10 percent of the capital of the company paying the dividends;

c) 15 percent of the gross amounts of the dividends in all other cases.

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

4. 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, not being 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.

5. 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.

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

Article 11. Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

2. The term “interest” as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

3. The provisions of paragraph 1 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 a case, the interest is taxable in that other Contracting State according to its own law.

4. 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.

5. 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 law 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 shall be taxable only in that other State if such resident is the beneficial owner of the royalties.

2. 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, or tapes for television or 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, and for information concerning industrial, commercial or scientific experience.

3. The provisions of paragraph 1 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 a case, the royalties are taxable in that other Contracting State according to its own law.

4. 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.

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

5. The provisions of paragraph 4 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 is a resident of that State, derived by an individual who is a resident of the other Contracting State and has been a resident of the first-mentioned State in the course of the last ten years preceding the alienation of the shares or "jouissance" rights.

In case where, under the domestic laws of the first-mentioned Contracting State, an assessment has been issued to the individual in respect of the alienation of the aforesaid shares deemed to have taken place at the time of his emigration from the first-mentioned Contracting State, the above shall apply only in so far as part of the assessment is still outstanding.

Article 14. Independent personal services

1. Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that 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 provisions of paragraphs 1 and 2, 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 the employment is exercised in connection with a building site or construction or installation project and the activities connected with such site or project are deemed not to be carried on through a permanent establishment according to the provisions of paragraph 3 of Article 5.

4. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated in international traffic, shall be taxable only in that State.

Article 16. Directors' fees

Directors' fees or other remuneration derived by a resident of a Contracting State in his capacity as a member of the board of directors, a “bestuurder” or a “commissaris” 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 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.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, income derived from such activities as defined in paragraph 1 of this Article shall be exempt from tax in the Contracting State in which these activities are exercised, if the visit of the entertainers, the musicians or the sportsmen to that State is supported wholly or almost wholly from the public funds of the other Contracting State, a political subdivision or a local authority thereof, or if these activities are performed under a cultural or sports agreement between the

Contracting States.

Article 18. Pensions, annuities and social security payments

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, as well as annuities paid to a resident of a Contracting State, shall be taxable only in that State. 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 shall be taxable only in that other State.

2. Notwithstanding the provisions of paragraph 1, a pension or other similar remuneration, annuity, or any pension and other payment paid out under the provisions of a social security system of a Contracting State, may also be taxed in the Contracting State from which it is derived, in accordance with the laws of that State:

a) if and in so far as the entitlement to this pension or other similar remuneration or annuity in the Contracting State from which it is derived is exempt from tax, or the contributions associated with the pension or other similar remuneration or annuity made to the pension scheme or insurance company were deducted in the past when calculating taxable income in that State or qualified for other tax relief in that State; and
b) if and in so far as this pension or other similar remuneration or annuity is in the Contracting State of which the recipient thereof is a resident not taxed at the generally applicable rate for income derived from dependent personal services, or less than 90 per cent of the gross amount of the pension or other similar remuneration or annuity is taxed; and
c) if the total gross amount of the pensions and other similar remuneration and annuities, and any pension and other payment paid out under the provisions of a social security system of a Contracting State, in any calendar year exceeds the sum of 10 000 Euro.

3. Notwithstanding the provisions of paragraphs 1 and 2, if this pension or other similar remuneration is not periodic in nature, is paid in respect of past employment in the other Contracting State and is paid out before the date on which the pension commences, or if a lump-sum payment is made in lieu of the right to an annuity before the date on which the annuity commences, the payment or this lump-sum may also be taxed in the Contracting State from which it is derived.

4. A pension or other similar remuneration or annuity is deemed to be derived from a Contracting State if and insofar as the contributions or payments associated with the pension or other similar remuneration or annuity, or the entitlements received from it qualified for tax relief in that State. The transfer of a pension from a pension fund or an insurance company in a Contracting State to a pension fund or an insurance company in another State will not restrict in any way the taxing rights of the first-mentioned State under this Article.

5. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraph 2. They shall also decide what details the resident of a Contracting State must submit for the purpose of the proper application of the Agreement in the other Contracting State, in particular so that it can be established whether the conditions referred in subparagraphs (a), (b) and (c) of paragraph 2 have been met.

6. 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.

7. Whether and to what extent a pension or similar remuneration falls under this Article or under Article 19, is determined by the nature of the past employment, as private or governmental, during which the entitlement to that part of the pension or similar remuneration was built up.

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 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:

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 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 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.

Article 20. Professors and teachers

1. Payments which a professor 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 21. Students

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 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 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. ELIMINATION OF DOUBLE TAXATION

Article 23. Elimination of double taxation

1. In Georgia double taxation shall be eliminated as follows:

where a resident of Georgia derives income which, in accordance with the provisions of this Agreement may be taxed in the Netherlands, Georgia shall allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in the Netherlands. Such deduction in either case shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in the Netherlands.

2. 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 Georgia.

3. However, where a resident of the Netherlands derives items of income which according to Article 6, Article 7, paragraph 5 of Article 10, paragraph 3 of Article 11, paragraph 3 of Article 12, paragraphs 1 and 2 of Article 13, Article 14, paragraph 1 of Article 15, paragraphs 1 (subparagraph a) and 2 (subparagraph a) of Article 19 and paragraph 2 of Article 22 of this Agreement may be taxed in Georgia and are included in the basis referred to in paragraph 1, 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.

The following paragraph 2 of Article 5 of the MLI applies to Paragraph 3 of Article 23 of this Agreement with respect to the residents of the Netherlands:

ARTICLE 5 –
APPLICATION OF METHODS FOR ELEIMINATION OF
DOUBLE TAXATION (Option A)

Paragraph 3 of Article 23 of the Agreement shall not apply where *Georgia* applies the provisions of *the Agreement* to exempt income derived by a resident of *the Netherlands* from tax or to limit the rate at which such income may be taxed. In the latter case, *the Netherlands* shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in *Georgia*. Such deduction shall not, however, exceed that part of the tax, as computed

before the deduction is given, which is attributable to such items of income which may be taxed in *Georgia*.

4. Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for the items of income which according to paragraph 2 of Article 10, paragraph 5 of Article 13, Article 16, Article 17 and paragraphs 2 and 3 of Article 18 of this Agreement may be taxed in Georgia to the extent that these items are included in the basis referred to in paragraph 1. The amount of this deduction shall be equal to the tax paid in Georgia 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.

5. Notwithstanding the provisions of paragraph 2, the Netherlands shall allow a deduction from the Netherlands tax for the tax paid in Georgia on items of income which according to Article 7, paragraph 5 of Article 10, paragraph 3 of Article 11, paragraph 3 of Article 12 and paragraph 2 of Article 22 of this Agreement may be taxed in Georgia to the extent that these items are included in the basis referred to in paragraph 1, if and insofar as the Netherlands under the provisions of Netherlands law for the avoidance of double taxation allows a deduction from the Netherlands tax of the tax levied in another country on such items of income. For the computation of this deduction the provisions of paragraph 3 of this Article shall apply accordingly.

CHAPTER V. SPECIAL PROVISIONS

Article 24. Activities on the continental shelf of the Netherlands

1. The provisions of this Article shall apply only with respect to activities on the Continental Shelf of the Netherlands and prevail over any other provisions of this Agreement. However, this Article shall not apply where such activities of a person constitute for that person a permanent establishment under the provisions of Article 5 or a fixed base under the provisions of Article 14.

2. In this Article the term "activities on the Continental Shelf" means activities which are carried on on the Continental Shelf of the Netherlands in connection with the exploration or exploitation of the sea bed and its sub-soil and their natural resources.

3. An enterprise of a Contracting State which carries on activities on the Continental Shelf shall, subject to paragraph 4 of this Article, be deemed to be carrying on, in respect of those activities, business in the Netherlands through a permanent establishment situated therein, unless the activities on the Continental Shelf are carried on for a period or periods not exceeding in the aggregate 30 days in any period of twelve months.

For the purposes of this paragraph:

a) where an enterprise carrying on activities on the Continental Shelf is associated with another enterprise and that other enterprise continues, as part of the same project, the same activities on the Continental Shelf that are or were being carried on by the first-mentioned enterprise, and the afore-mentioned activities carried on by both enterprises – when added together – exceed a period of 30 days, then each enterprise shall be deemed

to be carrying on its activities for a period exceeding 30 days in a twelve months-period;
b) an enterprise shall be regarded as associated with another enterprise if one holds directly or indirectly at least one third of the capital of the other enterprise or if a person holds directly or indirectly at least one third of the capital of both enterprises.

4. However, for the purposes of paragraph 3 of this Article the term "activities on the Continental Shelf" shall be deemed not to include:

a) one or any combination of the activities mentioned in paragraph 4 of Article 5;
b) towing or anchor handling by ships primarily designed for that purpose and any other activities performed by such ships;
c) the transport of supplies or personnel by ships or aircraft in international traffic.

5. A resident of a Contracting State who carries on activities on the Continental Shelf, which consist of professional services or other activities of an independent character, shall be deemed to be performing those activities from a fixed base in the Netherlands if the activities on the Continental Shelf in question last for a continuous period of 30 days or more.

6. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment connected with activities on the Continental Shelf carried on through a permanent establishment in the Netherlands may, to the extent that the employment is exercised on the Continental Shelf, be taxed in the Netherlands.

Article 25. 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 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 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 5 of Article 11, or paragraph 5 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. Contributions paid by, or on behalf of, an individual who is a resident of a Contracting State to a pension plan that is recognised 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 recognised 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 recognised 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. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 26. Mutual agreement procedure

1. [REPLACED by the first sentence of paragraph 1 of Article 16 of the MLI][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 25, 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.

The following first sentence of paragraph 1 of Article 16 of the MLI replaces the first sentence of paragraph 1 of Article 26 of this Agreement:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

Where a person considers that the actions of one or both of the [*Contracting States*] result or will result for that person in taxation not in accordance with the provisions of [*this Agreement*], that person may, irrespective of the remedies provided by the domestic law of those [*Contracting States*], present the case to the competent authority of either [*Contracting State*].

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. 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 endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or 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.

5. If any difficulty or doubt arising as to the interpretation or application of the Agreement cannot be resolved by the competent authorities of the Contracting States in a mutual agreement procedure pursuant to the previous paragraphs of this Article within a period of two years after the question was raised, the case may, at the request of either Contracting State, be submitted for arbitration, but only after fully exhausting the procedures available under paragraphs 1 to 4 of this Article and provided the taxpayer or taxpayers involved agree in writing to be bound by the decision of the arbitration board. The decision of the arbitration board in a particular case shall be binding on both Contracting States and the taxpayer or taxpayers involved with respect to that case.

Article 27. 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.

The competent authorities shall, by mutual agreement, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchanges of information shall be made.

2. The Contracting States may release to the arbitration board, established under the provisions of paragraph 5 of Article 26, such information as is necessary for carrying out the arbitration procedure. Such release of information shall be subject to the provisions of paragraph 3 of this Article. The members of the arbitration board shall be subject to the limitations on disclosure described in paragraph 1 of this Article with respect to any information so released.

3. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
b) to 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 28. Assistance in recovery

1. The States agree to lend each other assistance and support with a view to the collection, in accordance with their respective laws or administrative practice, of the taxes to which this Agreement shall apply and of any increases, surcharges, overdue payments, interests and costs pertaining to the said taxes.

2. At the request of the applicant State the requested State shall recover tax claims of the first-mentioned State in accordance with the law and administrative practice for the recovery of its own tax claims. However, such claims do not enjoy any priority in the requested State and cannot be recovered by imprisonment for debt of the debtor. The requested State is not obliged to take any executory measures which are not provided for in the laws of the applicant State.

3. The provisions of paragraph 2 shall apply only to tax claims which form the subject of an instrument permitting their enforcement in the applicant State and, unless otherwise agreed between the competent authorities, which are not contested.

However, where the claim relates to a liability to tax of a person as a non resident of the applicant State, paragraph 2 shall only apply, unless otherwise agreed between the competent authorities, where the claim may no longer be contested.

4. The obligation to provide assistance in the recovery of tax claims concerning a deceased person or his estate is limited to the value of the estate or the property acquired by each beneficiary of the estate, according to whether the claim is to be recovered from the estate or from the beneficiaries thereof.

5. The requested State shall not be obliged to accede to the request:

a) if the applicant State has not pursued all means available in its own territory, except where recourse to such means would give rise to disproportionate difficulty;
b) if and insofar as it considers the tax claim to be contrary to the provisions of this Agreement or of any other agreement to which both of the States are parties.

6. The request for administrative assistance in the recovery of a tax claim shall be accompanied by:

a) a declaration that the tax claim concerns a tax covered by the Agreement and that the conditions of paragraph 3 are met;
b) an official copy of the instrument permitting enforcement in the applicant State;
c) any other document required for recovery;
d) where appropriate, a certified copy confirming any related decision emanating from an administrative body or a public court.

7. The applicant State shall indicate the amounts of the tax claim to be recovered in both the currency of the applicant State and the currency of the requested State. The rate of exchange to be used for the purpose of the preceding sentence is the last selling price settled on the most representative exchange market or markets of the applicant State. Each amount recovered by the requested State shall be transferred to the applicant State in the currency of the requested State. The transfer shall be carried out within a period of a month from the date of the recovery.

8. At the request of the applicant State, the requested State shall, with a view to the recovery of an amount of tax, take measures of conservancy even if the claim is contested or is not yet the subject of an instrument permitting enforcement, in so far as such is permitted by the laws and administrative practice of the requested State.

9. The instrument permitting enforcement in the applicant State shall, where appropriate and in accordance with the provisions in force in the requested State, be accepted, recognised, supplemented or replaced as soon as possible after the date of the receipt of the request for assistance by an instrument permitting enforcement in the requested State.

10. Questions concerning any period beyond which a tax claim cannot be enforced shall be governed by the law of the applicant State. The request for assistance in the recovery shall give particulars concerning that period.

11. Acts of recovery carried out by the requested State in pursuance of a request for assistance, which, according to the laws of that State, would have the effect of suspending or interrupting the period mentioned in paragraph 10, shall also have this effect under the laws of the applicant State. The requested State shall inform the applicant State about such acts.

12. The requested State may allow deferral of payment or payment by installments, if its laws or administrative practice permit it to do so in similar circumstances; but it shall first inform the applicant State.

13. The competent authorities of the Contracting States shall by common agreement prescribe rules concerning minimum amounts of tax claims subject to a request for assistance.

14. The States shall reciprocally waive any restitution of costs resulting from the respective assistance and support which they lend each other in applying this Agreement. The applicant State shall in any event remain responsible towards the requested State for the pecuniary consequences of acts of recovery which have been found unjustified in respect of the reality of the tax claim concerned or of the validity of the instrument permitting enforcement in the applicant State.

15. In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
b) to 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 29. 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 or 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 organisations, 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.

The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Agreement:

ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE
(Principal purposes test provision)

Notwithstanding any provisions of [*the Agreement*], a benefit under [*the Agreement*] 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 [*the Agreement*].

Article 30. Territorial extension

1. 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 taxes 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.

2. Unless otherwise agreed the termination of the Agreement shall not also terminate any extension of the Agreement to any country to which it has been extended under this Article.

CHAPTER VI. FINAL PROVISIONS

Article 31. 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 32. Termination

This Agreement shall remain in force until terminated by one of the Contracting Parties. Either Party 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, duly authorized thereto, have signed this Agreement.

DONE at The Hague this 21st day of March 2002, in duplicate, in the Netherlands, Georgian and English languages, the three texts being equally authentic. In case there is any divergence of interpretation between the Georgian and Netherlands texts, the English text shall prevail.

For the Government of Georgia

For the Government of the Kingdom of the Netherlands

Protocol

At the moment of signing the Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, this day concluded between the Government of Georgia 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 3, paragraph 1, subparagraph e

1. It is understood that in the case of Georgia the term "company" includes an enterprise which is treated as a body corporate for tax purposes.

2. In case an entity that is treated as a body corporate for tax purposes is liable as such to tax in a Contracting State, but the income of that entity is taxed in the other Contracting State as income of the participants in that entity, the competent authorities shall take such measures that on the one hand no double taxation remains, but on the other hand it is prevented that merely as a result of application of the Agreement income is (partly) not subject to tax.

II. Ad paragraph 2 of Article 3 and Article 26

It is understood that if the competent authorities of the Contracting States, in mutual agreement have reached a solution, within the context of the Agreement, for cases in which double taxation or double exemption would occur:

a) as a result of the application of paragraph 2 of Article 3 with respect to the interpretation of a term not defined in the Agreement; or
b) as a result of differences in classification (for example of an element of income or of a person), this solution – after publication thereof by both competent authorities – shall for the application of the Agreement also be binding in other similar cases in the application of the provisions of the Agreement.

III. 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 harbour.

IV. Ad Articles 5, 6, 7, 13 and 24

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.

V. Ad Articles 5, 7 and 14

Profits or income derived by a resident of a Contracting State in connection with the exploitation of a pipeline in the other Contracting State may be taxed in that other State.

VI. Ad article 7

1. It is understood that in the case of Georgia business profits mean profits from economic activity.

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 of the enterprise, but shall be determined only on the basis 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 construction 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.

VII. Ad Articles 10 and 13

It is understood that income received in connection with the (partial) liquidation of a company or a purchase of own shares by a company is treated as income from shares and not as capital gains.

VIII. Ad Articles 10, 11 and 12

Where tax has been levied at source in excess of the amount of tax chargeable under the provisions of Articles 10, 11 or 12, applications for the refund of the excess amount of tax have to be lodged with the competent authority of the State having levied the tax, within a period of three years after the expiration of the calendar year in which the tax has been levied. Moreover, the competent authorities of the Contracting States may by mutual agreement establish procedures for the application of the Articles 10, 11 and 12.

IX. Ad Article 16

It is understood that “bestuurder or commissaris” of a Netherlands company means persons, who 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.

IN WITNESS whereof the undersigned, duly authorized thereto, have signed this Protocol.

DONE at The Hague this 21st day of March 2002, in duplicate, in the Netherlands, Georgian and English languages, the three texts being equally authentic. In case there is any divergence of interpretation between the Georgian and Netherlands texts, the English text shall prevail.

For the Government of Georgia

For the Government of the Kingdom of the Netherlands