SUPPLEMENTARY AGREEMENT TO AMEND THE CONVENTION BETWEEN THE KINGDOM OF BELGIUM AND THE REPUBLIC OF FINLAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Kingdom of Belgium

and

The Government of the Republic of Finland,

Desiring to conclude a Supplementary Agreement to amend the Convention between the Kingdom of Belgium and the Republic of Finland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, signed at Brussels on 18 May 1976 (hereinafter referred to as "the Convention"),

Have agreed as follows:

Article I

Paragraph 2 of Article 10 of the Convention shall be deleted and replaced by the following :

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

a) 5 per cent of the gross amount of the dividends if the recipient is a company which holds directly at least 25 per cent of the capital of the company paying the dividends ;

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

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

Article II

Article 16 of the Convention shall be deleted and replaced by the following :

"Article 16. Directors' fees

1. Director's fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or a similar organ of a company which is a resident of the other Contracting State may be taxed in that other State. This provision shall also apply to payments derived in respect of services rendered in the discharge of functions which under the laws of the Contracting State of which the company is a resident are treated as functions similar to those stated hereinbefore.

2. Remuneration paid by a company to any of its directors in respect of services rendered in the discharge of day-to-day functions of a managerial or technical nature and remuneration paid by a company, other than a company with share capital, to any of its members in respect of his personal activity as such member may be taxed in accordance with the provisions of paragraph 1 of Article 15, as if the remuneration were paid in respect of an employment."

Article III

Article 18 of the Convention shall be deleted and replaced by the following :

"Article 18. Pensions and Annuities

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

2. Notwithstanding the provisions of paragraph 1, and subject to the provisions of paragraph 2 of Article 19, pensions and other allowances, periodic or non-periodic, paid under the social security legislation of a Contracting State or under a public scheme organised by a Contracting State for social welfare purposes, and any annuity arising in that State may be taxed in that State.

3. The term "annuity" as used in this Article 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 (other than services rendered)."

Article IV

Article 24 of the Convention shall be deleted and replaced by the following :

"Article 24. Elimination of Double Taxation

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

a) Where a resident of Finland derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Belgium, Finland shall, subject to the provisions of sub-paragraph b, allow :

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

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

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

b) Dividends paid by a company which is a resident of Belgium to a company which is a resident of Finland and controls directly at least 10 per cent of the voting power in the company paying the dividends shall be exempt from Finnish tax.

c) Where in accordance with any provisions of the Convention income derived or capital owned by a resident of Finland is exempt from tax in Finland, Finland may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

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

a) Where a resident of Belgium derives income or owns capital which may be taxed in Finland in accordance with the provisions of the Convention, other than those of paragraph 2 of Article 10, of paragraphs 2 and 6 of Article 11 and of paragraphs 2 and 6 of Article 12, Belgium shall exempt such income or capital from tax but may, in calculating the amount of tax on the remaining income or capital of that resident, apply the rate of tax which would have been applicable if such income or capital had not been exempted.

b) Where a resident of Belgium derives items of his aggregate income for Belgian tax purposes which are dividends taxable in accordance with paragraph 2 of Article 10, and not exempt from Belgian tax according to sub-paragraph e below, interest taxable in accordance with paragraph 2 or 6 of Article 11, or royalties taxable in accordance with paragraph 2 or 6 of Article 12, the fixed proportion in respect of the foreign tax for which provision is made under Belgian law shall, under the conditions and at the rate provided for by such law, be allowed as a credit against Belgian tax relating to such income.

c) Where a resident of Belgium derives income which has been taxed in Finland in accordance with the provisions of paragraph 3 of Article 13, the amount of Belgian tax proportionately attributable to such income shall not exceed the amount which would be charged according to Belgian law if such income were taxed as earned income derived from sources outside Belgium and subject to foreign tax.

d) Where a resident of Belgium derives income from an undivided estate which is a resident of Finland, and such income may be taxed in Finland in accordance with the Convention, the provisions of sub-paragraph a or sub-paragraph b, as the case may be, shall apply according to the nature of the income.

e) Where a company which is a resident of Belgium owns shares in a company which is a resident of Finland, the dividends which are paid to it by the latter company shall be exempt from the corporate income tax in Belgium under the conditions and within the limits provided for in Belgian law.

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

Article V

Paragraph 1 of Article 29 of the Convention shall be deleted and the existing paragraphs 2 to 5 shall be renumbered as paragraphs 1 to 4.

Article VI

The following additional provisions shall constitute a Protocol to the Convention and shall form an integral part of that Convention:

"Protocol

Article 10 of the Convention, as modified by the Supplementary Agreement, signed at Brussels on 13th of March 1991, is consequential on the taxation laws in force in either Contracting State at that date. Those laws do not enable the Contracting States to work out a more integrated treatment of dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State.

However, it is understood that where in any double taxation convention concluded by Finland with a third State, being a European State, Finland agrees to refund without the condition of reciprocity the Finnish compensatory tax in respect of dividends paid by a company which is a resident of Finland to residents of the third State, the Government of Finland shall without undue delay inform the Government of Belgium and shall enter into negotiations with the Government of Belgium with a view to providing the same treatment for residents of Belgium as that provided for residents of the third State."

Article VII

1. The Governments of the Contracting States shall notify each other that the constitutional requirements for the entry into force of this Supplementary Agreement have been complied with.

2. The Supplementary Agreement shall enter into force thirty days after the date of the later of the notifications referred to in paragraph 1 and its provisions shall have effect :

a) in relation to dividends paid on or after 1 January 1990 ;

b) in relations to income referred to in Articles 16 and 18 of the Convention, derived on or after 1 January in the calendar year next following the year in which the Supplementary Agreement enters into force.

In witness whereof the undersigned, duly authorised thereto, have signed this Supplementary Agreement.

Done in duplicate at Brussels this 13th day of March 1991, in the English language.

For the Government of the Kingdom of Belgium :

MARK EYSKENS

For the Government of the Republic of Finland:

S.E.M. ENSIO HELANIEMI