PROTOCOL
AMENDING THE CONVENTION

BETWEEN

THE KINGDOM OF BELGIUM

AND

THE KINGDOM OF NORWAY

FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND FOR THE PREVENTION OF FISCAL EVASION, SIGNED IN OSLO ON 23 APRIL 2014

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THE KINGDOM OF BELGIUM,

THE FLEMISH COMMUNITY,

THE FRENCH COMMUNITY,

THE GERMAN-SPEAKING COMMUNITY,

THE FLEMISH REGION,

THE WALLOON REGION,

AND THE BRUSSELS-CAPITAL REGION, on the one hand,

AND

THE KINGDOM OF NORWAY, on the other hand,

DESIRING to amend the Convention between the Kingdom of Norway and the Kingdom of Belgium for the avoidance of double taxation with respect to taxes on income and for the prevention of fiscal evasion, signed at Oslo on 23 April 2014 (hereafter referred to as "the Convention"),

HAVE AGREED AS FOLLOWS:

ARTICLE I

The Preamble of the Convention shall be deleted and replaced by the following:

"The Kingdom of Belgium, the Flemish Community, the French Community, the German-speaking Community, the Flemish Region, the Walloon Region, and the Brussels-Capital Region, on the one hand,

and

The Kingdom of Norway, on the other hand,

DESIRING to further develop their economic relationship and to enhance their cooperation in tax matters,

INTENDING to conclude a Convention for the elimination of double taxation with respect to taxes on income 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 II

A. New paragraphs 2 and 3 shall be inserted after the first sentence of Article 1 and shall read as follows:

> "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 he 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. This Convention shall not affect the taxation, by a Contracting State, of its residents except with respect to the benefits granted under paragraph 3 of Article 7, paragraph 2 of Article 9 and Articles 18, 19, 22, 23, 24 and 27."

B. The first sentence of Article 1 shall be numbered as paragraph 1.

ARTICLE III

A new number shall be added to Article 2 paragraph 3 subparagraph b) and shall read as follows:

"v) the withholding tax on immovable property;"

ARTICLE IV

A. A new subparagraph m) shall be added to Article 3 paragraph 1 and shall read as follows:

"m) for the purposes of Articles 5 and 20, a person or 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 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."

B. Article 3 paragraph 2 shall be deleted and replaced by the following:

"2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a different meaning pursuant to the provisions of Article 24, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State."

ARTICLE V

Article 4 paragraph 3 shall be deleted and 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 mutual agreement by the competent authorities of the Contracting States, such person shall not be entitled to any relief or exemption from tax provided by this Convention except those provided by Articles 22, 23 and 24."

ARTICLE VI

Article 5 shall be deleted and replaced by the following:

"Article 5 Permanent Establishment

1. For the purposes of this Convention, 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, and
f) 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 twelve months.

4. For the sole purpose of determining whether the twelve-month period referred to in paragraph 3 has been exceeded,

a) where an enterprise of a Contracting State carries on activities in the other Contracting State during one or more periods of time at a place that constitutes a building site or construction or installation project, and

b) connected activities are carried on at the same building site or construction or installation project during different periods of time 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 or installation project.

This provision shall not apply if the first-mentioned enterprise proves that the exercise of those connected activities is justified by other reasons than to avoid those activities constituting a permanent establishment.

5. Notwithstanding the provisions of paragraphs 1, 2, 3 and 4 where an enterprise of a Contracting State performs services in the other Contracting State

a) through an individual who is present in that other State for a period or periods exceeding in the aggregate 183 days in any twelve month period, and more than 50 per cent of the gross revenues attributable to active business activities of the enterprise during this period or periods are derived from the services performed in that other State through that individual, or

b) for a period or periods exceeding in the aggregate 183 days in any twelve month period, and these services are performed for the same project or connected projects through one or more individuals who are present and performing such services in that other State

the activities carried on in that other State in performing these services shall be deemed to be carried on through a permanent establishment of the enterprise situated in that other State, unless these services are limited to those mentioned in paragraph 6 which, if performed through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph. For the purposes of this paragraph, services performed by an individual on behalf of one enterprise shall not be considered to be performed by another enterprise through that individual unless that other

enterprise supervises, directs or controls the manner in which these services are performed by the individual.

6. 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 maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

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

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

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

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e),

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.

7. Paragraph 6 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.

8. Notwithstanding the provisions of paragraphs 1 and 2, but subject to the provisions of paragraph 9, 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 6 which, if exercised through a fixed place of business (other than a fixed place of business to which paragraph 7 would apply), would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

9. Paragraph 8 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.

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

ARTICLE VII

A. Article 10 paragraph 2 shall be deleted and replaced by the following:

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

a) 5 per cent of the gross amount of the dividends if the beneficial owner is a pension fund, provided that the shares or other rights in respect of which such dividends are paid are held for the purpose of an activity mentioned in paragraph 1, l) of Article 3;
b) 15 per cent of the gross amount of the dividends in all other cases."

B. Article 10 paragraph 3 subparagraph a) shall be deleted and replaced by the following:

"a) a company which is a resident of the other Contracting State and which holds shares representing directly at least 10 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);"

C. Article 10 paragraph 8 shall be deleted.

ARTICLE VIII

A. Article 11 paragraph 2 shall be deleted and replaced by the following:

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

B. Article 11 paragraph 8 shall be deleted.

ARTICLE IX

Article 12 paragraph 5 shall be deleted.

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ARTICLE X

A. Article 20 paragraph 1 shall be deleted and replaced by the following:

"1. Subject to Article 28, the provisions of this Article shall apply notwithstanding any other provision of this Convention."

B. Article 20 paragraph 3 shall be deleted and replaced by the following:

"3. The provisions of paragraph 2 and sub-paragraph b) of paragraph 6 shall not apply where the activities are carried on for a period or periods not exceeding 30 days in the aggregate in any twelve months period commencing or ending in the taxable period concerned. However, for the purposes of this paragraph activities carried on by an enterprise closely related to another enterprise shall be regarded as carried on by the enterprise with which it is closely related if the activities in question are substantially the same as those carried on by the last-mentioned enterprise."

ARTICLE XI

Article 21 paragraph 4 shall be deleted.

ARTICLE XII

Article 22 paragraph 2 subparagraph e) shall be deleted and replaced by the following:

"e) Where a company which is a resident of Belgium derives from a company which is a resident of Norway dividends which are not exempted in accordance with subparagraph d), such dividends shall nevertheless be exempted from the corporate income tax in Belgium if the company which is a resident of Norway is effectively engaged in the active conduct of a business in Norway. In such case, such dividends shall be exempted under the conditions and within the limits provided for in Belgian law except those related to the fiscal regime applicable to the company which is a resident of Norway or to the income out of which the dividends are paid. This provision shall only apply to dividends paid out of income generated by the active conduct of a business and shall not apply to the extent that the company that is a resident of Norway has deducted, or may deduct, the dividends from its profits.

For the purposes of this paragraph, a company shall not be considered to be effectively engaged in the active conduct of a business in Norway where such company is an investment company, a financing company (other than a bank) or a treasury company or where such company holds any portfolio investment or any copyright, patent, trade mark, design, model, plan, secret formula or process which represent in the aggregate more than a third of its assets and such holding is not part of the active conduct of a business."

ARTICLE XIII

A. Article 24 paragraph 1 shall be deleted and replaced by the following:

"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."

B. The following new sentence shall be inserted at the end of Article 24 paragraph 3:

"They may also consult together for the elimination of double taxation in cases not provided for in the Convention."

C. The following new paragraphs 6 and 7 shall be inserted after Article 24 paragraph 5 :

"6. 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 three 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 issues 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.

After the arbitration decision has been communicated to the competent authorities, they may agree on a different solution within six months. Unless a person directly affected by the case informs the competent authority of a Contracting State, within three months from the communication of the mutual agreement that implements the arbitration decision or the mutual agreement that implements the different solution agreed by the competent authorities, that he does not accept the mutual agreement, in either case the decision shall be binding and shall be implemented notwithstanding any time limits in the domestic laws of both Contracting States.

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

7. The following shall be excluded from arbitration:

a) any case in which an anti-abuse rule under domestic law of one of the Contracting States has been applied;
b) any case involving conduct for which the person, a person acting on his/her behalf, or a related person has been found guilty by a court for a tax offence or has been subject to the imposition of a serious penalty;
c) issues relating to corporation tax or special petroleum tax on income from exploration, extraction and exploitation of petroleum resources or on pipeline transportation of petroleum produced;
d) any case or issue for which the competent authorities of the Contracting States agree is not suitable for determination by arbitration."

ARTICLE XIV

A. A new Article 28 shall be inserted after Article 27 and shall read as follows:

"Article 28

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 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."

B. Articles 28 and 29 shall be renumbered as Articles 29 and 30.

ARTICLE XV

A. Paragraphs 1 and 10 of the Protocol to the Convention shall be deleted.

B. Paragraphs 2 to 9 of the Protocol shall be renumbered as paragraphs 1 to 8.

C. A new paragraph 9 of the Protocol shall be inserted after paragraph 8 and shall read as follows:

"9. Ad Article 24:

It is understood that the term "serious penalty" as used in Article 24, paragraph 7, subparagraph b) means any criminal penalty as well as:

a) in Norway, the administrative penalty for any infringement of the Norwegian tax law committed with fraudulent intent or gross negligence;

b) in Belgium, administrative penalties imposed for any infringement of the Belgian tax law committed with fraudulent intent or with intent to harm."

ARTICLE XVI

A. Each of the Contracting States shall notify the other Contracting State, through diplomatic channels, of the completion of the procedures required by its law for the bringing into force of this Protocol. This Protocol shall enter into force on the date on which the later of these notifications is received.

B. The provisions of this Protocol shall have effect:
a) with respect to taxes due at source, on income credited or payable on or after January 1 of the year next following the year in which this Protocol entered into force;
b) with respect to other taxes on income, on income of taxable periods beginning on or after January 1 of the year next following the year in which this Protocol entered into force.

C. Paragraph C of Article XIII shall be applicable only to assessments for taxable periods beginning after the entry into force of this Protocol.

ARTICLE XVII

This Protocol, which shall form an integral part of the Convention, shall remain in force as long as the Convention remains in force and shall apply as long as the Convention itself is applicable.

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

Done in duplicate at Oslo this 8th day of September 2004, in the English language.

FOR THE KINGDOM OF BELGIUM:
FOR THE FLEMISH COMMUNITY:
FOR THE FRENCH COMMUNITY:
FOR THE GERMAN-SPEAKING COMMUNITY:
FOR THE FLEMISH REGION:
FOR THE WALLOON REGION:
FOR THE BRUSSELS-CAPITAL REGION:

FOR THE KINGDOM OF NORWAY: