

# TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

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JAARGANG 2009 Nr. 229

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A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden en Barbados tot het vermijden van dubbele belasting en het voorkomen van het ontgaan van belasting met betrekking tot belastingen naar het inkomen;  
(met Protocol)  
Bridgetown, 28 november 2006*

B. TEKST

De Engelse tekst van het Verdrag, met Protocol, is geplaatst in *Trb.* 2006, 269.

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Op 27 november 2009 is te 's-Gravenhage een Protocol tot wijziging van het Verdrag, met Protocol, tot stand gekomen. De Engelse tekst van het Protocol luidt als volgt:

**Protocol amending the Convention between the Kingdom of the Netherlands and Barbados for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, with Protocol**

The Government of the Kingdom of the Netherlands  
and  
the Government of Barbados,

Desiring to amend the Convention between the Kingdom of the Netherlands and Barbados for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, with Protocol, signed in Bridgetown on the 28<sup>th</sup> of November 2006 (hereinafter referred to as “the Convention”);

Have agreed as follows:

Article I

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

“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 and 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 15 percent of the gross amount of the dividends.

3. Notwithstanding the provisions of paragraph 2, the Contracting State of which the company paying the dividends is a resident shall not levy a tax on dividends paid by that company, if the beneficial owner of the dividends is:

a) a company, the capital of which is wholly or partly divided into shares and which is a resident of the other Contracting State and holds directly at least 10 per cent of the capital of the company paying the dividends, provided that:

- (i) the shares of the company receiving the dividends are regularly traded on a recognised stock exchange; or
- (ii) at least 50 per cent of the shares of the company receiving the dividends is owned directly or indirectly by one or more individuals who are resident of either Contracting State or by one or more companies the shares of which are regularly traded on a recognised stock exchange, but only if the last mentioned companies:

aa) are resident of either Contracting State; or

bb) are resident of a member state of the European Union (EU) or of a party to the North American Free Trade Agreement (NAFTA) or of Jamaica or Trinidad and Tobago and that company would be entitled to benefits which are similar to or more favourable than the benefits provided by this paragraph pursuant to a comprehensive arrangement for the avoidance of double taxation between their state of residence and the Contracting State from which the benefits of this paragraph are claimed or pursuant to a multilateral

agreement to which their state of residence and the Contracting State from which the benefits of this paragraph are claimed, are a party.

b) a bank or an insurance company that is established and regulated as such under the laws of the Contracting State of which it is a resident;

c) a Contracting State, or a political subdivision or local authority thereof;

d) a company, the capital of which is wholly or partly divided into shares, and which is a resident of the other Contracting State and holds directly at least 10 per cent of the capital of the company paying the dividends, provided that this company is a headquarters company for a multinational corporate group which provides a substantial portion of the overall supervision and administration of the group and which has, and exercises, independent discretionary authority to carry out these functions. A person shall be considered a headquarters company for this purpose only if:

- (i) the corporate group consists of corporations resident in, and engaged in an active business in, at least five countries or five groupings of countries and the business activities carried on in each of the five countries (or five groupings of countries) generate at least 10 per cent of the gross income of the group; and
- (ii) no more than 50 per cent of its gross income is derived from the Contracting State other than the Contracting State of which the headquarters company is a resident; or

e) a pension fund as referred to in paragraph 2 of Article 4.

4. Where a company fails to qualify for benefits under paragraph 3, it may however qualify if the competent authority of the Contracting State which has to grant the benefits determines that the establishment, acquisition or maintenance of the company does not have as its main purpose or one of its main purposes to secure the benefits of paragraph 3.

Such determination shall be based on all facts and circumstances including:

a) the nature and volume of the activities of the company in its country of residence in relation to the nature and volume of the dividends;

b) both the historical and the current ownership of the company; and

c) the business reasons for the company residing in its country of residence.

The competent authority of the Contracting State which has to grant the benefits will consult with the competent authority of the other Contracting State before denying the benefits under this paragraph.

5. For the purposes of paragraph 3, the term “recognised stock exchange” means:

a) any of the stock exchanges in the member states of the European Union (EU);

b) the NASDAQ System and any stock exchange in the United States of America which is registered with the U.S. Securities and Exchange Commission as a national securities exchange under the U.S. Securities Exchange Act of 1934, the Mexican Stock Exchange (*Bolsa Mexicana de Valores*) and the Toronto Stock Exchange;

c) the Barbados Stock Exchange, the Jamaica Stock Exchange and the Trinidad Stock Exchange; and

d) any other stock exchange agreed upon by the competent authorities of the Contracting States, provided that the purchase or sale of shares on the stock exchange is not implicitly or explicitly restricted to a limited group of investors.

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

7. The provisions of paragraphs 2, 3 and 4 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

8. The term “dividends” as used in this Article means:

a) income from shares, “*jouissance*” shares or “*jouissance*” rights, mining shares, founders’ shares or other rights, not being debt-claims, participating in profits, as well as 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.

b) income received in connection with the (partial) liquidation of a company or a purchase of own shares by a company.

9. The provisions of paragraphs 1, 2, 3, 4 and 12 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.

10. 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 prof-

its 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.

11. Where a company which is a resident of the Netherlands having a permanent establishment in Barbados derives profits or income from that permanent establishment, any remittances of such profits or income by that permanent establishment to the company which is a resident of the Netherlands shall, notwithstanding any other provisions of the Convention, be exempt from tax on branch profits in Barbados where such profits or income are exempt from tax in the Netherlands.

12. Notwithstanding the provisions of paragraphs 1, 2 and 10, dividends paid by a company whose capital is divided into shares and which under the laws of a State is a resident of that State, to an individual who is a resident of the other State may be taxed in the first-mentioned State in accordance with the laws of that State, if that individual – either alone or with his or her spouse – or one of their relations by blood or marriage in the direct line directly or indirectly holds at least 5 per cent of the issued capital of a particular class of shares in that company. This provision shall apply only if the individual to whom the dividends are paid has been a resident of the first-mentioned State in the course of the last ten years preceding the year in which the dividends are paid and provided that, at the time he became a resident of the other State, the above-mentioned conditions regarding share ownership in the said company were satisfied.

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

## Article II

In Article 24 of the Convention the following amendments shall be made:

- a) In paragraph 2 the words “paragraph 7 of Article 10” shall be deleted and replaced by: “paragraph 9 of Article 10”.
- b) In paragraph 4 the words “paragraph 7 of Article 10” shall be deleted and replaced by: “paragraph 9 of Article 10”.

## Article III

In Article 26 of the Convention the following amendment shall be made: in paragraph 4, the words “paragraph 9 of Article 10” shall be deleted and replaced by: “paragraph 11 of Article 10”.

## Article IV

In Article IX (Ad Article 10, paragraph 6, and Article 11, paragraph 5) of the Protocol to the Convention the following amendments shall be made:

- a) In the title of the Article the words “Article 10, paragraph 6” shall be deleted and replaced by: “Article 10, paragraph 8”.
- b) In the text of the Article the words “paragraph 6 of Article 10” shall be deleted and replaced by: “paragraph 8 of Article 10”.

## Article V

Article 28 of the Convention shall be deleted and replaced by:

“Article 28

*Exchange of information*

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. The Contracting States may release to the arbitration board, established under the provisions of paragraph 5 of Article 27, such information as is necessary for carrying out the arbitration procedure. The members of the arbitration board shall be subject to the limitations on disclosure described in paragraph 2 of this Article with respect to any information so released.

4. In no case shall the provisions of the previous paragraphs 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*).

5. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 4 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

6. In no case shall the provisions of paragraph 4 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.”.

#### Article VI

This Protocol 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 from thirty days after the date on which the Protocol enters into force.

This Protocol shall remain in effect as long as the Convention remains in force.

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

DONE at The Hague this 27<sup>th</sup> day of November 2009, in duplicate, in the English language.

*For the Kingdom of the Netherlands:*

J. C. DE JAGER

*For Barbados:*

EDWIN G. HUTSON

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C. VERTALING

Zie *Trb.* 2007, 73.

D. PARLEMENT

Zie *Trb.* 2007, 118.

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Het Protocol van 27 november 2009 tot wijziging van het Verdrag, met Protocol, behoeft ingevolge artikel 91 van de Grondwet de goedkeuring van de Staten-Generaal, alvorens het Koninkrijk aan het Protocol kan worden gebonden.

G. INWERKINGTREDING

Zie *Trb.* 2007, 118.

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De bepalingen van het Protocol van 27 november 2009 tot wijziging van het Verdrag, met Protocol, zullen ingevolge zijn artikel VI in werking treden op de dertigste dag na de laatste der data waarop de onderscheiden regeringen elkaar er schriftelijk van in kennis hebben gesteld dat aan de in hun onderscheiden staten grondwettelijk vereiste formaliteiten is voldaan.

Uitgegeven de *eenentwintigste* december 2009.

*De Minister van Buitenlandse Zaken,*

M. J. M. VERHAGEN