

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2017 Nr. 68

A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden en de Republiek Ghana tot het vermijden van dubbele belasting en het voorkomen van het ontgaan van belastingen met betrekking tot belastingen naar het inkomen en naar vermogenswinsten (met Protocol);
Accra, 10 maart 2008*

Voor een overzicht van de verdragsgegevens, zie verdragsnummers 011613 en 012951 in de Verdragenbank.

B. TEKST

Op 10 maart 2017 is te Accra een Protocol tot wijziging van het Verdrag tot stand gekomen. De Engelse tekst van het Protocol luidt als volgt:

Protocol amending the Convention between the Kingdom of the Netherlands and the Republic of Ghana for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains

The Kingdom of the Netherlands,
and

the Republic of Ghana,

Desiring to conclude a Protocol to amend the Convention between the Kingdom of the Netherlands and the Republic of Ghana for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains, with Protocol, signed at Accra on 10 March 2008, (hereinafter referred to as "the Convention"),

Have agreed as follows:

Article 1

The Title and Preamble shall be deleted and replaced by the following Title and Preamble:

"Convention between the Kingdom of the Netherlands and the Republic of Ghana for the Elimination of Double Taxation with respect to Taxes on Income and on Capital Gains and the Prevention of Tax Evasion and Avoidance

The Kingdom of the Netherlands
and

the Republic of Ghana,

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 and on capital gains without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Convention for the indirect benefit of residents of third States),

Have agreed as follows:".

Article 2

In Article 3, paragraph 1, subparagraph h, the words “the Commissioner of the Internal Revenue” shall be deleted and replaced by the words: “the Commissioner-General of the Ghana Revenue Authority”.

Article 3

The following Article shall be inserted after Article 24:

“Article 24A

Entitlement to Benefits

1. Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of income or capital gains 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.
2. Where a benefit under this Convention is denied to a person under paragraph 1, the competent authority of the Contracting State that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to specific income or capital gains, if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted in the absence of the transaction or arrangement referred to in paragraph 1.
3. The competent authority of a Contracting State shall consult with the competent authority of the other Contracting State before denying a benefit under paragraph 1 or 2.”.

Article 4

1. The following sentence shall be added to paragraph 2 of Article 27:

“Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.”.

2. Paragraph 5 of Article 27 shall be deleted and replaced by the following paragraph:

“5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.”.

3. Paragraph 6 of Article 27 shall be deleted.

Article 5

Article 28 shall be deleted and replaced by the following Article:

“Article 28

Assistance in the collection of taxes

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.
2. The term “revenue claim” as used in this Article means an amount owed in respect of 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 this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.
3. The provisions of this Article shall apply only to a revenue claim that forms the subject of an instrument permitting enforcement in the requesting State and, unless otherwise agreed between the competent authorities, that is not contested. However, where the claim relates to a liability to tax of a person as a non-resident

of the requesting State, this Article shall only apply, unless otherwise agreed between the competent authorities, where the claim may no longer be contested. The revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that requested State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such and, unless otherwise agreed between the competent authorities, cannot be collected by imprisonment for debt of the debtor. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

- a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection; or
- b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection; the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. 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 carry out measures which would be contrary to public policy (*ordre public*);
- c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State."

Article 6

1. In Article 30, paragraph 1, the first sentence shall be deleted and replaced by the following sentence:

"This Convention may be extended, either in its entirety or with any necessary modifications, to any part of the Kingdom of the Netherlands which is not situated in Europe and imposes taxes substantially similar in character to those to which the Convention applies."

2. In Article 30, paragraph 2, the words "to any country" shall be deleted and replaced by the words: "for any part of the Kingdom of the Netherlands".

Article 7

In the Article XV of the Protocol to the Convention, the words "this Article" shall be deleted and replaced by the words: "Article 27".

Article 8

The Title of the Protocol shall be deleted and replaced by the following Title of the Protocol:

"With respect to the Convention concluded between the Kingdom of the Netherlands and the Republic of Ghana for the elimination of double taxation with respect to taxes on income and on capital gains and the

prevention of tax evasion and avoidance the undersigned have agreed that the following provisions shall form an integral part of the Convention.”.

Article 9

The following article shall be inserted after Article XV of the Protocol to the Convention:

“XVI.

Ad Articles 27 and 28

For the application of the provisions of Articles 27 and 28, the contributions levied and benefits granted under the Netherlands income-related regulations shall be considered to be taxes.”.

Article 10

Entry into force

This Protocol shall enter into force on the last day of the month following the month in which the later of the notifications has been received in which the respective 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, and taxable events occurring, on or after the first day of January in the calendar year following that in which the Protocol has entered into force.

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

DONE at Accra this tenth day of March 2017, in duplicate, in the English language.

For the Kingdom of the Netherlands,

RON STRIKKER

For the Republic of Ghana,

KEN OFORI-ATTA

Op 10 maart 2017 is te Accra een overeenkomst tussen de bevoegde autoriteiten tot stand gekomen. De Engelse tekst van deze overeenkomst luidt als volgt:

Competent authority agreement – Exclusion of tax exempt investment institution

With reference to the Convention and the Protocol, signed on 10 March 2008, between the Kingdom of the Netherlands and the Republic of Ghana (hereinafter referred to as the Contracting States) for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (hereinafter referred to as the Convention), the competent authorities of the Contracting States have mutually agreed the following:

Application of Article I of the Protocol

With reference to paragraph 3 of Article I of the Protocol to the Convention the competent authorities of the Contracting States have mutually agreed that a company which is treated as a *vrijgestelde beleggingsinstelling* (tax exempt investment institution) according to Article 6a of the *Wet op de Vennootschapsbelasting 1969* (Dutch Corporate Income Tax Act 1969) is considered to be a resident that is subject to a special regime. As a result, such a company shall not be entitled to the benefits of the Convention and the corresponding articles of the Protocol. It is understood that this Competent Authority Agreement shall also apply to any identical or substantially similar special regime enacted in addition to or replacing the said special regime, unless otherwise agreed by the competent authorities of the Contracting States.

Signed at Accra on 10 March 2017,

For the competent authorities of the Netherlands,

RON STRIKKER

For the competent authorities of the Republic of Ghana,

EMMANUEL KOFI NTI

D. PARLEMENT

Het 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

De bepalingen van het Protocol zullen ingevolge artikel 10 in werking treden op de laatste dag van de maand die volgt op de maand waarin de laatste kennisgeving is ontvangen waarin de onderscheiden regeringen elkaar schriftelijk ervan in kennis hebben gesteld, dat aan de in hun onderscheiden staten grondwettelijk vereiste formaliteiten is voldaan, en de bepalingen ervan vinden toepassing voor belastingjaren en -tijdvakken en belastbare gebeurtenissen die aanvangen op of na 1 januari van het kalenderjaar dat volgt op dat waarin het Protocol in werking is getreden

Uitgegeven de zestiende mei 2017.

De Minister van Buitenlandse Zaken,

A.G. KOENDERS