



JUAN CARLOS VARELA R.
Vice President of the Republic and
Minister of Foreign Affairs

The Hague, 6 October 2010

Your Excellency,

With reference to the Convention and the Protocol, signed today, between the Republic of Panama and the Kingdom of the Netherlands for the avoidance of double taxation and the prevention of fiscal evasion, I have the honour to state on behalf of the Government of the Netherlands:

Application of paragraph 1 of article 4

With reference to paragraph 8.3 of the Commentary to article 4 of the OECD Model tax convention, it is understood that paragraph 1 of article 4 is to be interpreted in the light of its object and purpose, which is to exclude persons who are not subjected to the most comprehensive taxation (full liability to tax). However, it is understood that the Convention does not exclude from its scope persons who are liable to tax in Panama, which adopts a territorial principle in its tax system.

Application of article 4 and article I of the Protocol

With reference to article I of the Protocol to the Convention the competent authorities of the Contracting States have decided that a company which is treated as a *vrijgestelde beleggingsinstelling* (tax exempt investment institution) according to article 6a *Wet op de Vennootschapsbelasting 1969* (Netherlands Corporate Income Tax Act 1969) is considered to be a resident that is subject to a special regime. Such a company shall not be entitled to the benefits of articles 10, 11, 12, 13, 20 and 21, paragraph 1 of the Convention and the corresponding articles of the Protocol.

It is understood that the statement above is also applicable to any identical or substantially similar legislation in addition to or replacing such a special regime enacted after today, unless the competent authorities of the States decide otherwise by mutual agreement.

Recognition of the Panama special zones

The Government of the Netherlands recognizes the fiscal incentives offered by the Republic of Panama to stimulate cross border economic activities. These fiscal incentives are:

- (1) Código Fiscal Artículo 701, literal d (Zona Libre de Colón y otras Zonas Libres), and its related decrees and regulations;
- (2) Decreto de Gabinete No. 36 de 17 de septiembre de 2003, Artículo 14 (Zonas Libres de Petróleo) and its related decrees and regulations;
- (3) Decreto Ley No. 6 de 10 de febrero de 1998, which approves the Agreement between the State and the Fundación Ciudad del Saber para el Establecimiento y el Desarrollo de la Ciudad del Saber Cláusula Quinta, literal D) y E), and its related decrees and regulations;
- (4) Ley No. 41 de 20 de julio de 2004, Artículo 60 (Agencia del Área Económica Especial Panamá-Pacífico) and its related decrees and regulations;
- (5) Ley No. 41 de 24 de agosto de 2007, Artículo 21, and Decreto Ejecutivo No. 28 de 27 de marzo de 2009 del Ministerio de Comercio e Industria, Artículo 26 (Sedes de Empresas Multinacionales), and its related decrees and regulations;
- (6) Ley No. 25 de 30 de noviembre de 1992, Artículo 27 (Zonas Procesadoras para la Exportación) and its related decrees and regulations

Residents of Panama to which the listed incentives apply, as well as to any identical or substantially similar regimes that might be enacted in Panama in addition to or replacing any of the regimes listed above, shall be entitled to the benefits of the Convention under the same conditions as residents of Panama to which the listed incentives do not apply.

Application of article 27 (Measures to counter improper use of the Convention)

For the application of article 27 it is understood that the domestic laws and measures mentioned in that article include:

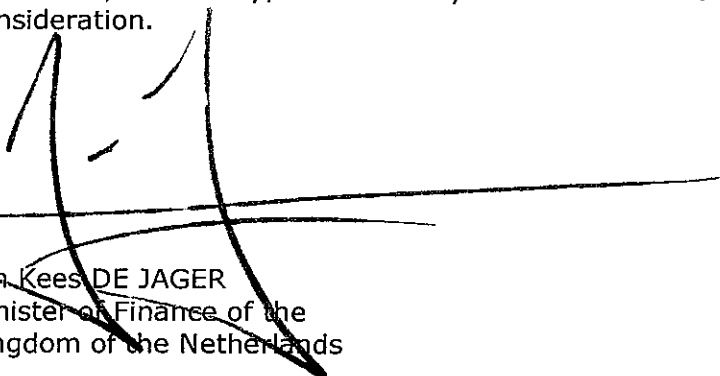
- (1) *fraus legis c.q. fraus tractatus*;
- (2) article 17, paragraph 3, subparagraph b in connection with article 17a, paragraph 1, subparagraph c Wet op de Vennootschapsbelasting 1969 (Netherlands Corporate Income Tax Act 1969) or any identical or substantially similar legislation in addition to or replacing these articles, unless the competent authorities of the States decide otherwise by mutual agreement.

Interpretation of the Shipping and Air transport Convention

For the interpretation of the Convention between the Kingdom of the Netherlands and the Republic of Panama for the Avoidance of Double Taxation with respect to enterprises operating ships or aircraft in international traffic, signed at The Hague on the 28th of April 1997 it is understood that the existing Koninklijke Luchtvaartmaatschappij N.V. (KLM N.V.) shall be deemed to be an enterprise of the Netherlands, as long as the Netherlands has an exclusive taxing right with respect to KLM N.V. under the tax convention concluded between the Netherlands and France.

If the foregoing is acceptable to the Government of the Republic of Panama, I have the honour to propose that this letter and your letter in reply will be an understanding between the Government of the Netherlands and Government of the Republic of Panama which shall take effect on the date of entry into force of the Convention and the Protocol, signed today, between the Kingdom of the Netherlands and Republic of Panama for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

Permit me, Excellency, to renew to you the assurances of my highest consideration.



Jan Kees DE JAGER
Minister of Finance of the
Kingdom of the Netherlands