

19 (2009) Nr. 1

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2009 Nr. 130

A. TITEL

*Verdrag tussen de Regering van het Koninkrijk der Nederlanden en de
Regering van Anguilla inzake de uitwisseling van informatie
betreffende belastingen;
(met Protocol)
Londen, 22 juli 2009*

B. TEKST

**Agreement between the Government of the Kingdom of the
Netherlands and the Government of Anguilla for the exchange of
information relating to taxes**

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

Whereas it is acknowledged that the Government of Anguilla under
the terms of its Entrustment from the United Kingdom of Great Britain
and Northern Ireland has the right to negotiate, and conclude a Tax
Information Exchange Agreement,

Desiring to conclude the following Agreement which contains obliga-
tions on the part of the Contracting Parties only,

Have agreed as follows:

Article 1

Scope of agreement

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning the taxes and the tax matters covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, verification, enforcement, recovery or collection of tax claims with respect to persons subject to such taxes, or the investigation or prosecution of tax matters in relation to such persons. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8.

Article 2

Jurisdiction

To enable the appropriate implementation of this Agreement, information shall be provided in accordance with this Agreement by the competent authority of the requested Party:

a) without regard to whether the person to whom the information relates is a resident, national or citizen of a Party, or whether the person by whom the information is held is a resident, national or citizen of a Party; and

b) provided that the information is present within the territory, or in the possession or control of a person subject to the jurisdiction, of the requested Party.

Article 3

Taxes covered

1. The taxes covered by this Agreement are:
 - a) in the case of the Netherlands:
 - (i) income tax, including income-related supplements based social supplements regulations (Inkomstenbelasting, inclusief inkomensafhankelijke toeslagen op grond van regelgeving inzake toeslagen);
 - (ii) wages tax (Loonbelasting);
 - (iii) company tax, including the Government share in the net profits of the exploitation of natural resources levied pursuant the Mining Act (Vennootschapsbelasting, daaronder begrepen het aan-

- deel van de Regering in de netto-winsten behaald met de exploitatie van natuurlijke rijkdommen geheven krachtens de Mijnbouwwet);
- (iv) dividend tax (Dividendbelasting);
 - (v) gift tax (Schenkingsrecht);
 - (vi) inheritance tax (Successierecht);
 - (vii) value added tax (Omzetbelasting);
 - (vii) tax on games of chance (Kansspelbelasting);
 - (viii) motor vehicle tax, including the additional percentages of the provinces (Motorrijtuigenbelasting, inclusief provinciale opcenten);
 - (ix) environmental taxes, including energy taxes (Belastingen op milieugrondslag, inclusief energiebelastingen);
 - (x) insurance tax (Assurantiebelasting);
 - (xi) tax on the ownership and/or use of real property (Onroerendezaakbelasting);
 - (xii) levies, duties, fines or exemptions relating to the importation, exportation, transshipment, transit, storage and circulation of goods, as well as to prohibitions, restrictions and other similar controls on the movement of controlled items across national boundaries;
- and
- b) in the case of Anguilla:
 - (i) property tax;
 - (ii) stamp duty;
 - (iii) accommodation tax;
 - (iv) vacation residential asset levy;
 - (v) levies, duties, fines or exemptions relating to the importation, exportation, transshipment, transit, storage and circulation of goods, as well as to prohibitions, restrictions and other similar controls on the movement of controlled items across national boundaries.

2. a) Subject to sub-paragraph b) of this paragraph, this Agreement shall also apply to any identical or substantially similar taxes imposed by either territory after the date of signature of this Agreement in addition to, or in place of, any of the taxes listed in paragraph 1.

b) The competent authorities of the Contracting Parties shall notify each other of any relevant changes to the taxation and related information gathering measures covered by this Agreement.

3. The Contracting Parties may, by mutual agreement, add other taxes to the taxes covered by this Agreement.

Article 4

Definitions

1. For the purposes of this Agreement, unless otherwise defined:

- a) “Anguilla” means the territory of Anguilla and includes the territorial sea and areas within the maritime boundaries of Anguilla and any area within which in accordance with international law the rights of Anguilla with respect to the seabed and sub-soil and their natural resources may be exercised;
- b) “the Netherlands” means the part of the Kingdom of the Netherlands that is situated in Europe, including its territorial seas, and any area beyond the territorial sea within which the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights with respect to the sea bed, its subsoil and its superjacent waters, and their natural resources;
- c) “collective investment scheme” means any pooled investment scheme, fund or vehicle irrespective of legal form;
- d) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- e) “competent authority” means
 - (i) in the case of the Netherlands the Minister of Finance or his authorised representative;
 - (ii) in the case of Anguilla, the Permanent Secretary in the Ministry of Finance or a person or authority designated by him in writing;
- f) “Contracting Party” means the Netherlands or Anguilla as the context requires;
- g) “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes;
- h) “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting Contracting Party;
- i) “information” means any fact, statement, document or record in whatever form;
- j) “information gathering measures” means judicial, regulatory or administrative laws and procedures enabling a Contracting Party to obtain and provide the information requested;
- k) “person” means an individual (“natural person”), a company, or any other body or group of persons;
- l) “public collective investment scheme” means any collective investment scheme in which the purchase, sale or redemption of shares or other interests is not implicitly or explicitly restricted to a limited group of investors;

m) “requested Party” means the Party to this Agreement which is requested to provide or has provided information in response to a request;

n) “requesting Party” means the Party to this Agreement submitting a request for or having received information from the requested Party;

o) “tax” means any tax covered by this Agreement.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Contracting Party, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

Article 5

Exchange of information upon request

1. The competent authority of a requested Party shall provide upon request in writing by the requesting Party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if it occurred in the territory of the requested Party. If the information received by the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, it shall advise the competent authority of the requesting Party of that fact and request such additional information as may be required to enable the effective processing of the request.

2. If the information in possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for the information, the requested Party shall use all relevant information gathering measures to provide the requesting Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the requesting Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authority, for the purposes of this Agreement, has the authority to obtain and provide upon request:

a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;

b) information regarding the legal and beneficial ownership of companies, partnerships, trusts, foundations, “Anstalten” and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; and in the case of trusts, information on settlors, trustees, beneficiaries and protectors; and in the case of foundations, information on founders, members of the foundation council and beneficiaries.

5. Notwithstanding the preceding paragraphs, this Agreement does not create an obligation on the Contracting Parties to obtain or provide:

- (i) ownership information with respect to publicly traded companies or public collective investment schemes unless such information can be obtained without giving rise to disproportionate difficulties;
- (ii) information which is older than a legally required time period for retaining that information in the jurisdiction of the requested Party and where that information is in fact no longer kept.

6. The competent authority of the requesting Party shall provide the following information to the competent authority of the requested Party when making a request for information under this Agreement in order to demonstrate the foreseeable relevance of the information to the request:

- a) the identity of the person under examination or investigation;
- b) the period for which the information is requested;
- c) the nature and type of the information requested, including a description of the specific information sought and the form in which the requesting Party would prefer to receive the information;
- d) the tax purposes for which the information is sought and the reasons for believing that the information requested is foreseeably relevant to the administration or enforcement of the domestic laws of the requesting Party;
- e) reasonable grounds for believing that the information requested is present in the territory of the requested Party or is in the possession or control of a person subject to the jurisdiction of the requested Party;
- f) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- g) a statement that the request is in conformity with this Agreement and the laws and administrative practices of the requesting Party, and that if the requested information were within the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice;
- h) a statement that the requesting territory has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

7. The competent authority of the requested Party shall forward the requested information as promptly as possible to the competent authority of the requesting Party. To ensure a prompt response, the competent authority of the requested Party shall:

a) confirm the receipt of a request in writing to the competent authority of the requesting Party and shall notify the competent authority of the requesting Party of any deficiencies in the request within 60 days of receipt of the request; and

b) if the competent authority of the requested party has been unable to obtain and provide the information requested within 90 days of receipt of the request, including if obstacles are encountered in furnishing the information, or if the competent authority of the requested party refuses to provide the information, it shall immediately inform the competent authority of the requesting Party to explain the reasons for its inability or the obstacles or its refusal.

Article 6

Tax examinations (or investigations) abroad

1. The requested Party may, to the extent permitted under its domestic laws, following reasonable notice from the requesting Party, allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party in connection with a request to interview persons and examine records with the prior written consent of the persons concerned. The competent authority of the requesting Party shall notify the competent authority of the requested Party of the time and place of the intended meeting with the persons concerned.

2. At the request of the competent authority of the requesting Party, the competent authority of the requested Party may permit representatives of the competent authority of the requesting Party to be present at the appropriate part of a tax examination in the territory of the requested Party.

3. If the request referred to in paragraph 2 is granted, the competent authority of the requested Party conducting the examination shall, as soon as possible, notify the competent authority of the requesting Party of the time and place of the examination, the authority or person authorised to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the requested Party conducting the examination.

Article 7

Possibility of declining a request

1. The competent authority of the requested Party may decline to assist:

- a) where the request is not made in conformity with this Agreement;
- b) where the requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
- c) where the disclosure of the information requested would be contrary to the public policy of the requested Party.

2. This Agreement shall not impose upon a Contracting Party any obligation to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Information described in Article 5, paragraph 4, shall not by reason of that fact alone constitute such a secret or process.

3. This Agreement shall not impose on a Contracting Party an obligation to provide information held that is subject to legal privilege.

4. A request for information shall not be refused on the ground that the tax liability giving rise to the request is disputed by the taxpayer.

5. The requested Party shall not be required to obtain and provide information which, if the requested information was within the jurisdiction of the requesting Party, the competent authority of the requesting Party would not be able to obtain under its laws or in the normal course of administrative practice.

6. The requested Party may decline a request for information if the information is requested by the requesting party to administer or enforce a provision of the tax law of the requesting Party, or any requirement connected therewith, which discriminates against a national or citizen of the requested party as compared with a national or citizen of the requesting party in the same circumstances.

Article 8

Confidentiality

1. All information provided and received by the competent authorities of the Contracting Parties shall be kept confidential and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1 and used by such persons or authorities only for such purposes, including the

determination of any appeal or the oversight of the above. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.

2. The information may not be used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested Party.

3. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

Article 9

Safeguards

Nothing in this Agreement shall affect the rights and safeguards secured to persons by the laws or administrative practice of the requested Party. The rights and safeguards may not be applied by the requested Party in a manner that unduly prevents or delays effective exchange of information.

Article 10

Administrative costs

Incidence of costs incurred in providing assistance (including reasonable costs of third Contracting Parties and external advisors in connection with litigation or otherwise) shall be agreed by the competent authorities of the Contracting Parties in accordance with a Memorandum of Understanding.

Article 11

Implementing legislation

The Contracting Parties shall (where they have not already done so) and, to the extent necessary, enact appropriate legislation to comply with, and give effect to, the terms of this Agreement.

Article 12

Language

Requests for assistance and responses thereto shall be drawn up in English.

Article 13

Mutual agreement procedure

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of this Agreement, the respective Competent Authorities shall use their best efforts to resolve the matter by mutual agreement and, so far as may be applicable, shall have regard to the interpretations set forth in the commentary to the 2002 model agreement on exchange of information on tax matters published by the Organisation for Economic Co-operation and Development (OECD).

2. In addition to the endeavours referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually determine the procedures to be used under Articles 5 and 6.

3. The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of this Agreement.

4. The Contracting Parties may also agree on other forms of dispute resolution.

Article 14

Entry into force

Each of the Contracting Parties shall notify to the other the completion of the procedures or formalities constitutionally required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the first day of the second month after the date of the later of these notifications. The provisions of this Agreement shall have effect:

a) with respect to criminal tax matters upon the entry into force of this Agreement; and

b) with respect to all other matters covered in Article 1 for taxable periods beginning on or after the date of entry into force of this Agreement or, where there is no taxable period, for all charges to tax arising on or after the date on which this Agreement enters into force.

Article 15

Termination

1. This Agreement shall remain in force until terminated by either Contracting Party.

2. Either Contracting Party may terminate this Agreement by giving notice of termination in writing. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the other Contracting Party.

3. If the Agreement is terminated the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement. All requests received up to the effective date of termination shall be dealt with in accordance with the terms of this Agreement.

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

DONE at London, this 22nd day of July 2009, in duplicate in the English language.

For the Government of the Kingdom of the Netherlands

LAURENS WESTHOFF

For the Government of Anguilla

VICTOR BANKS

Protocol between the Government of the Kingdom of the Netherlands and the Government of Anguilla concerning the interpretation and application of the Agreement between the Government of the Netherlands and the Government of Anguilla for the exchange of information relating to taxes

The Government of the Kingdom of the Netherlands

and

the Government of Anguilla

(the "Parties"),

Whereas it is acknowledged that the Government of Anguilla under the terms of its Entrustment from the United Kingdom of Great Britain and Northern Ireland has the right to negotiate, and conclude a Tax Information Exchange Agreement,

Whereas the Government of the Netherlands recognises the commitment Anguilla made to the Organisation for Economic Co-operation and Development (OECD) in 2002 to respect the principles of transparency and exchange of information and the Netherlands considers that this Agreement demonstrates the commitment of Anguilla to high standards for effective exchange of information with respect to both criminal and civil taxation matters;

Whereas the Government of the Netherlands also recognises the progressive steps that Anguilla has taken to demonstrate its commitment to high standards for effective exchange of information with respect to both criminal and civil taxation matters in negotiation of Tax Information Exchange Agreements with other countries and recognises that Anguilla is committed to combating tax abuse by putting in place mechanisms which enhance transparency; for example, the proactive steps taken to amend the domestic legislation of Anguilla for the purpose of fulfilling this Agreement and upon entering into the Agreement, the Netherlands does not consider Anguilla to be engaging in any harmful tax practises and thus is not referred to as a tax haven;

Desiring to facilitate the exchange of information relating to taxes,

Have further agreed as follows:

Article 1

(Article 5)

If personal data are exchanged under the Agreement, the following additional provisions shall apply:

a) The receiving authority may use such data only for the stated purpose and shall be subject to the conditions prescribed by the supplying authority; such use is also permitted, subject to the written consent required under Article 8, for the prevention and prosecution of serious crimes and for the purpose of addressing serious threats to public security;

b) The receiving authority shall on request inform the supplying authority about the use of the supplied data and the results achieved thereby;

c) Personal data may be supplied only to the responsible agencies. Any subsequent supply to other agencies may be effected only with the prior approval of the supplying authority;

d) The supplying authority shall be obliged to take all reasonable care to ensure that the data to be supplied are accurate and that they are necessary for and proportionate to the purpose for which they are supplied. Any bans on data supply prescribed under applicable domestic law shall be observed. If it emerges that inaccurate data or data which should not

have been supplied have been supplied, the receiving authority shall be informed of this without delay. That authority shall be obliged to correct or erase such data without delay;

e) Upon application the person concerned shall be informed of the supplied data relating to him and of the use to which such data are to be put. There shall be no obligation to furnish this information if on balance it turns out that the public interest in withholding it outweighs the interest of the person concerned in receiving it. In all other respects, the right of the person concerned to be informed of the existing data relating to him shall be governed by the domestic law of the Contracting Party in whose sovereign territory the application for the information is made;

f) The receiving authority shall bear liability in accordance with its domestic laws in relation to any person suffering unlawful damage as a result of supply of data pursuant to this Agreement. In relation to the damaged person, the receiving authority may not plead in its defence that the damage had been caused by the supplying agency;

g) If the domestic law of the supplying authority provide, with respect to the personal data supplied, for erasure within a certain period of time that authority shall inform the receiving authority accordingly. Irrespective of such periods, supplied personal data shall be erased once they are no longer required for the purpose for which they were supplied;

h) The supplying and the receiving authority shall be obliged to keep official records of the supply and receipt of personal data;

i) The supplying and the receiving authority shall be obliged to take effective measures to protect the personal data supplied against unauthorised access, unauthorised alteration and unauthorised disclosure.

Article 2

(Article 12)

In the event that a Contracting Party applies prejudicial or restrictive measures based on harmful tax practices to residents or nationals of the other Contracting Party, either Contracting Party may immediately initiate competent authority proceedings to resolve the matter. A prejudicial or restrictive measure based on harmful tax practices is a measure applied by one Contracting Party to residents or nationals of either Contracting Party on the basis that any one or more of the following applies:

a) the other Contracting Party does not engage in effective exchange of information;

b) it lacks transparency in the operation of its laws, regulations or administrative practices; or

c) that there is no or nominal taxes.

Without limiting the generality of the term, “prejudicial or restrictive measure” is not limited solely to taxation matters and includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or

levy, or special reporting requirements, but does not include any generally applicable measure, applied by either contracting party against, amongst others, members of the OECD generally.

Article 3

In light of the experience of operating the Agreement, or to reflect changing circumstances, either Contracting Party may wish to propose a variation in the terms of this Agreement. If so, it is understood that the other Contracting Party will agree to hold timely discussions with a view to revising the terms of the Agreement.

a) The competent authorities may initiate discussions should:

- (i) the Kingdom of the Netherlands enter into an agreement with another jurisdiction comparable to Anguilla which provides for other forms of exchange of information;
- (ii) Anguilla enter into an agreement with another jurisdiction which provides for other forms of exchange of information;
- (iii) Anguilla introduce new legislation which enables other forms of exchange of information.

b) If the Netherlands enters into arrangements with another jurisdiction comparable to Anguilla for the provision of information with respect to taxes that are less burdensome in any material respect than the provisions of the Agreement, Anguilla may initiate discussions with the Netherlands with a view to modifying the Agreement to have similar effect.

Article 4

This Protocol shall form an integral part of the Agreement between the Government of the Kingdom of the Netherlands and the Government of Anguilla for the exchange of information relating to taxes, and shall enter into force on the same date as the Agreement.

Article 5

The Contracting Parties may, by mutual arrangement amend this Protocol at any time in writing. Such amendment shall enter into force on the first day of the second month after the Contracting Parties have notified each other in writing that the constitutional or internal requirements for the entry into force of this Protocol have been complied with.

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

DONE at London, this 22nd day of July 2009, in duplicate in the English language.

For the Government of the Kingdom of the Netherlands

LAURENS WESTHOFF

For the Government of Anguilla

VICTOR BANKS

D. PARLEMENT

Het Verdrag, met Protocol, heeft ingevolge artikel 91 van de Grondwet de goedkeuring van de Staten-Generaal, alvorens het Koninkrijk aan het Verdrag, met Protocol, kan worden gebonden.

G. INWERKINGTREDING

De bepalingen van het Verdrag en het Protocol zullen ingevolge artikel 14 van het Verdrag juncto artikel 4 van het Protocol in werking treden op de eerste dag van de tweede maand nadat beide partijen elkaar een kennisgeving hebben gestuurd dat aan de grondwettelijke vereisten, noodzakelijk voor de inwerkingtreding van het Verdrag, is voldaan.

J. VERWIJZINGEN

Titel : Verdrag nopens de Organisatie voor Economische Samenwerking en Ontwikkeling;
Parijs, 14 december 1960
Tekst : *Trb.* 1961, 42 (Frans en Engels)
Trb. 1961, 60 (vertaling)
Laatste *Trb.* : *Trb.* 1994, 193

Uitgegeven de *eenentwintigste* september 2009.

De Minister van Buitenlandse Zaken,

M. J. M. VERHAGEN