

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2009 Nr. 164

A. TITEL

*Verdrag ter bevordering van de economische betrekkingen tussen het Koninkrijk der Nederlanden, ten behoeve van Aruba, en het Koninkrijk Noorwegen;
Parijs, 10 september 2009*

B. TEKST

Agreement to promote economic relations between the Kingdom of the Netherlands, in respect of Aruba, and the Kingdom of Norway

The Kingdom of the Netherlands, in respect of Aruba,
and
the Kingdom of Norway,

Whereas the Kingdom of the Netherlands, in respect of Aruba, and the Kingdom of Norway (“the Parties”) have today signed an Agreement for the Exchange of Information with Respect to Taxes;

Whereas both the Kingdom of the Netherlands, in respect of Aruba, and the Kingdom of Norway are committed to work towards an international financial system that is free of distortions created through lack of transparency and lack of effective exchange on information in tax matters;

Whereas the Kingdom of Norway wishes to assist the Kingdom of the Netherlands, in respect of Aruba, in diversifying its economy;

Now, therefore, the Parties have agreed as follows:

Article 1

1. For the purpose of this Agreement unless the context otherwise requires:

a) the term “Norway” means the Kingdom of Norway, and includes the land territory and internal waters; the term does not comprise Svalbard, Jan Mayen and the Norwegian dependencies (“biland”);

b) the term “Aruba” means that part of the Kingdom of the Netherlands that is situated in the Caribbean area and consisting of the Island of Aruba;

c) the term “competent authority” means

(i) In the case of Norway, the Minister of Finance or the Minister’s authorized representative;

(ii) In the case of Aruba, the Minister of Finance and Economic Affairs or his authorised representative;

d) the term “company resident in Norway” means any company which under the laws of Norway is liable to tax therein by reason of its domicile, residence, place of management or any other similar criterion. The term does not, however, include any company which is liable to tax in Norway in respect only of income from sources in Norway;

e) the term “person” includes an individual, a company or any other body of persons;

f) the term “permanent establishment” means:

(i) a fixed place of business through which the business of a company resident in Norway is wholly or partly carried on;

(ii) 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;

(iii) the term “permanent establishment” also encompasses a building site, a construction, assembly or installation project, but only if such site or project lasts for a period of more than 6 months;

(iv) notwithstanding the preceding provisions of this paragraph, the term “permanent establishment” shall be deemed not to include:

a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the company;

b) the maintenance of a stock of goods or merchandise belonging to the company solely for the purpose of storage or display;

c) the maintenance of a stock of goods or merchandise belonging to the company 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 company;

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the company, any other activity of a preparatory or auxiliary character;

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character;

(v) notwithstanding the provisions of paragraphs i) and ii), where a person

– other than an agent of an independent status to whom sub-paragraph f) vi) applies - is acting on behalf of a company resident in Norway and has, and habitually exercises, in Aruba an authority to conclude contracts in the name of the company, that company shall be deemed to have a permanent establishment in Aruba in respect of any activities as mentioned in Article 3 which that person undertakes for the company, unless the activities of such person are limited to those mentioned in paragraph iv) which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph;

(vi) a company resident in Norway shall not be deemed to have a permanent establishment in Aruba merely because it carries on business in Aruba through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

2. As regards the application of this Agreement at any time by a 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 Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 2

When a company resident in Norway has a permanent establishment in Aruba, Norway shall exempt profits, which are attributable to that permanent establishment from tax, provided that the greater part of the profits is derived from activities as mentioned in Article 3.

Article 3

1. Article 1 applies only to profits which to the greater part are derived from the following activities to the extent that such activities are carried on in Aruba:

- a) industrial and manufacturing activities, including assembly activities;
- b) tourism (including hotels);
- c) a building site or a construction, assembly or installation project;
- d) aquaculture and agriculture;
- e) medical services;
- f) repair, maintenance, certification of ship and aircraft; and
- g) oil and gas activities and energy production.

2. The right of any company resident in Norway to engage in Aruba in the activities listed in the preceding paragraph remains subject to the domestic legislation in force in Aruba.

Article 4

1. Where a company resident in Norway considers that the actions of one of the Parties result or will result for it in taxation not in accordance with the provisions of this Agreement, it may, irrespective of the remedies provided by the domestic law of the party, present its case to the competent authority of Norway. 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 this Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of Aruba, with a view to the avoidance of taxation which is not in accordance with this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Parties.

3. The competent authorities of the Parties shall endeavour to resolve by mutual agreement any difficulties arising as to the interpretation or application of this Agreement.

4. The competent authorities of the Parties may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraph.

Article 5

This Agreement shall apply for a period of five years from the date when this Agreement becomes applicable. This period may be extended by mutual agreement between the competent authorities of the Parties.

Article 6

This Agreement shall enter into force on the first day of the second month after each Party has notified the other in writing, through diplomatic channels, that the internal procedures required by that Party for the entry into force of the Agreement have been complied with. This Agreement shall apply to income earned in any tax year beginning on or after the first day of January of the calendar year next following that in which this Agreement enters into force.

Article 7

1. This Agreement shall remain in force until terminated by one of the Parties. Either Party may terminate this Agreement by giving notice of termination in writing through diplomatic channels at least six months before the end of any calendar year. In such event, the Agreement shall cease to have effect for taxable years and periods beginning after the end of the calendar year in which the notice of termination has been given.

2. This Agreement is supplementary to the Agreement for the Exchange of Information with Respect to Taxes between the Parties. Notwithstanding the provisions of paragraph 1, this Agreement shall, on receipt through diplomatic channels of written notice of termination of the Agreement for the Exchange of Information with Respect to Taxes, terminate and cease to be effective on the day the Agreement for the Exchange of Information with Respect to Taxes between the Parties terminates.

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

DONE in duplicate at, Paris, this 10th day of September 2009, in the English language.

For the Kingdom of the Netherlands, in respect of Aruba:

N. J. J. SWAEN

For the Kingdom of Norway:

TARALD O. BRAUTASET

D. PARLEMENT

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

G. INWERKINGTREDING

De bepalingen van het Verdrag zullen ingevolge zijn artikel 6 in werking treden op de eerste dag van de tweede maand nadat beide partijen, langs diplomatieke weg, elkaar er schriftelijk van in kennis hebben gesteld dat is voldaan aan hun nationale procedures die vereist zijn voor de inwerkingtreding van het Verdrag.

J. VERWIJZINGEN

- Titel : Verdrag tussen het Koninkrijk der Nederlanden, ten behoeve van Aruba, en het Koninkrijk Noorwegen inzake de uitwisseling van informatie betreffende belastingen; Parijs, 10 september 2009
- Tekst : *Trb.* 2009, 162 (Engels)

Uitgegeven de *tweede* november 2009.

De Minister van Buitenlandse Zaken,

M. J. M. VERHAGEN