

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2016 Nr. 41

A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden, ten behoeve van de Nederlandse Antillen, en de Caymaneilanden zoals gemachtigd krachtens de volmacht van 1 september 2009, van het Verenigd Koninkrijk van Groot-Brittannië en Noord-Ierland inzake de uitwisseling van informatie betreffende belastingen;
(met Protocol)
Willemstad, 29 oktober 2009*

B. TEKST

De Engelse tekst van het Verdrag, met Protocol, is geplaatst in *Trb.* 2009, 217.

C. VERTALING

Zie *Trb.* 2010, 162.

D. PARLEMENT

Zie *Trb.* 2009, 217.

E. PARTIJGEGEVENS

In brieven van 17 december 2015 en 22 januari 2016 hebben de bevoegde autoriteit van Nederland, mede namens de bevoegde autoriteiten van Curaçao en Sint Maarten, en de bevoegde autoriteit van de Caymaneilanden een interpretatieve verklaring inzake artikel 5, vijfde lid, onder g, van het Verdrag en artikel I van het Protocol vastgelegd. De Engelse tekst van deze brieven luidt als volgt:

Nr. I

MINISTRY OF FINANCE
INTERNATIONAL TAX AND CONSUMER TAX DIRECTORATE

The Hague, 17 December 2015

Subject: Letter of Understanding

Ref.: IZV/2015/1055 U

Dear Mr Nicol,

On July 8, 2009, a Tax Information Exchange Agreement ("the TIEA") was signed between the Kingdom of the Netherlands, in respect of the European part of the Netherlands, and the Government of the Cayman Islands.

On October 29, 2009, a Tax Information Exchange Agreement was signed between the Kingdom of the Netherlands, in respect of the Netherlands Antilles, and the Government of the Cayman Islands.

On April 20, 2010, a Tax Information Exchange Agreement was signed between the Kingdom of the Netherlands, in respect of Aruba, and the Government of the Cayman Islands.

The three TIEAs contain the following provision in the Protocol (Article I):

"Ad Article 5(5)(g)

With respect to subparagraph g of paragraph 5 of Article 5 it is understood that the term "pursued all means available in its own territory" includes the requesting Party using exchange of information mechanisms it has in force with any third country in which the information is located."

According to the OECD peer reviews of the Netherlands, Aruba, Curaçao and Sint Maarten in respect of their TIEAs with the Cayman Islands this wording is inconsistent with the Commentary to Article 5(5) of the OECD Model TIEA (paragraph 63) and narrower than the international standards and could potentially frustrate the effective exchange of information.

In order to meet modern standards, the competent authority of the Netherlands, also on behalf of the competent authority of Aruba, the competent authority of Curaçao and the competent authority of Sint Maarten (hereinafter referred to as "the competent authorities of the Kingdom"), adhere to the following interpretation regarding the policy on exchange of information under the TIEAs :

- It is understood that in the application of subparagraph g of paragraph 5 of Article 5, in combination with Article I of the Protocol, proportionality should be taken into account.
Therefore the statement that the requesting Party has "pursued all means available in its own territory" may be provided in the situation that it is disproportionately burdensome to the requesting state to first use the exchange of information mechanisms it has in force with any third country in which the information is located.

If the competent authority of the Cayman Islands agrees to this interpretation of subparagraph g of paragraph 5 of Article 5 of the Agreement and Article 1 of the Protocol, the competent authorities of the Kingdom of the Netherlands would like to propose that the competent authority of the Cayman Islands sends a letter in reply to confirm this interpretation, which will, with the consent of the competent authority of the Cayman Islands, be considered a joint interpretative declaration.

Yours sincerely,

HARRY ROODBEEN

*For the competent authority of the Netherlands,
Director International Tax and Consumer Tax*

Cayman Islands Government

*Mr Duncan E. Nicol
Director Department for International Tax Cooperation
Grand Cayman
Cayman Islands*

Nr. II

TAX INFORMATION AUTHORITY
CAYMAN ISLANDS
DEPARTMENT FOR INTERNATIONAL TAX COOPERATION

George Town, 22nd January 2016

RE: Letter of Understanding

Ref.: IZV/2015/1055 U

Dear Mr Roodbeen,

On 17 December 2015, you wrote a Letter of Understanding regarding the following Agreements between the Cayman Islands and the Kingdom of the Netherlands, and associated jurisdictions, for the exchange of information (TIEAs). In this letter you outlined the potential for one of the provisions of the Protocols to those TIEAs to frustrate the effective exchange of information due to the wording being inconsistent with the Commentary to Article 5(5) of the OECD Model TIEA (paragraph 63) and being seen as more restrictive than the international standards.

The agreements referenced were:

TIEA between the Kingdom of the Netherlands, in respect to the European part of the Netherlands, and the Government of the Cayman Islands, dated 9 July 2009.

TIEA between the Kingdom of the Netherlands, in respect of the Netherlands Antilles, and the Government of the Cayman Islands, dated October 29, 2009.

TIEA between the Kingdom of the Netherlands, in respect of Aruba, and the Government of the Cayman Islands, dated April 20, 2010.

All three of the TIEAs contain the following provision in their respective Protocols (Article 1):

“Ad Article 5(5)(g)

With respect to subparagraph g of paragraph 5 of Article 5 it is understood that the term “perused all means available in its own territory” includes the requesting Party using exchange of information mechanisms it has in force with any third country in which the information is located.”

The Kingdom of the Netherlands has confirmed its adherence to the following interpretation regarding the policy on exchange of information under the TIEAs;

- It is understood that in the application of subparagraph g of paragraph 5 of Article 5, in combination with Article I of the Protocol, proportionality should be taken into account.
- Therefore the statement that the requesting Party has “pursued all means available in its own territory” may be provided in the situation that it is disproportionately burdensome to the requesting state to first use the exchange of information mechanisms it has in force with any third country in which the information is located.

As the competent authority of the Cayman Islands, I confirm my agreement to this interpretation of subparagraph g of paragraph 5 of Article 5 of the Agreement and Article 1 of the Protocol, and consider this a joint interpretative declaration.

Yours sincerely,

DUNCAN E NICOL
Competent Authority

Mr. Harry Roodbeen
Director International Tax and Consumer Tax

Ministry of Finance
Den Haag
The Netherlands

G. INWERKINGTREDING

Zie *Trb.* 2009, 217.

Uitgegeven de *vijfde* april 2016.

De Minister van Buitenlandse Zaken,

A.G. KOENDERS