

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2018 Nr. 61

A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden en het Koninkrijk Denemarken tot het vermijden van dubbele belasting en het voorkomen van het ontgaan van belasting met betrekking tot belastingen naar het inkomen en naar het vermogen;
Kopenhagen, 1 juli 1996*

Voor een overzicht van de verdragsgegevens, zie verdragsnummers 007267 en 009981 in de Verdragenbank.

B. TEKST

Op 9 mei 2018 is te Kopenhagen 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 Kingdom of Denmark for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital

The Government of the Kingdom of the Netherlands

and

the Government of the Kingdom of Denmark,

Desiring to amend the Convention between the Kingdom of the Netherlands and the Kingdom of Denmark for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, done at Copenhagen on 1 July 1996 (hereinafter referred to as "the Convention"),

Have agreed as follows:

Article I

The Title and Preamble of the Convention shall be replaced by the following Title and Preamble:

Convention between the Kingdom of the Netherlands and the Kingdom of Denmark for the elimination of double taxation with respect to taxes on income and the prevention of tax evasion and avoidance

The Kingdom of the Netherlands

and

the Kingdom of Denmark,

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 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 indi-

rect benefit of residents of third Jurisdictions),

Have agreed as follows:".

Article II

Paragraph 3 of Article 2 of the Convention will be replaced by:

"3. The existing taxes to which the Convention shall apply are in particular:

- a) in Denmark:
 - (i) the income tax to the State (indkomstskatten til staten);
 - (ii) the income tax to the municipalities (den kommunale indkomstskat); (hereinafter referred to as "Danish tax");
- b) in the Netherlands:
 - (i) the income tax (de inkomstenbelasting);
 - (ii) the wages tax (de loonbelasting);
 - (iii) the company tax (de vennootschapsbelasting) including the Government share in the net profits of the exploitation of natural resources levied pursuant to the Mining Act (de Mijnbouwwet);
 - (iv) the dividend tax (de dividendbelasting); (hereinafter referred to as "Netherlands tax")."

Article III

1. The words "and on capital", "or of capital", "on total capital", "or capital situated therein" and "or on capital" shall be deleted from all provisions throughout the Convention, except from Article 33 of the Convention.
2. Chapter IV of the Convention shall be deleted from the Convention.
3. In Article 23 of the Convention the words "or owns items of capital", "or capital", "or owns capital", "or capital tax", "or the capital", "or the capital owned in" and ", as the case may be," shall be deleted.
4. In paragraph 2 of article 23 of the Convention the words ", paragraph 2 of Article 21 and paragraphs 1 and 2 of Article 22" shall be replaced by "and paragraph 2 of Article 21".
5. Subparagraph (a) of paragraph 5 of Article 23 of the Convention shall be replaced by the following:

"a) Subject to the provisions of subparagraph c), where a resident of Denmark derives income which, in accordance with the provisions of this Convention, may be taxed in the Netherlands, Denmark shall allow as a deduction from the taxes on the income of that resident an amount equal to the taxes on income paid in the Netherlands."
6. Subparagraph (f) of paragraph 5 of Article 23 of the Convention shall be deleted.
7. In paragraph 3 of Article 25 of the Convention the words "Similarly, any debts of an enterprise of one of the States to a resident of the other State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State" shall be deleted.
8. In subparagraph (b) of paragraph 3 of Article 30 of the Convention the words "or capital" shall be deleted.
9. Article I of the Protocol to the Convention shall be deleted.
10. The title of Article III of the Protocol to the Convention "Ad Articles 5, 6, 13 and 22" shall be replaced by "Ad Articles 5, 6 and 13".
11. Paragraph 1 of Article XI (Ad Article 23) of the Protocol to the Convention shall be deleted and the number "2." before the remaining paragraph of Article XI shall also be deleted.

Article IV

Article 18 of the Convention shall be replaced by the following:

“Article 18

Pensions, Annuities and Social Security Payments

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration, as well as annuities, arising in a State and paid to a resident of the other State may be taxed in the first-mentioned State.
2. Pensions paid and other payments made under the provisions of the social security legislation of a State to a resident of the other State may be taxed in the first-mentioned State.
3. A pension, other similar remuneration or an annuity shall be deemed to arise in a State insofar as the contributions or payments associated with that pension or other similar remuneration or annuity, or the entitlements received from that pension or other similar remuneration or annuity qualified for relief from tax in that State.
4. The term “annuity” means:
 - a) in the case of an annuity arising in the Netherlands, an annuity as mentioned in the Netherlands Income Tax Act 2001 (“Wet inkomstenbelasting 2001”), or any subsequent identical or substantially similar laws or regulations replacing this act, the benefits of which are part of taxable income from employment and dwellings (“belastbaar inkomen uit werk en woning”);
 - b) in the case of annuities arising in Denmark, a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money’s worth.
5. For the purpose of this Article contributions and payments are considered to have qualified for relief from tax where:
 - a) contributions paid to a pension fund, insurance company or any other similar institution were deducted from the taxable income of a taxpayer; or
 - b) contributions paid by an employer were not taxable income of a taxpayer.
6. The provisions of this Article shall also apply in case a lump sum payment is made in lieu of a pension or an other similar remuneration or an annuity before the date on which the pension or other similar remuneration or the annuity commences.”.

Article V

Article 23 of the Convention shall be modified as follows:

1. In paragraph 2, the words “paragraph 3 of Article 18” shall be replaced by “paragraphs 1 and 2 of Article 18”.
2. In paragraph 3, the words “paragraph 2 of Article 18” shall be replaced by “paragraph 6 of Article 18”.
3. The following sentence shall be added to paragraph 3 after the second sentence:

“This paragraph shall not restrict allowance now or hereafter accorded by the provisions of the Netherlands law for the avoidance of double taxation, but only as far as the calculation of the amount of the deduction of Netherlands tax is concerned with respect to the aggregation of income from more than one state and the carry forward of the tax paid in Denmark on the said items of income to subsequent years.”.

Article VI

The following Article shall be inserted after Article 23 of the Convention:

“Article 23a

Entitlement to Benefits

Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income 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.”.

Article VII

Paragraph 1 of Article 26 of the Convention will be replaced by:

"1. Where a person considers that the actions of one or both of the States result or will result for that person in taxation not in accordance with the provisions of this Convention, that person may, irrespective of the remedies provided by the domestic law of those States, present the case to the competent authority of either State. 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 the Convention."

Article VIII

Article 27 of the Convention shall be replaced by the following:

"Article 27

Exchange of information

1. The competent authorities of the States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2. The competent authorities of the States may by mutual agreement settle the mode of application of this Article.

2. Any information received under paragraph 1 by a State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a 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.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a State in accordance with this Article, the other State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a 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."

Article IX

Article 28 of the Convention shall be replaced by the following:

"Article 28

Assistance in the collection of taxes

1. The 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 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 States, or of their political subdivisions or local authorities, insofar

as the taxation there under is not contrary to this Convention or any other instrument to which the States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a State 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, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other State. That 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 other State.

4. When a revenue claim of a 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 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 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. In addition, a revenue claim accepted by a 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 State.

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

7. Where, at any time after a request has been made by a State under paragraph 3 or 4 and before the other 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 State the obligation:
- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other State;
 - b) to carry out measures which would be contrary to public policy (*ordre public*);
 - c) to provide assistance if the other 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 State."

Article X

Article 29 of the Convention shall be deleted.

Article XI

In paragraph 1 of article 32 of the Convention the words "either or both of the countries of the Netherlands Antilles or Aruba," shall be replaced by "Aruba, Curaçao, Sint Maarten or the Caribbean part of the Netherlands (the islands of Bonaire, Sint Eustatius and Saba),".

Article XII

The Title of the Protocol to the Convention shall be replaced by the following Title of the Protocol to the Convention:

"With respect to the Convention concluded between the Kingdom of the Netherlands and the Kingdom of Denmark for the elimination of double taxation with respect to taxes on income 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 XIII

Article X of the Protocol to the Convention shall be deleted.

Article XIV

The following new Article XIII shall be inserted in the Protocol to the Convention:

“XIII.

Ad articles 27 and 28

The provisions of Article 27 and Article 28 shall apply accordingly to income related regulations.”.

Article XV

Where before the date on which this Amending Protocol is signed, an individual who is a resident of one of the States receives a pension or other similar remuneration, or an annuity, arising in the other State, and who continues after that date to receive such pension, other similar remuneration or annuity, and who continues to be a resident of that State, the provisions of Article 18 of the Convention as they stood before the entry into force of this Amending Protocol shall remain applicable with respect to such pension, other similar remuneration or annuity.

Article XVI

This Amending 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 States have notified each other in writing that their formalities constitutionally required 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 Amending Protocol has entered into force.

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

DONE at Copenhagen this ninth day of May 2018, in duplicate, in the English language.

For the Kingdom of the Netherlands,

HENDRIK WILLEM SWARTTOUW

For the Kingdom of Denmark,

KARSTEN LAURITZEN

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 XVI in werking treden op de laatste dag van de maand die volgt op de maand waarin de laatste van de kennisgevingen langs diplomatieke weg is ontvangen waarin de onderscheiden verdragsluitende staten elkaar schriftelijk ervan in kennis hebben gesteld dat aan de grondwettelijk vereiste formaliteiten is voldaan.

Uitgegeven de *drieëntwintigste* mei 2018.

De Minister van Buitenlandse Zaken,

S.A. BLOK