

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2004 Nr. 17

A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden, ten behoeve van Aruba, en de Verenigde Staten van Amerika inzake de uitwisseling van gegevens met betrekking tot belastingen;
Washington, 21 november 2003*

B. TEKST

Agreement between the Kingdom of the Netherlands in respect of Aruba and the United States of America for the exchange of information with respect to taxes

The Kingdom of the Netherlands in respect of Aruba and the United States of America;

Desiring to facilitate the exchange of information with respect to taxes, recognizing the critical importance of sharing information with one another to prevent abuse of their respective fiscal laws, and determined to cooperate in the prevention of financial crimes and to combat terrorism through sharing of information;

Have agreed as follows:

Article 1

Object and scope of the Agreement

1. The Contracting Parties shall assist each other to assure the accurate assessment and collection of taxes, to prevent fiscal fraud and tax evasion, and to develop improved information sources for tax matters. The Contracting Parties shall provide assistance through exchange of information, authorized pursuant to Article 4, and such related measures as may be agreed upon by the competent authorities pursuant to Article 5.

2. Information shall be exchanged to fulfill the purpose of this Agreement without regard to whether the person to whom the information relates is, or whether the information is held by, a resident or national of a Contracting Party, provided that information is present within the territory, or in the possession or control of a person subject to the jurisdiction, of the requested Party.

3. As regards the Kingdom of the Netherlands, this Agreement shall apply only to Aruba.

Article 2

Taxes covered by the Agreement

1. This Agreement shall apply to the following taxes imposed by or on behalf of a Contracting Party:

a. in the case of the United States of America, the following taxes:

- (i) Federal income taxes;
- (ii) Federal taxes on self-employment income;
- (iii) Federal estate and gift taxes; and
- (iv) Federal excise taxes; and

b. in the case of Aruba, the following taxes:

- (i) the income tax (inkomstenbelasting);
- (ii) the wages tax (loonbelasting);
- (iii) the profit tax (winstbelasting);
- (iv) the dividend withholding tax (dividendbelasting);
- (v) the inheritance tax (successiebelasting); and
- (vi) the excise tax (accijnzen).

2. This Agreement shall apply also to any identical or substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. The competent authority of each Contracting Party shall notify the other of changes in laws which may affect the obligations of that Contracting Party pursuant to this Agreement.

3. This Agreement shall not apply to the extent that an action or proceeding concerning taxes covered by this Agreement is barred by the applicant Party's statute of limitations.

4. This Agreement shall not apply to taxes imposed by political subdivisions of either Contracting Party and, in the case of the United States, to taxes imposed by states or possessions of the United States.

Article 3

Definitions

1. In this Agreement, unless otherwise defined:

a. The term "competent authority" means:

- (i) in the case of the United States of America, the Secretary of the Treasury or his delegate; and
- (ii) in the case of Aruba, the Minister of Finance and Economic Affairs or his authorized representative.
- b) The term “Contracting Party” means the United States or the Kingdom of the Netherlands in respect of Aruba as the context requires.
- c) The term “national” means:
 - (i) in the case of the United States, any United States citizen and any legal person, partnership, corporation, trust, estate, association, or other entity deriving its status as such from the laws in force in the United States; and
 - (ii) in the case of Aruba, any individual who is a citizen of Aruba and any person other than an individual deriving its status as such from the laws of Aruba.
- d) The term “person” includes an individual and a partnership, corporation, trust, estate, association or other legal entity.
- e) The term “tax” means any tax to which the Agreement applies.
- f) The term “information” means any fact or statement, in any form whatever, including (but not limited to) declaration of an individual and documents, records, or tangible property of a person or a Contracting Party.
- g) The terms “applicant Party” and “requested Party” mean, respectively, the Contracting Party applying for or receiving information and the Contracting Party providing or requested to provide such information.
- h) For purposes of determining the geographical area within which jurisdiction to compel production of information may be exercised, the term “United States” means the United States of America, including Puerto Rico, the Virgin Islands, Guam, and any other United States possession or territory.
- i) For purposes of determining the geographical area within which jurisdiction to compel production of information may be exercised, the term “Aruba” means that part of the Kingdom of the Netherlands that is situated in the Caribbean area and consisting of the Island Aruba.

2. Any term not defined in this Agreement, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 5, shall have the meaning which it has under the laws of the Contracting Party relating to the taxes which are the subject of this Agreement.

Article 4

Exchange of information

1. The competent authorities of the Contracting Parties shall exchange information that is foreseeably relevant to the administration and

enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement, including information to effect the determination, assessment, and collection of tax, the recovery and enforcement of tax claims, or the investigation or prosecution of tax crimes or crimes involving the contravention of tax administration.

2. The competent authority of the requested Party shall provide information upon request by the competent authority of the applicant Party for the purposes referred to in paragraph 1. If the information available in the tax files of the requested Party is not sufficient to enable compliance with the request, that Party shall take all relevant measures, including compulsory measures, to provide the applicant Party with the information requested.

- a) The requested Party shall have the authority to:
 - (i) examine any books, papers, records, or other tangible property which may be relevant or material to such inquiry;
 - (ii) question any person having knowledge or in possession, custody or control of information which may be relevant or material to such inquiry;
 - (iii) compel any person in possession, custody, or control of information which may be relevant or material to such inquiry to appear at a stated time and place, and produce the books, papers, records, or other tangible property;
 - (iv) provide for a signed certification, from a person who is qualified by reason of position, authority, and knowledge, of the authenticity of such books, papers, records, or other tangible property, that if falsely made would subject the person providing the certification to criminal penalty under the laws of the requested Party; and
 - (v) compel any individual having knowledge of information which may be relevant or material to such inquiry to appear at a stated time and place and to give a declaration under circumstances that, if the declaration were falsely given, would subject the individual to criminal penalty under the laws of the requested Party.
- b) Privileges under the laws or practices of the applicant Party shall not apply in the execution of a request but shall be preserved for resolution by the applicant Party.

3. The requested Party shall provide information requested pursuant to the provisions of this Article regardless of whether the requested Party needs such information for purposes of its own tax. Moreover, if specifically requested by the competent authority of the applicant Party, the requested Party shall:

- a) specify the time and place for the taking of a declaration or the production of books, papers, records, and other tangible property;
- b) permit the presence of individuals designated by the competent authority of the applicant Party as being involved in or affected by execution of the request, including an accused, counsel for the accused, individuals charged with the administration and enforcement of domes-

tic laws of the applicant Party covered by this Agreement, and a commissioner or magistrate present for the purpose of rendering evidentiary rulings or determining issues of privilege under the laws of the applicant Party;

c) provide individuals permitted to be present with an opportunity to question, directly or through the executing authority, the individual giving a declaration or producing books, papers, records, and other tangible property;

d) secure original and unedited books, papers, records, and other tangible property;

e) secure or produce true and correct copies of original and unedited books, papers, and records;

f) determine the authenticity of books, papers, records, and other tangible property produced;

g) examine the individual producing books, papers, records, and other tangible property regarding the purpose for which and the manner in which the item produced is or was maintained;

h) permit the competent authority of the applicant Party to provide written questions to which the individual producing books, papers, records, and other tangible property is to respond regarding the item produced;

i) obtain from a person who is qualified by reason of position, authority, and knowledge a signed certification of the authenticity of such books, papers, records, or other tangible property that if falsely made would subject the person providing the certification to criminal penalty under the laws of the requested Party; {ov1

j) ensure both that the individual giving the declaration does so under circumstances that, if the declaration were falsely given, would subject the individual to criminal penalty under the laws of the requested Party, and that the individual evidences his awareness of such circumstances;

k) perform any other act not in violation of the laws or at variance with the administrative practice of the requested Party; and

l) certify either that procedures requested by the competent authority of the applicant Party were followed or that the procedures requested could not be followed, with an explanation of the deviation and the reason therefore.

4. The provisions of the preceding paragraphs shall not be construed so as to impose on a Contracting Party the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that Party or of the other Contracting Party;

b. to supply particular items of information which are not obtainable:

(i) under the laws or in the normal course of the administration of that Party; or

(ii) under the laws or in the normal course of the administration of the other Contracting Party;

c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process;

d) to supply information, the disclosure of which would be contrary to public policy;

e) to supply information requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party. A provision of tax law, or connected requirement, will be considered to be discriminatory against a national of the requested Party if a national of the requested Party is subject to treatment thereunder that is more burdensome than the treatment to which a national of the applicant Party that is in the same circumstances, particularly with respect to taxation on worldwide income, is or may be subject;

f) notwithstanding subparagraphs (a) through (e) of this paragraph, the requested Party shall have the authority to obtain and provide, through its competent authority, information held by financial institutions, nominees, or persons acting in agency or fiduciary capacity (not including information that would reveal confidential communications between a client and an attorney, solicitor, or other legal representative where the client seeks legal advice), or information in respect of ownership interests in a person.

5. Except as provided in paragraph 4, the provisions of the preceding paragraphs shall be construed so as to impose on a Contracting Party the obligation to use all legal means and its best efforts to execute a request. A Contracting Party may, in its discretion, take measures to obtain and transmit to the other Party information which, pursuant to paragraph 4, it has no obligation to transmit.

6. The competent authority of the requested Party shall allow representatives of the applicant Party to enter the requested Party to interview individuals and examine books and records with the consent of the individuals contacted.

7. Any information received by a Contracting Party shall be treated as secret in the same manner as information obtained under the domestic laws of that Party and shall be disclosed only to individuals or authorities (including judicial and administrative bodies) involved in the determination, assessment, collection, and administration of, the recovery and collection of claims derived from, the enforcement or prosecution in respect of, or the determination of appeals in respect of, the taxes which are the subject of this Agreement, or the oversight of the above. Such individuals or authorities shall use the information only for such purposes. These individuals or authorities may disclose the information in public court proceedings or in judicial decisions.

8. To demonstrate the foreseeable relevance of the requested information the applicant Party shall at least provide the following information:

- a) the identity of the person under examination or investigation; and
- b) the tax purpose for which the information is requested.

Article 5

Mutual agreement procedure

1. The competent authorities of the Contracting Parties shall agree to implement a program to carry out the purposes of this Agreement. This program may include, in addition to exchanges specified in Article 4, other measures to improve tax compliance, such as exchanges of technical know-how, development of new audit techniques, identification of new areas of non-compliance, and joint studies of non-compliance areas.

2. The competent authorities of the Contracting Parties shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. In particular, the competent authorities may agree to a common meaning of a term and may determine when costs are extraordinary for purposes of Article 6.

3. The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of reaching agreement under this Article.

Article 6

Costs

Unless the competent authorities of the Contracting Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party and extraordinary costs incurred in providing assistance shall be borne by the applicant Party.

Article 7

Implementation

A Contracting Party shall enact such legislation as may be necessary to effectuate this Agreement.

Article 8

Entry into force

This Agreement shall enter into force upon an exchange of notes between the Contracting Parties confirming that each has met domestic, constitutional, statutory and any other requirements necessary to effectuate this Agreement.

Article 9

Termination

This Agreement shall remain in force until terminated by one of the Contracting Parties. Either Contracting Party may terminate the Agreement at any time after the Agreement enters into force, provided that at least three months prior notice of termination has been given through diplomatic channels.

DONE at Washington, in duplicate, this 21st day of November, 2003.

For the Kingdom of the Netherlands in respect of Aruba:

(sd.) N. O. ODUBER

For the United States of America:

(sd.) J. W. SNOW

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 artikel 8 van het Verdrag in werking treden op het moment dat de Verdragssluitende Partijen nota's hebben gewisseld waarin zij bevestigen dat aan de nationale, grondwettelijke en wettelijke en eventueel andere vereisten voor inwerkingtreding is voldaan.

Uitgegeven de *negeentwintigste* januari 2004.

De Minister van Buitenlandse Zaken,

B. R. BOT