

12 (2009) Nr. 1

# TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

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JAARGANG 2009 Nr. 109

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A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden en Bermuda (zoals gemachtigd door de Regering van het Verenigd Koninkrijk van Groot-Brittannië en Noord-Ierland) tot het vermijden van dubbele belasting met betrekking tot natuurlijke personen;  
Londen, 8 juni 2009*

B. TEKST

**Agreement between the Kingdom of the Netherlands and Bermuda (as authorised by the Government of the United Kingdom of Great Britain and Northern Ireland) for the avoidance of double taxation on individuals**

The Government of the Kingdom of the Netherlands

and

the Government of Bermuda (as authorised by the Government of the United Kingdom of Great Britain and Northern Ireland),

Desiring to supplement the Agreement on the exchange of information with regard to taxes concluded at London today on the 8<sup>th</sup> day of June 2009, by concluding an Agreement for the avoidance of double taxation on individuals with respect to taxes on income,

Have agreed as follows:

CHAPTER I  
SCOPE OF THE AGREEMENT

Article 1

*Individuals covered*

This Agreement shall apply to individuals who are residents of one or both of the Contracting Parties.

Article 2

*Taxes covered*

1. This Agreement shall apply to taxes on income imposed on behalf of a Party or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. The existing taxes to which the Agreement shall apply are in particular:

- a) in the Netherlands:
  - de inkomstenbelasting (income tax);
  - de loonbelasting (wages tax);
- b) in Bermuda
  - any tax imposed by Bermuda which is substantially similar to the existing taxes of the Netherlands to which this Agreement applies, but does not include payroll tax;

3. The Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Parties shall notify each other of any significant changes that have been made in their taxation laws.

CHAPTER II  
DEFINITIONS

Article 3

*General definitions*

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

- a) the term “a Contracting Party” means the Netherlands or Bermuda, as the context requires; the term “Contracting Parties” means Bermuda and the Netherlands;
- b) the term “Bermuda” means the Islands of Bermuda including the territorial sea adjacent to those islands, in accordance with international law;
- c) the term “the Netherlands” means the part of the Kingdom of the Netherlands that is situated in Europe, including its territorial sea, and any area beyond the territorial sea within which the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights;
- d) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting Party, except when the ship or aircraft is operated solely between places in the other Contracting Party;
- e) the term “enterprise” applies to the carrying on of any business;
- f) the term “competent authority” means:
  - (i) in the Netherlands the Minister of Finance or his authorised representative;
  - (ii) in the case of Bermuda, the Minister of Finance or an authorised representative of the Minister.

2. As regards the application of the 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 for the purposes of the taxes to which the Agreement applies, 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 4

##### *Resident*

1. For the purposes of this Agreement, the term “resident of a Party” means:
  - a) in the Netherlands in respect of an individual any individual who, under the laws of the Netherlands, is liable to tax therein by reason of his domicile, residence or any other criterion of a similar nature. This term, however, does not include an individual who is liable to tax in the Netherlands in respect only of income from sources in Netherlands;
  - b) in Bermuda in respect of an individual who, under the laws of Bermuda is ordinarily resident in Bermuda.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Parties, then his status shall be determined as follows:
  - a) he shall be deemed to be a resident only of the Party in which he has a permanent home available to him; if he has a permanent home

available to him in both Parties, he shall be deemed to be a resident only of the Contracting Party with which his individual and economic relations are closer (centre of vital interests);

b) if the Party in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting Party, he shall be deemed to be a resident only of the Party in which he has an habitual abode;

c) if he has an habitual abode in both Parties or in neither of them, he shall be deemed to be a resident only of the Contracting Party of which he is a national;

d) if he is a national of both Parties or of neither of them, the competent authorities of the Contracting Parties shall settle the question by mutual agreement.

#### Article 5

##### *Income from employment*

1. Subject to the provisions of Articles 6, 7, 8 and 9, salaries, wages and other similar remuneration derived by a resident of a Contracting Party in respect of an employment shall be taxable only in that Party unless the employment is exercised in the other Contracting Party. If the employment is so exercised, such remuneration as is derived there may be taxed in that other Party.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting Party in respect of an employment exercised in the other Contracting Party shall be taxable only in the first-mentioned Party if:

a) the recipient is present in the other Party for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, and

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Party, and

c) the remuneration is not borne by a fixed place of business which the employer has in the other Party through which the business is wholly or partly carried out.

3. Paragraph 2 of this Article shall not apply to remuneration derived by a resident of a Contracting Party in respect of an employment exercised in the other Contracting Party and paid by, or on behalf of, an employer who is not a resident of that other Party if:

a) the recipient renders services in the course of that employment to a person other than the employer and that person, directly or indirectly, supervises, directs or controls the manner in which those services are performed, and;

b) those services constitute an integral part of the business activities carried on by that person.

4. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting Party in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed in that Party in which the place of effective management of the enterprise is situated.

5. For the purpose of this Article the place of effective management of the existing Koninklijke Luchtvaartmaatschappij N.V. (KLM N.V.) shall be deemed to be situated in the Netherlands, as long as the Netherlands has an exclusive taxing right with respect to KLM N.V. under the tax convention concluded between the Kingdom of the Netherlands and the French Republic.

#### Article 6

##### *Directors' fees*

1. Directors' fees and other remuneration derived by a resident of a Contracting Party in his capacity as a member of the board of directors of a company which is a resident of the other Contracting Party may be taxed in that other Party.

2. Where a company is a resident of the Netherlands, the term "member of the board of directors" includes both a "bestuurder" and a "commissaris". The terms "bestuurder" and "commissaris" mean respectively individuals who are charged with the general management of the company and individuals who are charged with the supervision thereof.

#### Article 7

##### *Entertainers and sports individuals*

1. Notwithstanding the provisions of Article 5 income derived by a resident of a Contracting Party as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sports individual, from his individual activities as such exercised in the other Contracting Party, may be taxed in that other Party.

2. Where income in respect of individual activities exercised by an entertainer or a sports individual in his capacity as such accrues not to the entertainer or sports individual himself but to another individual, that income may, notwithstanding the provisions of Article 5, be taxed in the Contracting Party in which the activities of the entertainer or sports individual are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived by a resident of a Contracting Party from activities exercised in the other Contracting Party, if the visit to that other Party is wholly or mainly supported by public funds of one Party or both Parties or political subdivisions or local authorities thereof, or takes place under a cultural agreement between the Governments of the Contracting Parties. In such a case, the income shall be taxable only in the Party of which the entertainer or sports individual is a resident.

#### Article 8

##### *Pensions, annuities and social security payments*

1. Subject to the provisions of paragraph 2 of Article 9, pensions and other similar remuneration paid to a resident of a Contracting Party, as well as annuities paid to a resident of a Contracting Party, shall be taxable only in that Party. Any pension and other payment paid out under the provisions of a social security system of a Contracting Party to a resident of the other Contracting Party shall be taxable only in that other Party.

2. Notwithstanding the provisions of paragraph 1, a pension or other similar remuneration, annuity, or any pension and other payment paid out under the provisions of a social security system of a Contracting Party, may also be taxed in the Contracting Party from which it is derived, in accordance with the laws of that Party:

a) insofar as the entitlement to this pension or other similar remuneration or annuity is exempt from tax in the Contracting Party from which it is derived, or the contributions associated with the pension or other similar remuneration or annuity made to the pension scheme or insurance company were deducted in the past when calculating taxable income in that Party or qualified for other tax relief in that Party; and

b) insofar as this pension or other similar remuneration or annuity or this pension or other payment paid out under the provisions of a social security system of a Contracting Party is not taxed in the Contracting Party of which the recipient thereof is a resident at the generally applicable rate for income derived from employment, or less than 90 per cent of the gross amount of the pension or other similar remuneration or annuity or payment is taxed; and

c) if the total gross amount of the pensions and other similar remuneration and annuities, and any pension and other payment paid out under the provisions of a social security system of a Contracting Party, that according to subparagraphs a) and b) may be taxed in the Contracting Party from which it is derived exceeds in any calendar year the sum of 10.000 Euro or the equivalent amount in the other Party.

3. Notwithstanding the provisions of paragraphs 1 and 2, if this pension or other similar remuneration is not periodic in nature, is paid in the other Contracting Party and is paid out before the date on which the pension commences, or if a lump sum payment is made in lieu of the right to an annuity before the date on which the annuity commences, the payment or this lump sum may also be taxed in the Contracting Party from which it is derived.

4. A pension or other similar remuneration or annuity is deemed to be derived from a Contracting Party insofar as the contributions or payments associated with the pension or other similar remuneration or annuity, or the entitlements received from them qualified for tax relief in that Contracting Party. The transfer of a pension from a pension fund or an insurance company in a Contracting Party to a pension fund or an insurance company in another Party shall not restrict in any way the taxing rights of the first-mentioned Party under this Article.

5. The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of paragraph 2. They shall also decide what details the resident of a Contracting Party must submit for the purpose of the proper application of the Agreement in the other Contracting Party, in particular so that it can be established whether the conditions referred to in subparagraphs a), b) and c) of paragraph 2 have been met.

6. The term “annuity” means 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.

7. Whether and to what extent a pension or similar remuneration falls under this Article or under Article 18, is determined by the nature of the services rendered, as private or governmental, during which the entitlement to that part of the pension or similar remuneration was built up.

#### Article 9

##### *Government service*

1. a) Salaries, wages and other similar remuneration paid by a Contracting Party or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Party or subdivision or authority may be taxed in that Party.

b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in that Party and the individual is a resident of that Party who:

(i) is a national of that Party; or

(ii) did not become a resident of that Party solely for the purpose of rendering the services.

2. a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting Party or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Party or subdivision or authority may be taxed in that Party.

b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting Party if the individual is a resident of, and a national of, that Party.

3. The provisions of Articles 5, 6 and 7 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting Party or a political subdivision or a local authority thereof.

#### Article 10

##### *Students*

Payments which a student or business apprentice who is or was immediately before visiting a Contracting Party a resident of the other Contracting Party and who is present in the first-mentioned Party solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that Party, provided that such payments arise from sources outside that Party.

#### CHAPTER IV

#### ELIMINATION OF DOUBLE TAXATION

#### Article 11

##### *Elimination of double taxation*

1. The Netherlands, when imposing tax on its residents, may include in the basis upon which such taxes are imposed the items of income which, according to the provisions of this Agreement, may be taxed in Bermuda.

2. However, where a resident of the Netherlands derives items of income which according to paragraphs 1, 3 and 4 of Article 5 of this Agreement may be taxed in Bermuda and are included in the basis referred to in paragraph 1, the Netherlands shall exempt such items of income by allowing a reduction of its tax. This reduction shall be computed in conformity with the provisions of the Netherlands law for the avoidance



of double taxation. For that purpose the said items of income shall be deemed to be included in the amount of the items of income which are exempt from Netherlands tax under those provisions.

3. Further, the Netherlands shall allow a reduction from the Netherlands tax so computed for the items of income which according to paragraph 1 of Article 6, paragraphs 1 and 2 of Article 7 and paragraph 3 of Article 8 of this Agreement may be taxed in Bermuda to the extent that these items are included in the basis referred to in paragraph 1. The amount of this reduction shall be equal to the tax paid in Bermuda on these items of income, but shall, in case the provisions of the Netherlands law for the avoidance of double taxation provide so, not exceed the amount of the reduction which would be allowed if the items of income so included were the sole items of income which are exempt from Netherlands tax under the provisions of the Netherlands law for the avoidance of double taxation.

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 reduction of Netherlands tax is concerned with respect to the aggregation of income from more than one country and the carry forward of the tax paid in Bermuda on the said items of income to subsequent years.

4. In Bermuda double taxation shall be avoided in accordance with the laws of Bermuda.

## CHAPTER V

### SPECIAL PROVISIONS

#### Article 12

##### *Mutual agreement procedure*

1. Where a individual considers that the actions of one or both of the Contracting Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those Parties, present his case to the competent authority of the Contracting Party of which he is a resident. 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 Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of

taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting Parties.

3. The competent authorities of the Contracting Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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

5. If any difficulty or doubt arising as to the interpretation or application of the Agreement cannot be resolved by the competent authorities of the Contracting Parties in a mutual agreement procedure pursuant to the previous paragraphs of this Article within a period of two years after the question was raised, the case may, at the request of either Party, be submitted for arbitration, but only after fully exhausting the procedures available under paragraphs 1 to 4 of this Article and provided the taxpayer or taxpayers involved agree in writing to be bound by the decision of the arbitration board. The decision of the arbitration board in a particular case shall be binding on both Parties and the taxpayer or taxpayers involved with respect to that case.

#### Article 13

##### *Territorial extension*

1. This Agreement may be extended, either in its entirety or with any necessary modifications, to either or both of the countries of the Netherlands Antilles and Aruba, if the country concerned imposes taxes substantially similar in character to those to which the Agreement applies. Any such extension shall take effect from such date and shall be subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed in notes to be exchanged through diplomatic channels.

2. Unless otherwise agreed the termination of the Agreement shall not also terminate any extension of the Agreement to any country to which it has been extended under this Article.

## Article 14

*Entry into force*

1. This Agreement shall enter into force on the first day of the second month after the latter of which each of the Contracting Parties has notified the other in writing that the formalities constitutionally required in their respective Parties have been complied with.

2. Notwithstanding paragraph 1 of this Article, the Agreement shall only enter into force when the Agreement between the Kingdom of the Netherlands and Bermuda on the exchange of information with respect to taxes shall have effect for criminal as well as civil tax matters.

## Article 15

*Termination*

1. This Agreement shall remain in force until terminated by a Party. Either Party may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the expiration of a period of three years from the date of its entry into force. 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. Notwithstanding paragraph 1 of this Article, this Agreement will be terminated, without giving notice of termination, on the date of termination of the Agreement between the Kingdom of the Netherlands and Bermuda (as authorised by the Government of the United Kingdom of Great Britain and Northern Ireland) on the exchange of information with respect to taxes.

IN WITNESS WHEREOF the undersigned, being duly authorised in that behalf by the respective Parties, have signed this Agreement.

DONE at London this 8<sup>th</sup> day of June 2009, in duplicate, in the English language.

*For the Kingdom of the Netherlands,*

J.C. DE JAGER

*For Bermuda,*

PAULA A. COX

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D. PARLEMENT

Het Verdrag heeft 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 14, eerste lid, in werking treden op de eerste dag van de tweede maand nadat beide verdragsluitende partijen elkaar er schriftelijk van in kennis hebben gesteld dat aan hun constitutioneel vereiste procedures is voldaan.

Uitgegeven de *twintigste* juli 2009.

*De Minister van Buitenlandse Zaken,*

M. J. M. VERHAGEN