

13 (2009) Nr. 1

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2009 Nr. 110

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) inzake de toegang tot onderlinge
overlegprocedures in verband met winstcorrecties tussen verbonden
ondernemingen;
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) on the access to mutual agreements
procedures in connection with the adjustment of profits of
associated enterprises**

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 informa-
tion with respect to taxes concluded today at London on the 8th day of
June 2009, and to strengthen their economic relationship and to encour-
age international trade;

Have agreed to conclude the following Agreement which contains
obligations on the part of the Contracting Parties only:

CHAPTER I

TAXES COVERED AND DEFINITIONS

Article 1

Taxes covered

This Agreement shall apply to taxes on income and profits.

Article 2

Definitions

1. For the purposes of this Agreement, unless otherwise defined:
 - a) the term “Contracting Party” means the Netherlands or Bermuda as the context requires; the term “Contracting Parties” means Bermuda and the Netherlands;
 - b) 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;
 - c) the term “Bermuda” means the Islands of Bermuda including the territorial sea adjacent to those islands, in accordance with international law;
 - d) the term “competent authority” means
 - (i) in the case of 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 this Agreement at any time by a Contracting 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.

CHAPTER II

THE ADJUSTMENT OF PROFITS OF ASSOCIATED
ENTERPRISES

Article 3

Scope of Chapter II

1. Chapter II of this Agreement shall apply where, for the purposes of taxation, profits which are included in the profits of an enterprise of a Contracting Party are also included or are also likely to be included in the profits of an enterprise of the other Contracting Party on the grounds that the principles set out in Article 4, and applied either directly or in corresponding provisions of the law of the Contracting Party concerned, have not been observed.

2. Paragraph 1 shall also apply where any of the enterprises concerned have made losses rather than profits.

Article 4

*Principles applying to the adjustment of profits of associated
enterprises*

Where:

a) an enterprise of a Contracting Party participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting Party, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Party and an enterprise of the other Contracting Party,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Article 5

General provision

Where a Contracting Party intends to adjust the profits of an enterprise in accordance with the principles set out in Article 4, it shall inform the enterprise of the intended action in due time and give it the opportunity to inform the other enterprise so as to give that other enterprise the

opportunity to inform in turn the other Contracting Party. However, the Contracting Party providing such information shall not be prevented from making the proposed adjustment.

Article 6

Mutual agreement procedures

1. Where an enterprise considers that, in any case to which this Agreement applies, the principles set out in Article 4 have not been observed, it may, irrespective of the remedies provided by the domestic law of the Contracting Party concerned, present its case to the competent authority of the Contracting Party of which it is an enterprise. The case must be presented within three years of the first notification of the action which is contrary or is likely to be contrary to the principles set out in Article 4. The competent authority shall then without delay notify the competent authority of the other Contracting Party.

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 may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraph.

4. The competent authority of a Contracting Party shall not be obliged to initiate the mutual agreement procedure where legal or administrative proceedings have resulted in a final ruling that by actions giving rise to an adjustment of transfers of profits under Article 4 one of the enterprises concerned is liable to a serious penalty. In addition, the competent authority of a Contracting Party shall not be obliged to initiate the mutual agreement procedure if the enterprise has not fulfilled the domestic documentation and/or information requirements of the adjusting Contracting Party before the assessment in which the adjustment is incorporated was finalized.

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 Contracting Party, be submitted for arbitration, but only after fully exhausting the

procedures available under paragraphs 1 to 3 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 Contracting Parties and the taxpayer or taxpayers involved with respect to that case.

CHAPTER III

FINAL PROVISIONS

Article 7

Entry into force

1. This Agreement shall enter into force when each Contracting Party has notified the other of the completion of its necessary internal procedures for entry into force. The Agreement shall apply to proceedings referred to in Article 6, paragraph 1, which are initiated after its entry into force.

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

Article 8

Termination

1. This Agreement shall remain in force until terminated by one of the Contracting Parties. Either Contracting 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

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 on the exchange of information with respect to taxes.

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

DONE at London this 8th 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

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 7, eerste lid, in werking treden nadat beide verdragsluitende partijen elkaar ervan in kennis hebben gesteld dat aan hun vereiste nationale procedures voor inwerkingtreding is voldaan.

Uitgegeven de *twintigste* juli 2009.

De Minister van Buitenlandse Zaken,

M. J. M. VERHAGEN