

14 (2009) Nr. 1

# TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

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JAARGANG 2009 Nr. 111

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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 ondernemingen die schepen of luchtvaartuigen exploiteren in het internationale verkeer;  
Londen, 8 juni 2009*

B. TEKST

**Agreement between the Kingdom of the Netherlands and Bermuda  
(as authorized by the Government of the United Kingdom of  
Great Britain and Northern Ireland) on the avoidance of double  
taxation with respect to enterprises operating ships or aircraft in  
international traffic**

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 respect to taxes concluded today on the 8<sup>th</sup> day of June 2009, by concluding an Agreement on the avoidance of double taxation with respect to enterprises operating ships or aircraft in international traffic,

Have agreed as follows:

## Article 1

*Definitions*

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

- a) the term “Bermuda” means the Islands of Bermuda including the territorial sea adjacent to those islands, in accordance with international law;
- b) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- c) 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;
- d) the term “Contracting Party” means the Netherlands or Bermuda, as the context requires; the term “Contracting Parties” means the Kingdom of the Netherlands and Bermuda;
- e) the term “enterprise of a Contracting Party” means an enterprise, carried on by a resident of a Contracting Party;
- f) the term “income derived from the operation of ships or aircraft in international traffic” includes revenues, gross receipts and profits derived from:
  - (i) such operation of ships or aircraft for the transport of passengers or cargo;
  - (ii) the rental on a charter basis of ships or aircraft where the rental is ancillary to the operation of ships or aircraft in international traffic;
  - (iii) the sale of tickets or similar documents and the provision of services connected with such transport, either for the enterprise itself or for any other enterprise, where such sale of tickets or similar documents or provision of services is directly connected with or ancillary to the operation of ships or aircraft in international traffic;
  - (iv) the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise, where the use, maintenance or rental is directly connected with or ancillary to the operation of ships or aircraft in international traffic;
  - (v) interest on funds deposited directly in connection with the operation of ships or aircraft in international traffic.
- g) 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;

h) the term “the Netherlands” means the part of the Kingdom of the Netherlands that is situated in Europe, including its territorial seas, and any area beyond the territorial sea within which the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights;

i) the term “person” includes an individual, a company and any other body of persons;

j) the term “resident of a Contracting Party” means any person, who under the law of that Party is liable to taxation therein by reason of his domicile, residence, place of effective management or any other criterion of a similar nature;

2. As regards the application of the 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 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 2

##### *Avoidance of double taxation*

1. An enterprise of a Contracting Party operating ships or aircraft in international traffic shall be exempted in the other Contracting Party from taxes of every kind and description on income derived therefrom, irrespective of the manner in which they are levied.

2. An enterprise of a Contracting Party operating ships or aircraft in international traffic shall be exempted in the other Contracting Party from taxes of every kind and description on gains derived from the alienation of ships or aircraft or movable property pertaining to the operation of such ships or aircraft, irrespective of the manner in which they are levied.

3. The provisions of paragraphs 1 and 2 shall also apply to income, profits and gains derived by an enterprise of a Contracting Party from the participation in a pool, a joint business or an international operating agency.

4. 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 3

*Mutual agreement procedure*

1. 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. Consultation requested by the competent authority of a Contracting Party shall begin within 90 days from the date of the receipt of such request.

2. 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.

3. If any difficulty or doubt arising as to the interpretation or application of the Agreement cannot be resolved by the competent authorities of the 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 2 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 4

*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 5

*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 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 6

*Termination*

1. This Agreement shall remain in force until terminated by one of the Contracting Parties. Either Party may terminate the Agreement by giving notice of termination in writing at least six months before the end of any calendar year after the expiration of a period of five 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 on the exchange of information with respect to taxes.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, 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 5, 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