

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2009 Nr. 166

A. TITEL

*Verdrag ter bevordering van de economische betrekkingen tussen het Koninkrijk der Nederlanden, ten behoeve van de Nederlandse Antillen, en het Koninkrijk Denemarken;
Parijs, 10 september 2009*

B. TEKST

Agreement to promote economic relations between the Kingdom of the Netherlands, in respect of the Netherlands Antilles, and the Kingdom of Denmark

The Kingdom of the Netherlands, in respect of the Netherlands Antilles,

and

the Kingdom of Denmark,

Whereas the Kingdom of the Netherlands, in respect of the Netherlands Antilles, and the Kingdom of Denmark (“the Parties”) have signed an Agreement for the Exchange of Information with respect to Taxes;

Whereas both the Netherlands Antilles and Denmark are committed to work towards an international financial system that is free of distortions created through lack of transparency and lack of effective exchange on information in tax matters;

Whereas Denmark wishes to assist the Netherlands Antilles in diversifying its economy;

Now, therefore, the Parties have agreed as follows:

Article 1

Definitions

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

a) the term “Denmark” means the Kingdom of Denmark including any area outside the territorial sea of Denmark which in accordance with international law has been or may hereafter be designated under Danish laws as an area within which Denmark may exercise sovereign rights with respect to the exploration and exploitation of the natural resources of the sea-bed or its subsoil and the superjacent waters and with respect to other activities for the exploration and economic exploitation of the area; the term does not comprise the Faroe Islands and Greenland;

b) the term “the Netherlands Antilles” means that part of the Kingdom of the Netherlands that is situated in the Caribbean Sea and consisting of the Island Territories of Bonaire, Curaçao, Saba, St. Eustatius and St. Maarten (Dutch part) including the territorial waters thereof and the part of the seabed and its subsoil under the Caribbean Sea over which the Kingdom of the Netherlands has sovereign rights in accordance with international law but excluding the part thereof relating to Aruba;

c) the term “competent authority” means:

(i) in the case of Denmark, the Minister for Taxation or his authorized representative;

(ii) in the case of the Netherlands Antilles, the Minister of Finance or his authorized representative;

d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes.

2. As regards the application of this 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, 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

Residence

1. For the purposes of this Agreement, the terms “company resident in Denmark” and “company resident in the Netherlands Antilles” mean any company which under the laws of a Party, is liable to tax therein by reason of its domicile, residence, place of management or any other criterion of a similar nature. The terms “company resident in Denmark”

and “company resident in the Netherlands Antilles” do not include any company which is liable to tax in a Party in respect of only income from sources in that Party.

2. Where by reason of the provisions of paragraph 1 a company is resident of both Parties, the competent authorities of the Parties shall endeavour to settle the question by mutual agreement.

Article 3

Permanent establishment income

When a company resident in Denmark has a permanent establishment in the Netherlands Antilles, Denmark shall exempt profits, which are attributable to that establishment from tax, provided that the greater part of the profits is derived from activities as mentioned in Article 5.

Article 4

Dividends

When a company resident in Denmark directly holds shares representing 100 per cent of the voting power in a company resident in the Netherlands Antilles, Denmark shall exempt dividends distributed from the last-mentioned company from tax, provided that the greater part of the profits of the last mentioned company is derived from activities as mentioned in Article 5.

Article 5

Activities covered

1. Articles 3 and 4 apply only to profits or to dividends paid out of profits, as the case may be, which to the greater part are derived from the following activities (excluding financial activities other than those in line with the ordinary course of business):

- a) industrial and manufacturing activities;
- b) tourism (including restaurants and hotels);
- c) a building site or a construction, assembly or installation project;
- d) agriculture;
- e) mining;
- f) oil and gas activities and energy production; and
- g) installation, operation or maintenance of fixed or mobile telecommunication systems.

2. The right of any company resident in Denmark to engage in the Netherlands Antilles in the activities listed in the preceding paragraph remains subject to the domestic legislation in force in the Netherlands Antilles.

Article 6

Mutual agreement procedure

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

3. The competent authorities of the Parties shall endeavour to resolve by mutual agreement any difficulties arising as to the interpretation or application of the Agreement.

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

Article 7

Duration

This Agreement shall apply for a period of ten years from the date when this Agreement becomes applicable. This period may be extended by mutual agreement between the competent authorities of the Parties.

Article 8

Entry into force

This Agreement shall enter into force on the first day of the second month after each Party has notified the other in writing, through diplomatic channels, that the internal procedures required by that Party for the entry into force of the Agreement have been complied with. The Agreement shall apply to income earned in any tax year beginning on or after the first day of January of the calendar year next following that in which this Agreement enters into force.

Article 9

Termination

1. This Agreement shall remain in force until terminated by one of the 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. 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. This Agreement is supplementary to the Agreement for the Exchange of Information with respect to Taxes between the Parties. Notwithstanding the provisions of paragraph 1, this Agreement shall, on receipt through the diplomatic channel of written notice of termination of the Agreement for the Exchange of Information with respect to Taxes, terminate and cease to be effective on the day the Agreement for the Exchange of Information with respect to Taxes between the Parties terminates.

IN WITNESS WHEREOF, the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Paris, this 10th day of September 2009, in the English language.

For the Kingdom of the Netherlands, in respect of the Netherlands Antilles:

E.T.M. DE LANNOOY

For the Kingdom of Denmark:

M. L. FELTER

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 zijn artikel 8 in werking treden op de eerste dag van de tweede maand nadat beide Verdragssluitende partijen elkaar er langs diplomatieke weg schriftelijk van in kennis hebben gesteld dat is voldaan aan de nationale procedures die door de partijen als vereisten worden gesteld voor de inwerkingtreding van het Verdrag.

J. VERWIJZINGEN

Titel : Verdrag tussen het Koninkrijk der Nederlanden, ten behoeve van de Nederlandse Antillen, en het Koninkrijk Denemarken inzake de uitwisseling van informatie betreffende belastingen;
Parijs, 10 september 2009
Tekst : *Trb.* 2009, 165

Uitgegeven de *tweede* november 2009.

De Minister van Buitenlandse Zaken,

M. J. M. VERHAGEN