

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2009 Nr. 174

A. TITEL

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

B. TEKST

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

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

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

Whereas the Kingdom of Sweden wishes to assist the Kingdom of the Netherlands, in respect of ¹⁾ Netherlands Antilles, in diversifying its economy;

Now, therefore, the Contracting Parties have agreed as follows:

¹⁾ Redactie Tractatenblad: Hier ontbreekt kennelijk het woord „the”.

Article 1

Taxes Covered

1. The taxes to which this Agreement shall apply are:
 - a) in the Netherlands Antilles:
 - (i) the income tax (inkomstenbelasting);
 - (ii) the profit tax (winstbelasting); and
 - (iii) the surtaxes on the income and profit tax (opcenten op de inkomsten- en winstbelasting);
(hereinafter referred to as “Netherlands Antilles tax”);
 - b) in Sweden:
the national income tax (den statliga inkomstskatten)
(hereinafter referred to as “Swedish tax”).

2. 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 taxes referred to in paragraph 1. The competent authorities of the Contracting Parties shall notify each other of any significant changes which have been made in their respective taxation laws.

Article 2

Definitions

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

- a) the term “Contracting Party” means the Kingdom of the Netherlands, in respect of the Netherlands Antilles, or the Kingdom of Sweden as the context requires;
- b) the term “Sweden” means the Kingdom of Sweden and, when used in a geographical sense, includes the national territory, the territorial sea of Sweden as well as other maritime areas over which Sweden in accordance with international law exercises sovereign rights or jurisdiction;
- c) 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;
- d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- e) the term “competent authority” means:

- (i) in the case of Sweden, the Minister of Finance, his authorized representative or the authority which is designated as a competent authority for the purposes of this Agreement;
- (ii) in the case of the Netherlands Antilles, the Minister of Finance or his authorized representative.

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 3

Resident

1. For the purposes of this Agreement, the terms “company resident in Sweden” and “company resident in the Netherlands Antilles” mean any company, which under the laws of that 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 Sweden” and “company resident in the Netherlands Antilles” do not include any company which is liable to tax in that Party in respect only of income from sources in that Party.

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

Article 4

Elimination of double taxation

1. Where a company resident in Sweden derives income attributable to a permanent establishment in the Netherlands Antilles which under the laws of the Netherlands Antilles may be taxed in the Netherlands Antilles, Sweden shall allow – subject to the provisions of the laws of Sweden concerning credit for foreign tax (as it may be amended from time to time without changing the general principle hereof) – as a deduction from the tax on such income, an amount equal to the Netherlands Antilles tax paid in respect of such income. The term “Netherlands Antilles tax paid” shall be deemed to include the Netherlands Antilles tax which would have been paid, but for any time-limited reduction or exemption of tax granted under incentive provisions contained in the Netherlands Antilles laws designed to promote economic development

to the extent that such reduction or exemption is granted for income derived from activities mentioned in Article 5 and provided that the activities have been carried out in the Netherlands Antilles.

2. Where a company resident in Sweden directly holds shares representing 100 per cent of the voting power in a company resident in the Netherlands Antilles, Sweden shall exempt from tax dividends distributed by the last-mentioned company to the extent that the dividends would have been exempt under Swedish law if both companies had been Swedish companies, and provided that the profits of the last-mentioned company are derived from activities listed in Article 5 and provided that the activities have been carried out in the Netherlands Antilles.

3. The provisions of the second sentence of paragraph 1 and of paragraph 2 shall only apply for the first ten years during which this Agreement is effective. This period may be extended by mutual agreement between the competent authorities.

Article 5

Activities covered

1. Article 4 applies to the following activities (excluding financial activities other than financial activities directly incidental and ancillary to the listed activities):

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

2. The right of any Swedish company 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 Contracting 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 Contracting Parties, present its case to the competent authority of the Contracting 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 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.

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.

Article 7

Entry into force

1. This Agreement shall enter into force on the thirtieth day after the later of the dates on which each of the Contracting Parties has notified the other in writing, through diplomatic channels, that the internal procedures required by its law have been complied with. The Agreement shall have effect on taxes chargeable for any tax year beginning on or after the first day of January of the year next following that in which this Agreement enters into force.

2. This Agreement is supplementary to the Agreement between the Kingdom of Sweden and the Kingdom of the Netherlands in respect of the Netherlands Antilles for the Exchange of Information with respect to Taxes between the Contracting Parties. Notwithstanding paragraph 1 of this Article, this Agreement shall only have effect when the Agreement signed on 10 September 2009 for the Exchange of Information with respect to Taxes between the Contracting Parties shall have effect.

Article 8

Termination

1. This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement, through diplomatic channels, by giving written notice of termination at

least six months before the end of any calendar year. In such event, the Agreement shall cease to have effect on taxes chargeable for any tax year beginning on or after the first day of January of the year next following the end of the six month period.

2. Notwithstanding paragraph 1, this Agreement shall, on receipt through the diplomatic channels of written notice of termination of the Agreement between the Kingdom of Sweden and the Kingdom of the Netherlands, in respect of the Netherlands Antilles, 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 Contracting Parties terminates.

IN WITNESS WHEREOF the undersigned being duly authorised thereto have signed this Agreement.

DONE at Paris, this 10th day of September 2009, in duplicate 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 Sweden:

PER HOLMSTRÖM

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 7, eerste lid, in werking treden op de dertigste dag na de laatste van de data waarop de Verdragsluitende partijen elkaar langs diplomatieke weg er schriftelijk van in kennis hebben gesteld dat is voldaan aan de nationale procedures die wettelijk vereist zijn.

J. VERWIJZINGEN

- Titel : Verdrag tussen het Koninkrijk der Nederlanden, ten behoeve van de Nederlandse Antillen, en het Koninkrijk Zweden inzake de uitwisseling van informatie betreffende belastingen;
Parijs, 10 september 2009
- Tekst : *Trb.* 2009, 173 (Engels)

Uitgegeven de *derde* november 2009.

De Minister van Buitenlandse Zaken,

M. J. M. VERHAGEN