

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2014 Nr. 102

A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden, ten behoeve van Aruba, en het Koninkrijk België inzake de uitwisseling van informatie betreffende belastingen;
's-Gravenhage, 24 april 2014*

B. TEKST

Agreement between the Kingdom of the Netherlands, in respect of Aruba, and the Kingdom of Belgium for the exchange of information with respect to taxes

The Kingdom of the Netherlands, in respect of Aruba,
on the one hand,
and

The Kingdom of Belgium,
the Flemish Community,
the French Community,
the German-speaking Community,
the Flemish Region,
the Walloon Region,
and the Brussels-Capital Region,
on the other hand,

Desiring to facilitate the exchange of information with respect to taxes;

Have agreed as follows:

Article 1

Object and Scope of the Agreement

1. The Parties, through their competent authorities, shall provide assistance through exchange of information that is foreseeably relevant to the administration or enforcement of the domestic laws of the Parties concerning taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, enforcement or collection of tax with respect to persons subject to such taxes or to the investigation or prosecution of tax matters in relation to such persons. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 9.

2. As regards the Kingdom of the Netherlands, this Agreement shall apply only to Aruba.

Article 2

Jurisdiction

A requested Party is not obliged to provide information which is neither held by its authorities, nor in the possession of, nor obtainable by persons who are within its territorial jurisdiction.

Article 3

Taxes Covered

1. This Agreement shall apply to the following taxes imposed by or on behalf of the Parties:

- a) in the case of Aruba: taxes of every kind and description imposed under national tax laws administrated by the Tax Inspector; and,
- b) in the case of Belgium, taxes of every kind and description imposed on behalf of Belgium or of the political subdivisions or local authorities thereof.

2. This Agreement shall apply also to any identical or substantially similar taxes imposed after the date of signature of this Agreement in addition to or in place of the existing taxes if the Parties, through their competent authorities, so agree. The competent authority of each Party shall notify the other of any substantial changes in laws which may affect the obligations of that Party pursuant to this Agreement.

Article 4

Definitions

1. In this Agreement:

a) the term “Aruba” means that part of the Kingdom of the Netherlands which is situated in the Caribbean Sea and consists of the territory of Aruba, including its territorial sea and any area beyond and adjacent to its territorial sea within which the Kingdom of the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights, but excluding the part thereof relating to Curaçao;

b) the term “Belgium” means the Kingdom of Belgium; used in a geographical sense, it means the territory of the Kingdom of Belgium, including the territorial sea and any other area in the sea and in the air within which the Kingdom of Belgium, in accordance with international law, exercises sovereign rights or its jurisdiction;

c) the term “Party” means the Kingdom of the Netherlands, in respect of Aruba, or Belgium as the context requires;

d) the term “competent authority” means,

(i) in the case of Aruba, the Minister in charge of Finance or his authorised representative;

(ii) in the case of Belgium, as the case may be, the Minister of Finance of the federal Government and/or of the Government of a Region and/or of a Community, or his authorised representative;

e) the term “person” means an individual, a company or any other body or group of persons;

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

g) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;

h) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;

i) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;

j) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form;

k) the term “public collective investment fund or scheme” means any collective investment scheme or fund in which the purchase, sale or redemption of shares or other interests is not implicitly or explicitly restricted to a limited group of investors;

l) the term “tax” means any tax covered by this Agreement;

m) the term “requesting Party” means the Party to this Agreement submitting a request for or having received information from the requested Party;

n) the term “requested Party” means the Party to this Agreement which is requested to provide information or has provided information in response to a request;

o) the term “information” means any fact, statement, document or record in whatever form;

p) the term “information gathering measures” means laws and administrative or judicial procedures enabling a requested Party to obtain and provide the information requested;

q) the term “criminal laws” means all criminal laws designated as such under domestic law, irrespective of whether such are contained in the tax laws, the criminal code or other statutes;

r) the term “criminal tax matters” means tax matters involving intentional conduct whether before or after the entry into force of this Agreement which is liable to prosecution under the criminal laws of the requesting Party.

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 5

Exchange of Information Upon Request

1. The competent authority of the requested Party shall provide upon request by the requesting Party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Party if it had occurred in the territory of the requested Party. The competent authority of the requesting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means, except where recourse to such means would give rise to disproportionate difficulty.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, the requested Party shall use all appropriate information gathering measures to provide the requesting Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the requesting Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Notwithstanding any contrary provisions in its domestic laws, each Party shall have the authority, subject to the terms of Articles 1 and 2 of this Agreement, to obtain and to provide:

a) information held by banks, other financial institutions, trusts, foundations and any person, including nominees and trustees, acting in an agency or fiduciary capacity;

b) information regarding the ownership of companies, partnerships, collective investment schemes, trusts, foundations and other persons, including information on all persons in an ownership chain, and

(i) in the case of collective investment schemes, information on shares, units and other interests;

(ii) in the case of trusts, information on settlors, trustees, protectors and beneficiaries;

(iii) in the case of foundations, information on founders, members of the foundation council and beneficiaries; and

(iv) in the case of persons that are neither collective investment schemes, trusts or foundations, equivalent information to the information in subparagraphs (i) to (iii),

provided that this Agreement does not create an obligation on the Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. Any request for information shall be formulated with the greatest possible details and shall specify in writing:

a) the identity of the person under examination or investigation;

b) the period for which the information is requested;

c) the nature of the information requested and the form in which the requesting Party would prefer to receive it;

d) the tax purpose for which the information is sought;

e) the reasons for believing that the information requested is foreseeably relevant to the administration or enforcement of the taxes of the requesting Party covered under Article 3, with respect to a person identified in subparagraph (a) of this paragraph;

f) grounds for believing that the information requested is present in the requested Party or is in the possession of or obtainable by a person within the jurisdiction of the requested Party;

g) to the extent known, the name and address of any person believed to be in possession of, or able to obtain the requested information;

h) a statement that the request is in conformity with this Agreement;

i) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulty.

6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the requesting Party. To ensure a prompt response, the competent authority of the requested Party shall:

a) confirm receipt of a request in writing to the competent authority of the requesting Party and shall notify the competent authority of the requesting Party of deficiencies in the request, if any, within 60 days of the receipt of the request;

b) if the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

Article 6

Spontaneous Exchange of Information

The competent authorities may forward to each other, without prior request, information of which they have knowledge that may be foreseeably relevant in accordance with Article 1.

Article 7

Tax Examinations Abroad

1. The competent authority of the requesting Party may request that the competent authority of the requested Party allows representatives of the competent authority of the requesting Party to enter the territory of the requested Party to interview individuals and examine records with the prior written consent of the individuals or other persons concerned. The competent authority of the requesting Party shall give reasonable notice to the competent authority of the requested Party of the time and place of the intended meeting with the individuals concerned.

2. At the request of the competent authority of the requesting Party, the competent authority of the requested Party may allow representatives of the competent authority of the requesting Party to attend a tax examination in the territory of the requested Party.

3. If the request referred to in paragraph 2 is granted, the competent authority of the requested Party conducting the examination shall, as

soon as possible, notify the competent authority of the requesting Party of the time and place of the examination, the authority or person authorised to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the examination. All decisions regarding the conduct of the tax examination shall be made by the requested Party conducting the examination.

Article 8

Possibility of Declining a Request

1. The competent authority of the requested Party may decline to assist:

- a) where the request is not made in conformity with this Agreement;
- b) where the requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
- c) where the disclosure of the information requested would be contrary to public policy.

2. This Agreement shall not impose on a requested Party any obligation to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 5, paragraph 4, shall not by reason of that fact alone be treated as a secret or trade process.

3. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

4. The requested Party may decline a request for information if the information is requested by the requesting Party to administer or enforce a provision of the tax law of the requesting Party, or any requirement connected therewith, which discriminates against a citizen of the requested Party as compared with a citizen of the requesting Party in the same circumstances.

Article 9

Confidentiality

Any information received by a Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose

the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

Article 10

Costs

Unless the competent authorities of the Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party, and extraordinary costs incurred in providing assistance (including reasonable costs of engaging external advisors in connection with litigation or otherwise) shall be borne by the requesting Party. At the request of either Party, the competent authorities shall consult with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent authority of the requesting Party in advance if the costs of providing information with respect to a specific request are expected to be extraordinary.

Article 11

Mutual Agreement Procedure

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Parties may mutually agree on the procedures to be used under Articles 5, 6, 7 and 10.
3. The competent authorities of the Parties may communicate with each other directly for purposes of reaching agreement under this Article.

Article 12

Entry into Force

Each of the Parties shall notify the other in writing through diplomatic channels of the completion of the internal procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the first day of the second month after receipt of the later of these notifications, and shall have effect:

- a) for criminal tax matters on that date; and

b) for all other matters covered in Article 1, in respect of taxable periods beginning on or after January 1 of the year next following the year in which the Agreement entered into force or, where there is no taxable period, in respect of taxes due in respect of taxable events taking place on or after January 1 of the year next following the year in which the Agreement entered into force.

Article 13

Termination

1. Either Party may terminate the Agreement by giving a notice of termination in writing through diplomatic channels.

2. Such termination shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notice of termination by the other Party. All requests received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.

3. A Party that terminates the Agreement shall remain bound by the provisions of Article 9 with respect to any information obtained under this Agreement.

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

DONE in duplicate at The Hague, this 24th day of April 2014, in the English language.

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

J.A. BOEKHOUDT

For the Kingdom of Belgium:

F.J.S. GEERKENS

For the Flemish Community:

F. D'HAVÉ

For the French Community:

M. CLAIRBOIS

For the German-speaking Community:

F.J.S. GEERKENS

For the Flemish Region:

F. D'HAVÉ

For the Walloon Region:

M. CLAIRBOIS

For the Brussels-Capital Region:

F.J.S. GEERKENS

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 artikel 12 in werking treden op de eerste dag van de tweede maand nadat beide verdragsluitende partijen elkaar langs diplomatieke weg schriftelijk ervan in kennis

hebben gesteld dat de wettelijk vereiste interne procedures voor de inwerkingtreding ervan zijn voltooid.

Uitgegeven de *drieëntwintigste* mei 2014.

De Minister van Buitenlandse Zaken,

F.C.G.M. TIMMERMANS