Draft Order in Council laid before the House of Commons under section 173(7) of the Finance Act 2006, for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2011 No.

TAXES

The International Tax Enforcement (Curaçao, Sint Maarten and BES Islands) Order 2011

Made - - - - [day] [Month] 2011

At the Court at Buckingham Palace, the [date] day of [Month] 2011

Present,

The Queen's Most Excellent Majesty in Council

A draft of this Order was laid before the House of Commons in accordance with section 173(7) of the Finance Act 2006(**1**) and approved by a resolution of that House.

Accordingly, Her Majesty, in exercise of the powers conferred upon Her by section 173(1) to (3) of the Finance Act 2006, by and with the advice of Her Privy Council, orders as follows—

Citation

1. This Order may be cited as the International Tax Enforcement (Curaçao, Sint Maarten and BES Islands) Order 2011.

Tax information exchange agreement to have effect

2. It is declared that—

(a) the agreement set out in the Schedule to this Order has been made with the Government of the Kingdom of the Netherlands, in respect of Curaçao, Sint Maarten and the BES Islands (formerly the Netherlands Antilles), with a view to the exchange of information foreseeably relevant to the administration or enforcement or recovery of the taxes, and debts relating to the taxes, covered by the agreement; and

(b) it is expedient that the agreement should have effect.

(**1**) 2006 c. 25.

Name
Clerk of the Privy Council

SCHEDULE Article 2

AGREEMENT BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE KINGDOM OF THE NETHERLANDS, IN RESPECT OF THE NETHERLANDS ANTILLES, ON THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES

The Government of the United Kingdom of Great Britain and Northern Ireland, and the Government of the Kingdom of the Netherlands, in respect of the Netherlands Antilles;

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 competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

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

ARTICLE 2

Jurisdiction

Information shall be exchanged under this Agreement without regard to whether the person to whom the information relates is a resident or national of a Contracting Party, or whether the person by whom the information is held is a resident or national of a Contracting Party. However, a requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

ARTICLE 3

Taxes Covered

1. The taxes which are the subject of this Agreement are:

   a) in the case of the Netherlands Antilles:

      - the income tax (inkomstenbelasting);
      - the wages tax (loonbelasting);
      - the profit tax (winstbelasting); and

- the surtaxes on the income and profit tax (opcenten op de inkomsten – en winstbelasting).

b) in the case of the United Kingdom, existing taxes of every kind and description.

2. This Agreement shall also apply to any identical or substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Contracting Parties so agree. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

ARTICLE 4

Definitions

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

a) the term "Contracting Party" means the Kingdom of the Netherlands, in respect of the Netherlands Antilles, or the United Kingdom as the context requires;

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 "the United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom designated under its laws concerning the Continental Shelf and in accordance with international law as an area within which the rights of the United Kingdom with respect to the sea bed and subsoil and their natural resources may be exercised;

d) the term "competent authority" means

i) in the case of the Netherlands Antilles, the Minister of Finance or his authorised representative;

ii) in the case of the United Kingdom, the Commissioners for Her Majesty's Revenue and Customs or their authorised representative;

e) the term "person" includes an individual, a company and any other body 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 "principal class of shares" means the class or classes of shares representing a majority of the voting power and value of the company;

i) the term "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Contracting Parties;

j) the term "collective investment fund or scheme" means any pooled investment vehicle, irrespective of legal form. The term "public collective investment fund or scheme" means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed "by the public" if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;

k) the term "tax" means any tax to which the Agreement applies;

l) the term "applicant Party" means the Contracting Party requesting information;

m) the term "requested Party" means the Contracting Party requested to provide information;

n) the term "information gathering measures" means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;

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

p) the term "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party;

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

r) the term "national" means:

(i) in relation to the Netherlands Antilles, an individual who has the Dutch nationality and who is registered as a resident in one of the Island territories of the Netherlands Antilles, provided however that, if an individual is not present in the Netherlands Antilles, he must have been born in the Netherlands Antilles, and any legal person, partnership or association deriving its status as such from the laws in force in the Netherlands Antilles; and

(ii) in relation to the United Kingdom, any British citizen, or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided he has the right of abode in the United Kingdom; and any legal person, partnership, association or other entity deriving its status as such from the laws in force in the United Kingdom.

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 Contracting Party, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

ARTICLE 5

Exchange of Information Upon Request

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party.