

**No. 44150. Netherlands and Barbados**

CONVENTION BETWEEN THE KINGDOM OF THE NETHERLANDS AND BARBADOS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME (WITH PROTOCOL). BRIDGETOWN, 28 NOVEMBER 2006 [*United Nations, Treaty Series, vol. 2455, I-44150.*]

PROTOCOL AMENDING THE CONVENTION BETWEEN THE KINGDOM OF THE NETHERLANDS AND BARBADOS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL (WITH PROTOCOL). THE HAGUE, 27 NOVEMBER 2009

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**N° 44150. Pays-Bas et Barbade**

CONVENTION ENTRE LE ROYAUME DES PAYS-BAS ET LA BARBADE TENDANT À ÉVITER LA DOUBLE IMPOSITION ET À PRÉVENIR L'ÉVASION FISCALE EN MATIÈRE D'IMPÔTS SUR LE REVENU (AVEC PROTOCOLE). BRIDGETOWN, 28 NOVEMBRE 2006 [*Nations Unies, Recueil des Traités, vol. 2455, I-44150.*]

PROTOCOLE MODIFIANT LA CONVENTION ENTRE LE ROYAUME DES PAYS-BAS ET LA BARBADE TENDANT À ÉVITER LA DOUBLE IMPOSITION ET À PRÉVENIR L'ÉVASION FISCALE EN MATIÈRE D'IMPÔTS SUR LE REVENU ET SUR LA FORTUNE (AVEC PROTOCOLE). LA HAYE, 27 NOVEMBRE 2009

**Entrée en vigueur :** 13 novembre 2011, conformément à l'article VI

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[ ENGLISH TEXT – TEXTE ANGLAIS ]

**Protocol amending the Convention between the Kingdom of the Netherlands and Barbados for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, with Protocol**

The Government of the Kingdom of the Netherlands

and

the Government of Barbados,

Desiring to amend the Convention between the Kingdom of the Netherlands and Barbados for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, with Protocol, signed in Bridgetown on the 28<sup>th</sup> of November 2006 (hereinafter referred to as “the Convention”);

Have agreed as follows:

## Article I

Article 10 of the Convention shall be deleted and replaced by the following:

### Article 10

#### *Dividends*

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 15 percent of the gross amount of the dividends.

3. Notwithstanding the provisions of paragraph 2, the Contracting State of which the company paying the dividends is a resident shall not levy a tax on dividends paid by that company, if the beneficial owner of the dividends is:

a) a company, the capital of which is wholly or partly divided into shares and which is a resident of the other Contracting State and holds directly at least 10 per cent of the capital of the company paying the dividends, provided that:

(i) the shares of the company receiving the dividends are regularly traded on a recognised stock exchange; or

(ii) at least 50 per cent of the shares of the company receiving the dividends is owned directly or indirectly by one or more individuals who are resident of either Contracting State or by one or more companies the shares of which are regularly traded on a recognised stock exchange, but only if the last mentioned companies:

aa) are resident of either Contracting State; or

bb) are resident of a member state of the European Union (EU) or of a party to the North American Free Trade Agreement (NAFTA) or of Jamaica or Trinidad and Tobago and that company would be entitled to benefits which are similar to or more favourable than the benefits provided by this paragraph pursuant to a comprehensive arrangement for the avoidance of double taxation between their state of residence and the Contracting State from which the benefits of this paragraph are claimed or pursuant to a multilateral

agreement to which their state of residence and the Contracting State from which the benefits of this paragraph are claimed, are a party.

b) a bank or an insurance company that is established and regulated as such under the laws of the Contracting State of which it is a resident;

c) a Contracting State, or a political subdivision or local authority thereof;

d) a company, the capital of which is wholly or partly divided into shares, and which is a resident of the other Contracting State and holds directly at least 10 per cent of the capital of the company paying the dividends, provided that this company is a headquarters company for a multinational corporate group which provides a substantial portion of the overall supervision and administration of the group and which has, and exercises, independent discretionary authority to carry out these functions. A person shall be considered a headquarters company for this purpose only if:

(i) the corporate group consists of corporations resident in, and engaged in an active business in, at least five countries or five groupings of countries and the business activities carried on in each of the five countries (or five groupings of countries) generate at least 10 per cent of the gross income of the group; and

(ii) no more than 50 per cent of its gross income is derived from the Contracting State other than the Contracting State of which the headquarters company is a resident; or

e) a pension fund as referred to in paragraph 2 of Article 4.

4. Where a company fails to qualify for benefits under paragraph 3, it may however qualify if the competent authority of the Contracting State which has to grant the benefits determines that the establishment, acquisition or maintenance of the company does not have as its main purpose or one of its main purposes to secure the benefits of paragraph 3.

Such determination shall be based on all facts and circumstances including:

a) the nature and volume of the activities of the company in its country of residence in relation to the nature and volume of the dividends;

b) both the historical and the current ownership of the company; and

c) the business reasons for the company residing in its country of residence.

The competent authority of the Contracting State which has to grant the benefits will consult with the competent authority of the other Contracting State before denying the benefits under this paragraph.

5. For the purposes of paragraph 3, the term “recognised stock exchange” means:

a) any of the stock exchanges in the member states of the European Union (EU);

b) the NASDAQ System and any stock exchange in the United States of America which is registered with the U.S. Securities and Exchange Commission as a national securities exchange under the U.S. Securities Exchange Act of 1934, the Mexican Stock Exchange (*Bolsa Mexicana de Valores*) and the Toronto Stock Exchange;

c) the Barbados Stock Exchange, the Jamaica Stock Exchange and the Trinidad Stock Exchange; and

d) any other stock exchange agreed upon by the competent authorities of the Contracting States, provided that the purchase or sale of shares on the stock exchange is not implicitly or explicitly restricted to a limited group of investors.

6. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraphs 2, 3 and 4.

7. The provisions of paragraphs 2, 3 and 4 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

8. The term “dividends” as used in this Article means:

a) income from shares, “*jouissance*” shares or “*jouissance*” rights, mining shares, founders’ shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

b) income received in connection with the (partial) liquidation of a company or a purchase of own shares by a company.

9. The provisions of paragraphs 1, 2, 3, 4 and 12 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

10. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company’s undistributed prof-