

No. 46333

Netherlands and Luxembourg

Exchange of letters constituting an Agreement on the taxation of savings income and the provisional application of the Convention between the Kingdom of the Netherlands in respect of the Netherlands Antilles and the Grand Duchy of Luxembourg concerning the automatic exchange of information regarding savings income in the form of interest payments (with appendix). Luxembourg, 13 May 2004, and The Hague, 27 August 2004

Entry into force: *provisionally on 1 July 2005 and definitively on 23 July 2005 by notification, in accordance with article 12*

Authentic text of the exchange of letters: *English*

Authentic texts of the appendix: *Dutch, English and French*

Registration with the Secretariat of the United Nations: *Netherlands, 13 July 2009*

Pays-Bas et Luxembourg

Échange de lettres constituant un Accord relatif à la fiscalité des revenus de l'épargne et à l'application à titre provisoire de l'Accord entre le Royaume des Pays-Bas pour ce qui est des Antilles néerlandaises et le Grand-Duché de Luxembourg relatif à l'échange automatique d'informations concernant les revenus de l'épargne sous forme de paiements d'intérêts (avec appendice). Luxembourg, 13 mai 2004, et La Haye, 27 août 2004

Entrée en vigueur : *provisoirement le 1^{er} juillet 2005 et définitivement le 23 juillet 2005 par notification, conformément à l'article 12*

Texte authentique de l'échange de lettres : *anglais*

Textes authentiques de l'appendice : *néerlandais, anglais et français*

Enregistrement auprès du Secrétariat des Nations Unies : *Pays-Bas, 13 juillet 2009*

[ENGLISH TEXT – TEXTE ANGLAIS]

I

A. Letter from the Grand Duchy of Luxembourg

Madam/Sir,

I have the honour to refer to the texts of respectively the “Convention between the Kingdom of the Netherlands in respect of the Netherlands Antilles and (Belgium, Austria or Luxembourg) concerning the automatic exchange of information regarding savings income in the form of interest payments”, the “Convention between the Kingdom of the Netherlands in respect of the Netherlands Antilles and (the EU Member State, other than Belgium, Austria and Luxembourg) concerning the automatic exchange of information regarding savings income in the form of interest payments”, the “Convention between the Kingdom of the Netherlands in respect of Aruba and (the EU Member State, other than Belgium, Austria and Luxembourg) concerning the automatic exchange of information regarding savings income in the form of interest payments” and the “Convention between the Kingdom of the Netherlands in respect of Aruba and (Belgium, Austria or Luxembourg) concerning the automatic exchange of information regarding savings income in the form of interest payments”, that resulted from the negotiations with the Netherlands Antilles and Aruba on a Savings Tax Agreement, and that were annexed, respectively as Annex I, II, III and IV, to the Outcome of Proceedings of the High Level Working Party of the Council of Ministers of the European Union of 12 March (doc. 7660/04 FISC 68).

In view of the above mentioned texts I have the honour to propose to you the “Convention concerning the automatic exchange of information regarding savings income in the form of interest payments” as contained in Appendix 1 to this letter, and our mutual undertaking to comply at the earliest possible date with our internal constitutional formalities for the entry into force of this Convention and to notify each other without delay when such formalities are completed.

Pending the completion of these internal procedures and the entry into force of this “Convention concerning the automatic exchange of information regarding savings income in the form of interest payments”, I have the honour to propose to you that the Grand Duchy of Luxembourg and the Kingdom of the Netherlands in respect of the Netherlands Antilles apply this Convention provisionally, within the framework of our respective domestic constitutional requirements, as from 1 January 2005, or the date of application of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, whichever is later.

I have the honour to propose that, if the above is acceptable to your Government, this letter and your confirmation shall together constitute an Agreement between the Grand Duchy of Luxembourg and the Kingdom of the Netherlands in respect of the Netherlands Antilles.

Please accept, Madam/Sir, the assurance of our highest consideration,

For the Grand Duchy of Luxembourg

Minister of Finance

DONE at Luxembourg, on 13 May 2004, in the English language in three copies.

Appendix

Convention between the Kingdom of the Netherlands in respect of the Netherlands Antilles and the Grand Duchy of Luxembourg concerning the automatic exchange of information regarding savings income in the form of interest payments

Whereas:

1. Article 17(2) of Directive 2003/48/EEC (“the Directive”) of the Council of the European Union (“the Council”) on taxation of savings income provides that Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive from January 1, 2005, provided that:

- the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra from that same date apply measures equivalent to those contained in the Directive, in accordance with agreements entered into by them with the European Community, following unanimous decisions of the Council;
- all agreements or other arrangements are in place, which provide that all the relevant dependent or associated territories apply from that date automatic exchange of information in the same manner as is provided for in Chapter II of the Directive, or, during the transitional period defined in Article 10, apply a withholding tax on the same terms as are contained in Articles 11 and 12.

2. The Netherlands Antilles are not within the EU fiscal territory but are, for purposes of the Directive, an EU associated territory and as such are not bound by the terms of the Directive. However, the Kingdom of the Netherlands in respect of the Netherlands Antilles, on the basis of an agreement between the Netherlands Antilles and the Netherlands, is willing to enter into agreements with the Member States of the EU to apply from January 1, 2005, a withholding tax on the same terms as are contained in Articles 11 and 12 of the Directive during the transitional period defined in Article 10 thereof, and, after expiration of the transitional period, to apply automatic exchange of information in the same manner as is provided for in Chapter II of the Directive.

3. The agreement between the Netherlands Antilles and the Netherlands, as stated in the previous paragraph, is contingent on the adoption by all the Member States of the laws, regulations and administrative provisions necessary to comply with the Directive, and on the requirements of Article 17 of the Directive being met.

4. Through this Convention, the Netherlands Antilles agrees to apply the provisions of the Directive, subject to what is otherwise agreed herein, in regard of Beneficial Owners that are residents of the Grand Duchy of Luxembourg and the Grand Duchy of Luxembourg agrees to apply the Directive in regard to Beneficial Owners that are residents of the Netherlands Antilles.

The Government of the Kingdom of the Netherlands in respect of the Netherlands Antilles and the Government of the Grand Duchy of Luxembourg, desiring to conclude a Convention which enables savings income in the form of Interest Payments made in one of the Contracting States to Beneficial Owners who are individuals resident in the other Contracting State, to be made subject to effective taxation in accordance with the laws of the latter Contracting State, in conformity with the Directive and with the intentions of the Contracting States as laid down herein above, have agreed as follows:

Article 1

General Scope

1. This Convention shall apply to interest paid by a Paying Agent established within the territory of one of the Contracting States with a view to enable savings income in the form of Interest Payments made in one Contracting State to Beneficial Owners who are individuals resident for tax purposes in the other Contracting State to be made subject to effective taxation in accordance with the laws of the latter Contracting State.

2. The scope of this Convention shall be limited to taxation of savings income in the form of Interest Payments on debt claims, to the exclusion, *inter alia*, of the issues relating to the taxation of pension and insurance benefits.

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

Article 2

Definitions

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