

No. 46750

**Netherlands
and
Australia**

Agreement between the Government of the Kingdom of the Netherlands in respect of the Netherlands Antilles and the Government of Australia for the exchange of information with respect to taxes. Canberra, 1 March 2007

Entry into force: *4 April 2008 by notification, in accordance with article 12*

Authentic text: *English*

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**Pays-Bas
et
Australie**

Accord relatif à l'échange de renseignements en matière fiscale entre le Gouvernement du Royaume des Pays-Bas à l'égard des Antilles néerlandaises et le Gouvernement de l'Australie. Canberra, 1^{er} mars 2007

Entrée en vigueur : *4 avril 2008 par notification, conformément à l'article 12*

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[ENGLISH TEXT – TEXTE ANGLAIS]

Agreement between the Government of the Kingdom of the Netherlands in respect of the Netherlands Antilles and the Government of Australia for the exchange of information with respect to taxes

The Government of the Kingdom of the Netherlands in respect of the Netherlands Antilles

and

the Government of Australia,

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

Have agreed as follows:

Article 1

Object and scope of this 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 those 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. Infor-

mation 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. The Requested Party shall use its best endeavours to ensure that any such rights and safeguards are not applied in a manner that unduly prevents or delays effective exchange of information.

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

Article 2

Jurisdiction

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 existing taxes which are the subject of this Agreement are:

- a) in Australia,
 - the Australian income tax; and
- b) in the Netherlands Antilles,
 - the income tax (inkomstenbelasting);
 - the wages tax (loonbelasting);
 - the profit tax (winstbelasting); and
 - the surtaxes on the income and profit taxes.

2. This Agreement shall also apply 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. This Agreement shall also apply to such other taxes as may be agreed in an exchange of letters between the Contracting Parties. 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 this Agreement.

3. This Agreement shall not apply to taxes imposed by states, municipalities, or other political subdivisions, or possessions of a Contracting Party.

Article 4

Definitions

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

- a) the term "Applicant Party" means the Contracting Party requesting information;

b) the term “Australia”, when used in a geographical sense, excludes all external territories other than:

- i) the Territory of Norfolk Island;
- ii) the Territory of Christmas Island;
- iii) the Territory of Cocos (Keeling) Islands;
- iv) the Territory of Ashmore and Cartier Islands;
- v) the Territory of Heard Island and McDonald Islands; and
- vi) the Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the seabed and subsoil of the continental shelf;

c) the term “Netherlands Antilles” means the part of the Kingdom of the Netherlands that is situated in the Caribbean area and which on the date of signing of this Agreement consists of the Island Territories of Curaçao, Sint Maarten (Dutch part), Bonaire, Saba and Sint Eustatius;

d) 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;

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

f) the term “competent authority” means in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of the Netherlands Antilles, the Minister of Finance or his authorised representative;

g) the term “Contracting Party” means Australia or the Kingdom of the Netherlands in respect of the Netherlands Antilles as the context requires;

h) 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;

i) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Applicant Party;

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

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

l) the term “person” includes an individual, a company and any other body of persons;

m) 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;

n) 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;

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

p) the term “Requested Party” means the Contracting Party requested to provide information; and

q) the term “tax” means any tax to which this Agreement applies.

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 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 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.

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, that Party shall use all relevant information gathering measures to provide the Applicant 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 an Applicant 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. Each Contracting Party shall ensure that its competent authority for the purposes specified in Article 1 of this Agreement, has the authority to obtain and provide upon request: