

No. 49253

**Netherlands (in respect of Aruba)
and
United Kingdom of Great Britain and Northern Ireland
(in respect of Bermuda)**

Agreement between the Kingdom of the Netherlands, in respect of Aruba, and Bermuda (as authorised by the Government of the United Kingdom of Great Britain and Northern Ireland) for the exchange of information with respect to taxes (with protocol). Oranjestad, Aruba, 2 October 2009, and Hamilton, 20 October 2009

Entry into force: *1 December 2011 by notification, in accordance with article 13*

Authentic text: *English*

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**Pays-Bas (à l'égard d'Aruba)
et
Royaume-Uni de Grande-Bretagne et d'Irlande du Nord
(à l'égard des Bermudes)**

Accord entre le Royaume des Pays-Bas, à l'égard d'Aruba, et les Bermudes (autorisées par le Gouvernement du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord) relatif à l'échange de renseignements en matière fiscale (avec protocole). Oranjestad (Aruba), 2 octobre 2009, et Hamilton, 20 octobre 2009

Entrée en vigueur : *1^{er} décembre 2011 par notification, conformément à l'article 13*

Texte authentique : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *Pays-Bas, 18 janvier 2012*

[ENGLISH TEXT – TEXTE ANGLAIS]

**Agreement between the Kingdom of the Netherlands, in respect of
Aruba, and Bermuda (as authorised by the Government of the
United Kingdom of Great Britain and Northern Ireland) for the
Exchange of Information with respect to Taxes**

The Government of the Kingdom of the Netherlands, in respect of
Aruba,

and

the Government of Bermuda (as authorised by the Government of the
United Kingdom of Great Britain and Northern Ireland)

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 relevant to the admin-

istration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement.

Such information shall include information that is 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 practices of the requested Party remain applicable.

The rights and safeguards shall not be applied by the requested Party 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 Aruba.

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. This Agreement shall apply to the following taxes imposed by the Parties:

a) in the case of Aruba:

- (i) Income tax (Inkomstenbelasting);
- (ii) wage tax (Loonbelasting);
- (iii) Profit tax (Winstbelasting);
- (iv) Dividen¹⁾ withholding tax (Dividendbelasting);
- (v) Succession tax (Successiebelasting);
- (vi) Turn over tax (Omzetbelasting);

b) in the case of Bermuda:

The existing taxes which are the subject of this Agreement are direct 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. The competent authorities

¹⁾ Noot redactie: hier dient „Dividend” gelezen te worden.

of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by this Agreement. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Contracting Parties in the form of exchange of letters.

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 Aruba, or Bermuda as the context requires;
 - b) the term "Aruba" means that part of the Kingdom of the Netherlands that is situated in the Caribbean area and consisting of the Island Aruba;
 - c) the term "Bermuda" means the Islands of Bermuda including the territorial sea adjacent to those islands, in accordance with international law;
 - 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:
 - i) in the case of Aruba, the Minister of Finance and Economic Affairs or his authorised representative; and
 - ii) in the case of Bermuda, the Minister of Finance or an authorised representative of the Minister;
 - g) the term "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party with the inclusion of administrative fines;
 - 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 "information" means any fact, statement or record in any form whatever;
 - j) the term "information gathering measures" means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
 - k) the term "national" means:

- (i) in the case of Aruba, an individual who has the Dutch nationality and who is registered as a resident in Aruba, provided however that, if an individual is not present in Aruba, he must have been born in Aruba, and any legal person, partnership or association deriving its status as such from the laws in force in Aruba; and
- (ii) in the case of Bermuda, any individual, legal person, partnership, company, state, association or other entity deriving its status as such from the laws in force in Bermuda;
- 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 “applicant Party” means the Contracting Party requesting information;
- q) the term “requested Party” means the Contracting Party requested to provide information;
- r) the term “tax” means any tax to which the Agreement applies.

2. The term “relevant” wherever used in the Agreement with respect to information, shall be interpreted in a manner that ensures that information will be considered relevant notwithstanding that a definite assessment of the pertinence of the information to an on-going investigation could only be made following the receipt of the information.

3. 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.

4. The Commentary to the Organisation for Economic Co-operation and Development (OECD) Model Agreement on Exchange of Information on Tax Matters shall apply to the interpretation of this Agreement where this Agreement is in conformity with the OECD Model Agreement on Exchange of Information on Tax Matters.