

No. 49986

**Netherlands (for the European part of the Netherlands)
and
United Kingdom of Great Britain and Northern Ireland
(in respect of Bermuda)**

Agreement between the Kingdom of the Netherlands and Bermuda (as authorised by the Government of the United Kingdom of Great Britain and Northern Ireland) on the access to mutual agreements procedures in connection with the adjustment of profits of associated enterprises. London, 8 June 2009

Entry into force: *1 February 2010, in accordance with article 7*

Authentic text: *English*

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

Accord entre le Royaume des Pays-Bas et les Bermudes (autorisées par le Gouvernement du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord) sur l'accès à des procédures amiables en cas de correction des bénéfices d'entreprises associées. Londres, 8 juin 2009

Entrée en vigueur : *1^{er} février 2010, conformément à l'article 7*

Texte authentique : *anglais*

Enregistrement auprès du Secrétariat de l'Organisation des Nations Unies : *Pays-Bas, 12 juillet 2012*

[ENGLISH TEXT – TEXTE ANGLAIS]

**Agreement between the Kingdom of the Netherlands and Bermuda
(as authorised by the Government of the United Kingdom of Great
Britain and Northern Ireland) on the access to mutual agreements
procedures in connection with the adjustment of profits of
associated enterprises**

The Government of the Kingdom of the Netherlands
and

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

Desiring to supplement the Agreement on the exchange of information with respect to taxes concluded today at London on the 8th day of June 2009, and to strengthen their economic relationship and to encourage international trade;

Have agreed to conclude the following Agreement which contains obligations on the part of the Contracting Parties only:

CHAPTER I

TAXES COVERED AND DEFINITIONS

Article 1

Taxes covered

This Agreement shall apply to taxes on income and profits.

Article 2

Definitions

1. For the purposes of this Agreement, unless otherwise defined:
 - a) the term “Contracting Party” means the Netherlands or Bermuda as the context requires; the term “Contracting Parties” means Bermuda and the Netherlands;
 - b) the term “the Netherlands” means the part of the Kingdom of the Netherlands that is situated in Europe, including its territorial sea, and any area beyond the territorial sea within which the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights;
 - 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 “competent authority” means
 - (i) in the case of the Netherlands the Minister of Finance or his authorised representative;
 - (ii) in the case of Bermuda, the Minister of Finance or an authorised representative of the Minister;
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.

CHAPTER II
THE ADJUSTMENT OF PROFITS OF ASSOCIATED
ENTERPRISES

Article 3

Scope of Chapter II

1. Chapter II of this Agreement shall apply where, for the purposes of taxation, profits which are included in the profits of an enterprise of a Contracting Party are also included or are also likely to be included in the profits of an enterprise of the other Contracting Party on the grounds that the principles set out in Article 4, and applied either directly or in corresponding provisions of the law of the Contracting Party concerned, have not been observed.

2. Paragraph 1 shall also apply where any of the enterprises concerned have made losses rather than profits.

Article 4

Principles applying to the adjustment of profits of associated enterprises

Where:

a) an enterprise of a Contracting Party participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting Party, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Party and an enterprise of the other Contracting Party,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Article 5

General provision

Where a Contracting Party intends to adjust the profits of an enterprise in accordance with the principles set out in Article 4, it shall inform the enterprise of the intended action in due time and give it the opportunity to inform the other enterprise so as to give that other enterprise the

opportunity to inform in turn the other Contracting Party. However, the Contracting Party providing such information shall not be prevented from making the proposed adjustment.

Article 6

Mutual agreement procedures

1. Where an enterprise considers that, in any case to which this Agreement applies, the principles set out in Article 4 have not been observed, it may, irrespective of the remedies provided by the domestic law of the Contracting Party concerned, present its case to the competent authority of the Contracting Party of which it is an enterprise. The case must be presented within three years of the first notification of the action which is contrary or is likely to be contrary to the principles set out in Article 4. The competent authority shall then without delay notify the competent authority of the other Contracting Party.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting Parties.

3. The competent authorities of the Contracting Parties may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraph.

4. The competent authority of a Contracting Party shall not be obliged to initiate the mutual agreement procedure where legal or administrative proceedings have resulted in a final ruling that by actions giving rise to an adjustment of transfers of profits under Article 4 one of the enterprises concerned is liable to a serious penalty. In addition, the competent authority of a Contracting Party shall not be obliged to initiate the mutual agreement procedure if the enterprise has not fulfilled the domestic documentation and/or information requirements of the adjusting Contracting Party before the assessment in which the adjustment is incorporated was finalized.

5. If any difficulty or doubt arising as to the interpretation or application of the Agreement cannot be resolved by the competent authorities of the Contracting Parties in a mutual agreement procedure pursuant to the previous paragraphs of this Article within a period of two years after the question was raised, the case may, at the request of either Contracting Party, be submitted for arbitration, but only after fully exhausting the