

No. 50022

**Netherlands (in respect of Netherlands Antilles)
and
United States of America**

Agreement between the Government of the Kingdom of the Netherlands in respect of the Netherlands Antilles and the Government of the United States of America for the exchange of information with respect to taxes. Washington, 17 April 2002

Entry into force: *22 March 2007 by notification, in accordance with article 8*

Authentic text: *English*

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**Pays-Bas (à l'égard des Antilles néerlandaises)
et
États-Unis d'Amérique**

Accord entre le Gouvernement du Royaume des Pays-Bas, à l'égard des Antilles néerlandaises, et le Gouvernement des États-Unis d'Amérique relatif à l'échange de renseignements en matière fiscale. Washington, 17 avril 2002

Entrée en vigueur : *22 mars 2007 par notification, conformément à l'article 8*

Texte authentique : *anglais*

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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 the United States of America 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 the United States of America;

Considering that it is more important than ever not to allow the institutions in either jurisdiction to be used to further illicit financial activity of any kind and recognizing the critical importance of sharing information with one another to prevent abuse of their respective fiscal laws; and

Therefore, desiring to cooperate to prevent financial crimes and combat terrorism, including through sharing of information, and to conclude an Agreement for the exchange of information with respect to taxes (hereinafter referred to as the “Agreement”);

Have agreed as follows:

Article 1

Object and scope of the Agreement

1. The Contracting States shall assist each other to assure the accurate assessment and collection of taxes, to prevent fiscal fraud and eva-

sion, and to develop improved information sources for tax matters. The Contracting States shall provide assistance through exchange of information authorized pursuant to Article 4 and such related measures as may be agreed upon by the competent authorities pursuant to Article 5.

2. Information shall be exchanged to fulfill the purpose of this Agreement without regard to whether the person to whom the information relates is, or whether the information is held by, a resident or national of a Contracting State, provided that the information is present within the territory, or in the possession or control of a person subject to the jurisdiction, of the requested State.

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

Article 2

Taxes covered by the Agreement

1. This Agreement shall apply to the following taxes imposed by or on behalf of a Contracting State:

- a) in the case of the United States of America, all federal taxes;
- b) in the case of the Netherlands Antilles, the following taxes: the income tax (*inkomstenbelasting*), the wages tax (*loonbelasting*), the profit tax (*winstbelasting*) and the surtaxes on the income and profit taxes (hereinafter referred to as “Netherlands Antilles taxes”).

2. This Agreement shall apply also 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 authority of each Contracting State shall notify the other of changes in laws which may affect the obligations of that State pursuant to this Agreement.

3. This Agreement shall not apply to the extent that an action or proceeding concerning taxes covered by this Agreement is barred by the applicant State’s statute of limitations.

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

Article 3

Definitions

1. In this Agreement, unless otherwise defined:

- a) The term “competent authority” means:
 - (i) in the case of the United States of America, the Secretary of the Treasury or his delegate; and

- (ii) in the case of the Netherlands Antilles, the Minister of Finance or his authorized representative;
- b) The term “Contracting State” means the United States or the Kingdom of the Netherlands in respect of the Netherlands Antilles as the context requires;
- c) The term “national” means:
 - (i) in the case of the United States, any United States citizen and any legal person, partnership, corporation, trust, estate, association, or other entity deriving its status as such from the laws in force in the United States; and
 - (ii) in the case of the Netherlands Antilles, an individual who has Dutch nationality and who would be eligible to vote in the Netherlands Antilles if he were of age and present in the Netherlands Antilles, provided however, if an individual is not present in the Netherlands Antilles, he must have either been born in the Netherlands Antilles or have been resident thereof for at least five years;
- d) The term “person” includes an individual and a partnership, corporation, trust, estate, association or other legal entity;
- e) The term “tax” means any tax to which the Agreement applies;
- f) The term “information” means any fact or statement, in any form whatever, that may be relevant or material to tax administration and enforcement, including (but not limited to):
 - (i) testimony of an individual; and
 - (ii) documents, records or tangible property of a person or Contracting State;
- g) The terms “applicant State” and “requested State” mean, respectively, the Contracting State applying for or receiving information and the Contracting State providing or requested to provide such information;
- h) For purposes of determining the geographical area within which jurisdiction to compel production of information may be exercised, the term “United States” means the United States of America, including Puerto Rico, the Virgin Islands, Guam, and any other United States possession or territory;
- i) For purposes of determining the geographical area within which jurisdiction to compel production of information may be exercised, the term “Netherlands Antilles” means that part of the Kingdom of the Netherlands that is situated in the Caribbean area and consisting of the Island Territories of Bonaire, Curaçao, Saba, St. Eustatius and St. Maarten (Dutch part).

2. Any term not defined in this Agreement, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 5, shall have the meaning which it has under the laws of the Contracting State relating to the taxes which are the subject of this Agreement.

Article 4

Exchange of information

1. The competent authorities of the Contracting States shall exchange information to administer and enforce the domestic laws of the Contracting States concerning taxes covered by this Agreement, including information to effect the determination, assessment, and collection of tax, the recovery and enforcement of tax claims, or the investigation or prosecution of tax crimes or crimes involving the contravention of tax administration.

2. The competent authority of the requested State shall provide information upon request by the competent authority of the applicant State for the purposes referred to in paragraph 1. If the information available in the tax files of the requested State is not sufficient to enable compliance with the request, that State shall take all relevant measures, including compulsory measures, to provide the applicant State with the information requested.

a) The requested State shall have the authority to:

- (i) examine any books, papers, records, or other tangible property which may be relevant or material to such inquiry;
- (ii) question any person having knowledge or in possession, custody or control of information which may be relevant or material to such inquiry;
- (iii) compel any person having knowledge or in possession, custody or control of information which may be relevant or material to such inquiry to appear at a stated time and place and testify under oath and produce books, papers, records, or other tangible property;
- (iv) take such testimony of any individual under oath.

b) Privileges under the laws or practices of the applicant State shall not apply in the execution of a request but shall be preserved for resolution by the applicant State.

3. The requested State shall provide information requested pursuant to the provisions of this Article regardless of whether the requested State needs such information for purposes of its own tax. Moreover, if specifically requested by the competent authority of the applicant State, the requested State shall:

- a) specify the time and place for the taking of testimony or the production of books, papers, records, and other tangible property;
- b) place the individual giving testimony or producing books, papers, records and other tangible property under oath;
- c) permit the presence of individuals designated by the competent authority of the applicant State as being involved in or affected by execution of the request, including an accused, counsel for the accused, individuals charged with the administration and enforcement of dom-