No. 50048*

Netherlands (in respect of Aruba)
and
Denmark (in respect of Greenland)

Agreement between the Kingdom of the Netherlands, in respect of Aruba, and the Government of Greenland for the exchange of information with respect to taxes. Paris, 10 September 2009

Entry into force: *1 May 2012, in accordance with article 13*

Authentic text: *English*

Registration with the Secretariat of the United Nations: *Netherlands, 7 August 2012*

No UNTS volume number has yet been determined for this record. The Text(s) reproduced below, if attached, are the authentic texts of the agreement /action attachment as submitted for registration and publication to the Secretariat. For ease of reference they were sequentially paginated. Translations, if attached, are not final and are provided for information only.

Pays-Bas (à l'égard d'Aruba)
et
Danemark (à l'égard du Groenland)

Accord entre le Royaume des Pays-Bas, à l'égard d'Aruba, et le Gouvernement du Groënland relatif à l'échange d'information en matière d'impôts. Paris, 10 septembre 2009

Entrée en vigueur : *1er mai 2012, conformément à l'article 13*

Texte authentique : *anglais*

Enregistrement auprès du Secrétariat des Nations Unies : *Pays-Bas, 7 août 2012*

* *Numéro de volume RTNU n'a pas encore été établie pour ce dossier. Les textes réproduits ci-dessous, s'ils sont disponibles, sont les textes authentiques de l'accord/pièce jointe d'action tel que soumises pour l'enregistrement et publication au Secrétariat. Pour référence, ils ont été présentés sous forme de la pagination consécutive. Les traductions, s'ils sont inclus, ne sont pas en form finale et sont fournies uniquement à titre d'information.*

[ENGLISH TEXT – TEXTE ANGLAIS]

Agreement between the Kingdom of the Netherlands, in respect of Aruba, and the Government of Greenland for the exchange of information with respect to taxes

The Kingdom of the Netherlands, in respect of Aruba,

and

the Government of Greenland,

Desiring to conclude an Agreement concerning information on tax matters,

Considering that the Government of Greenland concludes this agreement on behalf of the Kingdom of Denmark pursuant to the Act on Greenland Self-Government;

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 the Con-

TR/070812/I-50048

tracting 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. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 9. The rights and safeguards secured to persons by the laws or administrative practice of the Requested Party remain applicable to the extent that they do not unduly prevent or delay 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. The taxes which are the subject of this Agreement are:
a) in Aruba:
   a. the income tax (inkomstenbelasting);
   b. the wage tax (loonbelasting);
   c. the profit tax (winstbelasting);
   d. the dividend withholding tax (dividendbelasting);
b) in Greenland:
   a. the Government tax;
   b. the special Government tax;
   c. the communal tax;
   d. the intercommual tax;
   e. the company tax;
   f. the dividend tax;
   g. the royalty tax; and
   h. labour market tax.

2. This Agreement shall also apply to any identical 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 any substantially similar taxes imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes if the competent authorities

of the Contracting Parties so agree. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Contracting Parties in the form of an exchange of letters. 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.

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 the Government of Greenland 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 of Aruba;

c) the term "Greenland" means the landmass of Greenland and its territorial waters and any area outside the territorial waters where Denmark or Greenland according to domestic legislation and in accordance with international law, may exercise its rights with respect to the seabed and subsoil and their natural resources;

d) the term "competent authority" means

(i) in the case of Aruba, the Minister of Finance and Economic Affairs or an authorised representative of the Minister;

(ii) in the case of Greenland, the Minister of Finance or his delegate;

e) the term "person" includes an individual, a company and any other body of persons;

f) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

g) 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;

h) 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;

i) the term "recognised stock exchange" means any stock exchange agreed upon by the competent authorities of the Contracting Parties;

j) 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;

k) the term "tax" means any tax to which this Agreement applies;

l) the term "Applicant Party" means the Contracting Party requesting information;

m) the term "Requested Party" means the Contracting Party requested to provide information;

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

o) the term "information" means any fact, statement or record in any form whatever;

p) 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;

q) the term "criminal tax matters" means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Applicant Party.

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:

a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;

b) information regarding the ownership of companies, partnerships, trusts, foundations, "Anstalten" and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees, beneficiaries and protectors; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the Applicant Party shall provide the following information to the competent authority of the Requested Party when making a request for information under this Agreement to demonstrate the foreseeable relevance of the information to the request:

a) the identity of the person under examination or investigation;

b) a statement of the information sought including its nature and the form in which the Applicant Party wishes to receive the information from the Requested Party;

c) the tax purpose for which the information is sought;

d) the grounds for believing that the information requested is held in the Requested Party or is in the possession or control of a person within the jurisdiction of the Requested Party;

e) to the extent known, the name and address of any person believed to be in possession of the requested information;

f) a statement that the request is in conformity with the law and administrative practices of the Applicant Party, that if the requested information was within the jurisdiction of the Applicant Party then the competent authority of the Applicant Party would be able to obtain the information under the laws of the Applicant Party or in the normal course of administrative practice and that the information request is in conformity with this Agreement;

g) a statement that the Applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the Requested Party shall forward the requested information as promptly as possible to the Applicant Party. To ensure a prompt response, the competent authority of the Requested Party shall:

a) confirm receipt of a request in writing to the competent authority of the Applicant Party and shall notify the competent authority of the Applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request; and

b) if the competent authority of the Requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the Applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

Article 6

Spontaneous exchange of information

The Contracting Parties may forward to each other, without prior request, information of which they have knowledge.

Article 7

Tax examinations abroad

1. A Contracting Party may allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Party shall notify the competent authority of the first-mentioned Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of one of the Contracting Parties, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Party to be present at the appropriate part of a tax examination in the second-mentioned Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the other Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the first-mentioned Party for the conduct of the exami-

nation. All decisions with respect to the conduct of the tax examination shall be made by the Party conducting the examination.

Article 8

Possibility of declining a request

1. The Requested Party shall not be required to obtain or provide information that the Applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws. The competent authority of the Requested Party may decline to assist where the request is not made in conformity with this Agreement.

2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in paragraph 4 of Article 5 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

a) produced for the purposes of seeking or providing legal advice; or

b) produced for the purposes of use in existing or contemplated legal proceedings.

4. The Requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (ordre public).

5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed by the taxpayer.

6. The Requested Party may decline a request for information if the information is requested by the Applicant Party to administer or enforce a provision of the tax law of the Applicant Party, or any requirement connected therewith, which discriminates against a national of the Requested Party as compared with a national of the Applicant Party in the same circumstances.

Article 9

Confidentiality

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the Requested Party.

Article 10

Costs

Unless the competent authorities of the Contracting Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the Requested Party, and extraordinary costs incurred in providing assistance (including reasonable costs of engaging external advisors in connection with litigation or otherwise) shall be borne by the Applicant Party. At the request of either Contracting Party, the competent authorities shall consult as necessary with regard to this Article, and in particular the competent authority of the Requested Party shall consult with the competent authority of the Applicant Party in advance if the costs of providing information with respect to a specific request are expected to be significant.

Article 11

Implementation legislation

The Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of this Agreement.

Article 12

Mutual agreement procedure

1. The competent authorities of the Contracting Parties shall jointly endeavour to resolve any difficulties or doubts arising as to the interpretation or application of this Agreement.

2. In addition to the endeavours referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually determine the procedures to be used under Articles 5, 6 and 7.

3. The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of this Article.

Article 13

Entry into force

1. Each of the Contracting Parties shall notify the other in writing of the completion of the internal procedures required by its law for the entry into force of this Agreement.

2. The Agreement shall enter into force on the first day of the second month after the receipt of the later of these notifications and shall thereupon have effect as from that date.

3. The provisions of this Agreement shall have effect for any taxable periods, which could still be investigated at the moment of the information request, according to the laws of the Applicant Party.

Article 14

Termination

1. This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate the Agreement, through diplomatic channels, by giving written notice of termination to the other Contracting Party at least six months before the end of any calendar year.

2. In such event, the Agreement shall cease to have effect from the first day of January of the calendar year next following the end of the six month period.

3. Notwithstanding any termination of this Agreement the Contracting Parties shall remain bound by the provisions of Article 9 with respect to any information obtained under this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto, have signed the Agreement.

DONE at Paris, this 10th day of September, 2009, in duplicate in the English language.

For the Kingdom of the Netherlands, in respect of Aruba:

N. J. J. SWAEN

For the Government of Greenland:

L. S. LENNERT