

No. 52758*

**Netherlands (in respect of the Caribbean part of the Netherlands,
Curaçao and Sint Maarten)
and
United Kingdom of Great Britain and Northern Ireland (in
respect of Bermuda)**

**Agreement between the Kingdom of the Netherlands, in respect of the Netherlands Antilles,
and Bermuda (as authorized by the Government of the United Kingdom of Great
Britain and Northern Ireland) for the exchange of information with respect to taxes
(with protocol). Willemstad, 21 September 2009, and Hamilton, 28 September 2009**

Entry into force: 24 March 2015, in accordance with article 13

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**Pays-Bas (à l'égard de la partie caribéenne des Pays-Bas, Curaçao
et Saint-Martin)
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 des Antilles néerlandaises, et les Bermudes
(autorisés par le Gouvernement du Royaume-Uni de Grande-Bretagne et d'Irlande du
Nord) relatif à l'échange d'information en matière fiscale (avec protocole). Willemstad,
21 septembre 2009, et Hamilton, 28 septembre 2009**

Entrée en vigueur : 24 mars 2015, conformément à l'article 13

Texte authentique : anglais

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[ENGLISH TEXT – TEXTE ANGLAIS]

**Agreement between the Kingdom of the Netherlands, in respect of
the Netherlands Antilles, 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 the
Netherlands Antilles,

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:

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 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 the Netherlands Antilles, or Bermuda as the context requires;
- b) the term "Bermuda" means the Islands of Bermuda including the territorial sea adjacent to those islands, in accordance with international law;
- c) the term "the Netherlands Antilles" means that part of the Kingdom of the Netherlands that is situated in the Caribbean Sea and consisting of the Island Territories of Bonaire, Curaçao, Saba, St. Eustatius and St. Maarten (Dutch part), including its territorial waters and the part of the seabed and its subsoil under the Caribbean Sea over which the Kingdom of the Netherlands has sovereign rights in accordance with international law but excluding the part relating to Aruba;
- 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 the Netherlands Antilles, the Minister of Finance 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;

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.

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, the requested 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 the 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 of this Agreement, has the authority to obtain and provide upon request:

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

b) information regarding the legal and beneficial ownership of companies, partnerships, 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 the position in an ownership chain; in the case of foundations, information on founders, members of the foundation council and beneficiaries.

h) the period of time with respect to which the information is required for the tax purposes.

8. 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;

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

Tax examinations abroad

1. The requested Party may allow, to the extent permitted under its domestic law, representatives of the competent authority of the applicant Party to enter the territory of the applicant Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the applicant Party shall notify the competent authority of the requested Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of the applicant Party, the competent authority of the requested Party may allow representatives of the competent authority of the applicant Party to be present at the appropriate part of a tax examination in the requested Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the requested Party conducting the examination shall, as soon as possible, notify the competent authority of the applicant 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 requested Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the requested Party conducting the examination.

sons 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 9

Costs

Incidence of costs incurred in providing assistance (including reasonable costs of third Parties and external advisors in connection with litigation or otherwise) shall be agreed by the competent authorities of the Contracting Parties.

Article 10

Implementation legislation

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

Article 11

Language

Requests for assistance and answers thereto shall be drawn up in English.

Article 12

Mutual agreement procedure

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of the Convention, the competent authorities shall endeavour to resolve the matter by mutual agreement;
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under Articles 5 and 6.

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

ERSILIA DE LANNOOY

For Bermuda:

PAULA A. FOX

Protocol between the Kingdom of the Netherlands, in respect of the Netherlands Antilles, and Bermuda (as authorised by the Government of the United Kingdom of Great Britain and Northern Ireland) concerning the interpretation and application of the Agreement between the Kingdom of the Netherlands, in respect of the Netherlands Antilles, and Bermuda (as authorised by 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 the Netherlands Antilles,

and

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

(hereinafter referred to as "the Contracting Parties"),

Desiring to facilitate the exchange of information with respect to taxes, have further agreed as follows:

Article 1

(Article 5(7)(e))

With respect to subparagraph e) of paragraph 7 of Article 5 it is understood that the term "pursued all means available in its own territory" includes the requesting Contracting Party using exchange of information mechanisms it has in force with any third country in which the information is located.

Article 2

(Article 5)

If personal data is exchanged under the Agreement, the following additional provisions shall apply:

Article 3

(Article 12)

In the event that a Contracting Party applies prejudicial or restrictive measures based on harmful tax practices to residents or nationals of the other Contracting Party, either Contracting Party may immediately initiate Competent Authority proceedings to resolve the matter. A prejudicial or restrictive measure based on harmful tax practices is a measure applied by one Contracting Party to residents or nationals of either Contracting Party on the basis that any one or more of the following applies:

- a) the other Contracting Party does not engage in effective exchange of information;
- b) because it lacks transparency in the operation of its laws, regulations or administrative practices; or,
- c) on the basis of no or nominal taxes.

Without limiting the generality of the term, "prejudicial or restrictive measure" is not limited solely to taxation matters and includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements, but does not include any generally applicable measure, applied by either Contracting Party against, amongst others, members of the OECD generally.

Article 4

In the light of the experience of operating the Agreement, or to reflect changing circumstances, either Contracting Party may wish to propose a variation in the terms of this Agreement. If so, it is understood the other Contracting Party will agree to hold timely discussions with a view to revising the terms of the Agreement.

- a) The competent authorities may initiate discussions in case:
 - (i) the Kingdom of the Netherlands, in respect of the Netherlands Antilles, enters into an agreement with another jurisdiction comparable to Bermuda which provides for other forms of exchange of information;
 - (ii) Bermuda enters into an agreement with another jurisdiction which provides for other forms of exchange of information;
 - (iii) Bermuda introduces new legislation which enables other forms of exchange of information;
- b) If the Kingdom of the Netherlands, in respect of the Netherlands Antilles, enters into arrangements with another jurisdiction comparable to Bermuda for the provision of information with respect to taxes that are less burdensome in any material respect than the provisions of the Agreement, Bermuda may initiate discussions with the Kingdom of the Netherlands, in respect of the Netherlands Antilles, with a view to modifying the Agreement to have similar effect.