

No. 49012

**Netherlands (in respect of Aruba)
and
Australia**

Agreement between the Kingdom of the Netherlands, in respect of Aruba, and the Government of Australia on the exchange of information with respect to taxes. Canberra, 16 December 2009

Entry into force: *17 August 2011 by notification, in accordance with article 14*

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**Pays-Bas (à l'égard d'Aruba)
et
Australie**

Accord entre le Royaume des Pays-Bas à l'égard d'Aruba et le Gouvernement de l'Australie relatif à l'échange de renseignements en matière fiscale. Canberra, 16 décembre 2009

Entrée en vigueur : *17 août 2011 par notification, conformément à l'article 14*

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[ENGLISH TEXT – TEXTE ANGLAIS]

**Agreement between the Kingdom of the Netherlands, in respect of
Aruba, and the Government of Australia on the Exchange of
Information with respect to Taxes**

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

the Government of Australia (“the Parties”),

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 Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the 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. Infor-

mation 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 existing taxes which are the subject of this Agreement are:

- a) in Australia, taxes of every kind and description imposed under federal laws administered by the Commissioner of Taxation; and
- b) in Aruba, taxes of every kind and description imposed under national tax laws administered by the Tax Inspector.

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 Agreement shall also apply to such other taxes as may be agreed in an exchange of letters between the Parties. The competent authorities of the Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

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

Article 4

Definitions

1. For the purposes of this Agreement, unless otherwise defined:

- a) the term “Applicant Party” means the Party requesting information;

b) the term “Australia”, when used in a geographical sense, excludes all external territories other than:

- (i) the Territory of Norfolk Island;
- (ii) the Territory of Christmas Island;
- (iii) the Territory of Cocos (Keeling) Islands;
- (iv) the Territory of Ashmore and Cartier Islands;
- (v) the Territory of Heard Island and McDonald Islands; and
- (vi) the Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the exclusive economic zone and the seabed and subsoil of the continental shelf;

c) 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;

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 in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of Aruba, the Minister of Finance and Economic Affairs or an authorised representative of the Minister;

g) the term “Party” means Australia or the Kingdom of the Netherlands in respect of Aruba as the context requires;

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 “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the Applicant Party;

j) the term “information” means any fact, statement or record in any form whatever;

k) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Party to obtain and provide the requested information;

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 Parties;

p) the term “Requested Party” means the Party requested to provide information; and

q) the term “tax” means any tax to which this Agreement applies.

2. As regards the application of this Agreement at any time by a 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 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: