

No. 49013

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

Agreement between the Kingdom of the Netherlands, in respect of Aruba, and the Government of Australia for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments. Canberra, 16 December 2009

Entry into force: *17 August 2011 by notification, in accordance with article 10*

Authentic text: *English*

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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'octroi de droits d'imposition à l'égard de certains revenus d'individus et visant à établir une procédure amiable en matière d'ajustements de prix de transfert. Canberra, 16 décembre 2009

Entrée en vigueur : *17 août 2011 par notification, conformément à l'article 10*

Texte authentique : *anglais*

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[ENGLISH TEXT – TEXTE ANGLAIS]

Agreement between the Kingdom of the Netherlands, in respect of Aruba, and the Government of Australia for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments

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

the Government of Australia (“the Parties”),

Recognising that the Parties have concluded an Agreement on the Exchange of Information with Respect to Taxes, and

Desiring to conclude an Agreement for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments,

Have agreed as follows:

Article 1

Persons covered

This Agreement shall apply to persons who are residents of one or both of the Parties.

Article 2

Taxes covered

1. The existing taxes to which this Agreement shall apply are:
 - a) in Australia, the income tax imposed under the federal law of Australia;
(hereinafter referred to as “Australian tax”).
 - b) in Aruba, the following taxes:
 - (i) the income tax (inkomstenbelasting);
 - (ii) the wages tax (loonbelasting); and
 - (iii) the profit tax (winstbelasting);
(hereinafter referred to as “Aruban tax”).
2. This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Parties shall notify each other within a reasonable period of time of any substantial changes to the taxation laws covered by this Agreement.
3. This Agreement shall not apply to taxes imposed by states, municipalities, local authorities or other political subdivisions, or possessions of a Party.

Article 3

Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
 - a) 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 or the seabed and subsoil of the continental shelf;

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 “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;

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

e) the term “national”, in relation to a Party, means any individual possessing the nationality or citizenship of that Party;

f) the term “person” includes an individual, a company and any other body of persons;

g) the term “tax” means Australian tax or Aruban tax as the context requires; and

h) the term “transfer pricing adjustment” means an adjustment made by the competent authority of a Party to the profits of an enterprise as a result of applying the domestic law concerning taxes referred to in Article 2 of that Party regarding transfer pricing.

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, for the purposes of the taxes to which this Agreement applies, with 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 4

Resident

1. For the purposes of this Agreement, the term “resident of a Party” means:

a) in the case of Australia, a person who is a resident of Australia for the purposes of Australian tax; and

b) in the case of Aruba, a person who is a resident of Aruba for the purposes of Aruban tax.

2. A person is not a resident of a Party for the purposes of this Agreement if the person is liable to tax in that Party in respect only of income from sources in that Party.

3. Where by reason of the preceding provisions of this Article a person, being an individual, is a resident of both Parties, then the person's status shall be determined as follows:

a) the individual shall be deemed to be a resident only of the Party in which a permanent home is available to that individual; if a permanent home is available in both Parties, or in neither of them, that individual shall be deemed to be a resident only of the Party with which the individual's personal and economic relations are closer (centre of vital interests);

b) if the Party in which the individual has their centre of vital interests cannot be determined, the individual shall be deemed to be a resident only of the Party of which the individual is a national;

c) if the individual is a national of both Parties or of neither of them, the competent authorities of the Parties shall endeavour to resolve the question by mutual agreement.

4. Where, by reason of paragraph 1, a person other than an individual is a resident of both Parties, then it shall be deemed to be a resident only of the Party in which its place of effective management is situated.

Article 5

Pensions and retirement annuities

1. Pensions (excluding government pensions) and retirement annuities paid to an individual who is a resident of a Party shall be taxable only in that Party. However, pensions and retirement annuities arising in a Party may be taxed in that Party where such income is not subject to tax in the other Party.

2. The term "retirement annuity" means:

a) in the case of Australia, a superannuation annuity payment within the meaning of the taxation laws of Australia;

b) in the case of Aruba, a stated sum payable in consequence of retirement and paid periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth; and

c) any other similar periodic payment agreed upon by the competent authorities.

Article 6

Government service

1. a) Salaries, wages and other similar remuneration, other than a pension, paid by a Party or a political subdivision or a local authority