

2005 No. 1460

INCOME TAX

**The Tax Information Exchange Agreement (Taxes on
Income) (Netherlands Antilles) Order 2005**

Made - - - - - *7th June 2005*

At the Court at Buckingham Palace, the 7th day of June 2005

Present,

The Queen's Most Excellent Majesty in Council

In accordance with section 815C(3) of the Income and Corporation Taxes Act 1988 a draft of this Order was laid before, and approved by a resolution of, the House of Commons;

Accordingly Her Majesty, in exercise of the power conferred upon Her by section 815C of the Act of 1988(a), and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order as follows:—

Citation

1. This Order may be cited as the Tax Information Exchange Agreement (Taxes on Income) (Netherlands Antilles) Order 2005.

Declaration about exchange of information

2.—(1) It is declared that the arrangements specified in the Convention set out in Part I of the Schedule to this Order, and the Exchange of Notes constituting an Agreement set out in Part II of that Schedule have been made with the Government of the Kingdom of the Netherlands in respect of the Netherlands Antilles with a view to the exchange of information foreseeably relevant to the administration or enforcement of—

- (a) the domestic laws of the United Kingdom concerning income tax, capital gains tax or corporation tax; and
- (b) the laws of the Netherlands Antilles concerning taxes imposed by the law of the Netherlands Antilles which are of a similar character to any of those taxes.

(2) It is further declared that it is expedient that the arrangements referred to in paragraph (1) should have effect.

A. K. Galloway
Clerk of the Privy Council

(a) 1988 c. 1. Section 815C was inserted by section 146(1) of the Finance Act 2000 (c. 17), and amended by section 88(2) of the Finance Act 2002 (c. 23) and section 198 of the Finance Act 2003 (c. 14).

SCHEDULE

PART I

CONVENTION BETWEEN THE KINGDOM OF THE NETHERLANDS IN RESPECT OF THE NETHERLANDS ANTILLES AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND CONCERNING THE AUTOMATIC EXCHANGE OF INFORMATION REGARDING SAVINGS INCOME IN THE FORM OF INTEREST PAYMENTS

WHEREAS:

1. Article 17(2) of Directive 2003/48/EEC (“the Directive”) of the Council of the European Union (“the Council”) on taxation of savings income^(a) provides that Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive from January 1, 2005, provided that:

- the Swiss Confederation, the Principality of Liechtenstein, the Republic of San Marino, the Principality of Monaco and the Principality of Andorra from that same date apply measures equivalent to those contained in the Directive, in accordance with agreements entered into by them with the European Community, following unanimous decisions of the Council;
- all agreements or other arrangements are in place, which provide that all the relevant dependent or associated territories apply from that date automatic exchange of information in the same manner as is provided for in Chapter II of the Directive, or, during the transitional period defined in Article 10, apply a withholding tax on the same terms as are contained in Articles 11 and 12.

2. The Netherlands Antilles are not within the EU fiscal territory but are, for purposes of the Directive, an EU associated territory and as such are not bound by the terms of the Directive. However, the Kingdom of the Netherlands in respect of the Netherlands Antilles, on the basis of an agreement between the Netherlands Antilles and the Netherlands, is willing to enter into agreements with the Member States of the EU to apply from January 1, 2005, a withholding tax on the same terms as are contained in Articles 11 and 12 of the Directive during the transitional period defined in Article 10 thereof, and, after expiration of the transitional period, to apply automatic exchange of information in the same manner as is provided for in Chapter II of the Directive.

3. The agreement between the Netherlands Antilles and the Netherlands, as stated in the previous paragraph, is contingent on the adoption by all the Member States of the laws, regulations and administrative provisions necessary to comply with the Directive, and on the requirements of Article 17 of the Directive being met.

4. Through this Convention, the Netherlands Antilles agrees to apply the provisions of the Directive, subject to what is otherwise agreed herein, in regard of Beneficial Owners that are residents of the United Kingdom of Great Britain and Northern Ireland and the United Kingdom of Great Britain and Northern Ireland agrees to apply the Directive in regard to Beneficial Owners that are residents of the Netherlands Antilles.

The Government of the Kingdom of the Netherlands in respect of the Netherlands Antilles and the Government of the United Kingdom of Great Britain and Northern Ireland, desiring to conclude a Convention which enables savings income in the form of Interest Payments made in one of the Contracting States to Beneficial Owners who are individuals resident in the other Contracting State, to be made subject to effective taxation in accordance with the laws of the latter Contracting State, in conformity with the Directive and with the intentions of the Contracting States as laid down herein above, have agreed as follows:

ARTICLE 1

General Scope

(1) This Convention shall apply to interest paid by a Paying Agent established within the territory of one of the Contracting States with a view to enable savings income in the form of Interest Payments made in one Contracting State to Beneficial Owners who are individuals resident for tax purposes in the other Contracting State to be made subject to effective taxation in accordance with the laws of the latter Contracting State.

(2) The scope of this Convention shall be limited to taxation of savings income in the form of Interest Payments on debt claims, to the exclusion, inter alia, of the issues relating to the taxation of pension and insurance benefits.

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

(a) OJ No. L157, 26.06.2003, p. 38.

ARTICLE 2

Definitions

- (1) For the purposes of this Convention, unless the context otherwise requires:
 - (a) the terms “a Contracting State” and “the other Contracting State” mean the Kingdom of the Netherlands in respect of the Netherlands Antilles or the United Kingdom of Great Britain and Northern Ireland as the context requires;
 - (b) “The Netherlands Antilles” mean that part of the Kingdom of the Netherlands that is situated in the Caribbean area and consists of the Island territories of Bonaire, Curaçao, Saba, St. Eustatius and the Dutch part of St. Maarten;
 - (c) the “contracting party” being a Member State of the European Union means: the United Kingdom of Great Britain and Northern Ireland;
 - (d) the term “Directive” means Directive 2003/48/EC of the Council of the European Union of 3 June 2003 on taxation of savings income in the form of interest payments, as applicable at the date of signing this Convention;
 - (e) the term “Beneficial Owner(s)” means the beneficial owner(s) according to Article 2 of the Directive;
 - (f) the term “Paying Agent(s)” means the paying agent(s) according to Article 4 of the Directive;
 - (g) the term “Competent Authority” means:
 - (i) in the case of the Netherlands Antilles: the Minister of Finance or his authorised representative.
 - (ii) in the case of the United Kingdom of Great Britain and Northern Ireland: the competent authority of that State according to Article 5 of the Directive.
 - (h) the term “Interest Payment(s)” means the interest payment(s) according to Article 6, due account being taken of Article 15, of the Directive;
 - (i) any term not otherwise defined herein shall have the meaning given to it in the Directive.
- (2) For the purposes of this Convention, in the provisions of the Directive to which this Convention refers, instead of “Member States” has to be read: Contracting States.

ARTICLE 3

Identity and residence of beneficial owners

Each Contracting State shall, within its territory, adopt and ensure the application of the procedures necessary to allow the Paying Agent to identify the Beneficial Owners and their residence for the purpose of the Articles 4 to 6. These procedures shall comply with the minimum standards established in Article 3, paragraph 2 and 3 of the Directive, with the provision, that, in regard to the Netherlands Antilles, in relation to subparagraphs 2.a) and 3.a) of that Article, the identity and residence of the Beneficial Owner shall be established on the basis of the information which is available to the Paying Agent by virtue of the application of the relevant provisions of Netherlands Antilles law and regulations. However, existing exemptions or dispensations, if any, provided on request to Beneficial Owners resident in the United Kingdom of Great Britain and Northern Ireland under these provisions shall cease to apply and no further exemptions or dispensations of this nature shall be provided to such Beneficial Owners.

ARTICLE 4

Automatic exchange of information

- (1) The Competent Authority of the Contracting State where the Paying Agent is established, shall communicate the information referred to in Article 8 of the Directive to the Competent Authority of the other Contracting State of residence of the Beneficial Owner.
- (2) The communication of information shall be automatic and shall take place at least once a year, within six months following the end of the tax year of the Contracting State of the Paying Agent, for all Interest Payments made during that year.
- (3) Information exchange under this Convention shall be treated by the Contracting States in a manner consistent with the provisions of Article 7 of Directive 77/799/EEC.

ARTICLE 5

Transitional provisions

- (1) During the transitional period referred to in Article 10 of the Directive, where the Beneficial Owner is resident in the United Kingdom of Great Britain and Northern Ireland and the Paying Agent is resident in the Netherlands Antilles, the Netherlands Antilles shall levy a withholding tax on Interest Payments at a rate of 15% during the first three years of the transitional period, 20% for the subsequent three years and 35% thereafter. During this period, the Netherlands Antilles shall not be required to apply the provisions of Article 4. It shall, however, receive information from the United Kingdom of Great Britain and Northern Ireland in accordance with that Article.
- (2) The Paying Agent shall levy the withholding tax in the manner as described in Article 11, paragraphs 2 and 3 of the Directive.
- (3) The imposition of withholding tax by the Netherlands Antilles shall not preclude the United Kingdom of Great Britain and Northern Ireland from taxing the income in accordance with its national law.
- (4) During the transitional period, the Netherlands Antilles may provide that an economic operator paying interest to, or securing interest for, an entity referred to in Article 4, paragraph 2, of the Directive, established in the United Kingdom of Great Britain and Northern Ireland shall be considered the Paying Agent in place of the entity and shall levy the withholding tax on that interest, unless the entity has formally agreed to its name, address and the total amount of interest paid to it or secured for it being communicated in accordance with the last subparagraph of that paragraph.
- (5) At the end of the transitional period, the Netherlands Antilles shall be required to apply the provisions of Article 4 and shall cease to apply the withholding tax and the revenue sharing provided for in Article 5 and Article 6. If, during the transitional period, the Netherlands Antilles elects to apply the provisions of Article 4, it shall no longer apply the withholding tax and the revenue sharing provided for in Article 5 and Article 6.

ARTICLE 6

Revenue sharing

- (1) The Netherlands Antilles shall retain 25% of the revenue of the withholding tax mentioned in Article 5, paragraph 1, and transfer 75% of the revenue to the United Kingdom of Great Britain and Northern Ireland.
- (2) If the Netherlands Antilles levies withholding tax in accordance with Article 5, paragraph 4, the Netherlands Antilles shall retain 25% of the revenue and transfer 75% to the United Kingdom of Great Britain and Northern Ireland of the revenue of the withholding tax levied on interest payments made to entities referred to in Article 4, paragraph 2, of the Directive, established in the United Kingdom of Great Britain and Northern Ireland.
- (3) Such transfers shall take place at the latest within a period of six months following the end of the tax year of the Netherlands Antilles.
- (4) The Netherlands Antilles shall take the necessary measures to ensure the proper functioning of this revenue-sharing system.

ARTICLE 7

Exceptions to the withholding procedure

- (1) The Netherlands Antilles shall provide for one or both of the procedures of Article 13, paragraph 1, of the Directive in order to ensure that the Beneficial Owners may request that no tax be withheld.
- (2) At the request of the Beneficial Owner, the Competent Authority of his Contracting State of residence for tax purposes shall issue a certificate in accordance with Article 13, paragraph 2, of the Directive.

ARTICLE 8

Elimination of double taxation

The United Kingdom of Great Britain and Northern Ireland shall ensure the elimination of any double taxation which might result from the imposition of the withholding tax referred to in Article 5, in accordance with the provisions of Article 14, paragraphs 2 and 3, of the Directive or will provide a refund of the withholding tax.

ARTICLE 9

Other withholding taxes

The Convention shall not preclude the Contracting States from levying other types of withholding tax than that referred to in Article 5 in accordance with their national laws or double-taxation conventions.

ARTICLE 10

Transposition

Before 1 January 2005 the Contracting States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Convention.

ARTICLE 11

Annex

The texts of the Directive(a) and of Article 7 of Directive 77/799/EEC of the Council of the European Union of 19 December, 1977(b) concerning mutual assistance by the competent authorities of the Member States in the field of direct and indirect taxation, as applicable at the date of signing this Convention and to which this Convention refers, are appended as an Annex to, and form an integral part of, this Convention. The text of Article 7 of Directive 77/799/EEC in this Annex shall be replaced by the text of the said Article in the revised Directive 77/799/EEC if this revised Directive enters into force before the date from which the provisions of this Convention shall take effect.

ARTICLE 12

Entry Into Force

This Convention shall enter into force on the thirtieth day after the latter of the dates on which the respective Governments have notified each other in writing that the formalities constitutionally required in their respective States have been complied with, and its provisions shall have effect from the date from which the Directive is applicable according to Article 17, paragraphs 2 and 3, of the Directive.

ARTICLE 13

Termination

This Convention shall remain in force until terminated by one of the Contracting States. Either State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the expiration of a period of three years from the date of its entry into force. In such event the Convention shall cease to have effect for periods beginning after the end of the calendar year in which the notice of termination has been given.

Done in, English and Dutch languages all texts being equally authentic. In case there is any divergence of interpretation between the different language versions of the texts, the English text shall prevail.

For the United Kingdom of
Great Britain and Northern Ireland:

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

John Grant

E.T.M. Delanooy

Annex

Text of Article 7 of Directive 77/799/EEC of the Council of the European Union of 19th December, 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, certain excise duties and taxation of insurance premiums

“Provisions relating to secrecy

1. All information made known to a Member State under this Directive shall be kept secret in that State in the same manner as information received under its national legislation. In any case, such information:

- may be made available only to the persons directly involved in the assessment of the tax or in the administrative control of this assessment,
- may be made known only in connection with judicial proceedings or administrative proceedings involving sanctions undertaken with a view to, or relating to, the making or reviewing the tax assessment and only to persons who are directly involved in such proceedings; such information may, however, be disclosed during public hearings or in judgements if the competent authority of the Member State supplying the information raises no objection at the time when it first supplies the information,

(a) Not reproduced. Copies of the Directive are available on the Commission web site http://europa.eu.int/comm/index_en.htm or on the Inland Revenue web site at <http://www.hmrc.gov.uk/esd-guidance/index.htm>.

(b) The text as in force at the time of the making of this Agreement is set out below.

— shall in no circumstances be used other than for taxation purposes or in connection with judicial proceedings or administrative proceedings involving sanctions undertaken with a view to, or in relation to, the making or reviewing the tax assessment. In addition, Member States may provide for the information referred to in the first subparagraph to be used for assessment of other levies, duties and taxes covered by Article 2 of Directive 76/308/EEC(a).

2. Paragraph 1 shall not oblige a Member State whose legislation or administrative practice lays down, for domestic purposes, narrower limits than those contained in the provisions of that paragraph, to provide information if the State concerned does not undertake to respect those narrower limits.

3. Notwithstanding paragraph 1, the competent authorities of the Member State providing the information may permit it to be used for other purposes in the requesting State, if, under the legislation of the informing State, the information could, in similar circumstances, be used in the informing State for similar purposes.

4. Where a competent authority of a Member State considers that information which it has received from the competent authority of another Member State is likely to be useful to the competent authority of a third Member State, it may transmit it to the latter competent authority with the agreement of the competent authority which supplied the information.

“PART II

Exchange of Notes

Note from the United Kingdom

United Kingdom Permanent Representation
To the European Union

The Permanent Representative

Sir John Grant KCMG

15 February 2005

Your Excellency,

I have the honour to refer to the texts of respectively the “Convention between the Kingdom of the Netherlands in respect of the Netherlands Antilles and (Belgium, Austria and Luxembourg) concerning the automatic exchange of information regarding savings income in the form of interest payments”, the “Convention between the Kingdom of the Netherlands in respect of the Netherlands Antilles and (the EU Member State, other than Belgium, Austria and Luxembourg) concerning the automatic exchange of information regarding savings income in the form of interest payments”, the “Convention between the Kingdom of the Netherlands in respect of Aruba and (the EU Member State, other than Belgium, Austria and Luxembourg) concerning the automatic exchange of information regarding savings income in the form of interest payments” and the “Convention between the Kingdom of the Netherlands in respect of Aruba and (Belgium, Austria and Luxembourg) concerning the automatic exchange of information regarding savings income in the form of interest payments”, that resulted from the negotiations with the Netherlands Antilles and Aruba on a Savings Tax Agreement, and that were annexed, respectively as Annex I, II, III and IV, to the Outcome of Proceedings of the High Level Working Party of the Council of Ministers of the European Union of 12 March (doc. 7660/04 FISC 68).

In view of the above mentioned texts I have the honour to propose to you the “Convention concerning the automatic exchange of information regarding savings income in the form of interest payments” as contained in Appendix 1 to this letter, and our mutual undertaking to comply at the earliest possible date with our internal constitutional formalities for the entry into force of this Convention and to notify each other without delay when such formalities are completed.

Pending the completion of these internal procedures and the entry into force of this “Convention concerning the automatic exchange of information regarding savings income in the form of interest payments”, I have the honour to propose to you that the United Kingdom of Great Britain and Northern Ireland and the Kingdom of the Netherlands in respect of the Netherlands Antilles apply this Convention provisionally, so as far as is possible under their respective domestic constitutional requirements, as from 1 January 2005, or the date of application of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, whichever is later.

(a) OJ No. L73, 19.03.1976, p. 18.

I have the honour to propose that, if the above is acceptable to your Government, this letter together with its Appendix 1 and your confirmation to that effect shall together constitute an Agreement between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of the Netherlands in respect of the Netherlands Antilles.

Please accept, Your Excellency, the assurance of my highest consideration,

John Grant

Permanent Representative of the United Kingdom of Great Britain and Northern Ireland

Note from the Kingdom of the Netherlands in respect of the Netherlands Antilles

Sir,

I have the honour to acknowledge receipt of your letter of 15 February 2005, which reads as follows:

“Your Excellency,

I have the honour to refer to the texts of respectively the “Convention between the Kingdom of the Netherlands in respect of the Netherlands Antilles and (Belgium, Austria and Luxembourg) concerning the automatic exchange of information regarding savings income in the form of interest payments”, the “Convention between the Kingdom of the Netherlands in respect of the Netherlands Antilles and (the EU Member State, other than Belgium, Austria and Luxembourg) concerning the automatic exchange of information regarding savings income in the form of interest payments”, the “Convention between the Kingdom of the Netherlands in respect of Aruba and (the EU Member State, other than Belgium, Austria and Luxembourg) concerning the automatic exchange of information regarding savings income in the form of interest payments” and the “Convention between the Kingdom of the Netherlands in respect of Aruba and (Belgium, Austria and Luxembourg) concerning the automatic exchange of information regarding savings income in the form of interest payments”, that resulted from the negotiations with the Netherlands Antilles and Aruba on a Savings Tax Agreement, and that were annexed, respectively as Annex I, II, III and IV, to the Outcome of Proceedings of the High Level Working Party of the Council of Ministers of the European Union of 12 March (doc. 7660/04 FISC 68).

In view of the above mentioned texts I have the honour to propose to you the “Convention concerning the automatic exchange of information regarding savings income in the form of interest payments” as contained in Appendix 1 to this letter, and our mutual undertaking to comply at the earliest possible date with our internal constitutional formalities for the entry into force of this Convention and to notify each other without delay when such formalities are completed.

Pending the completion of these internal procedures and the entry into force of this “Convention concerning the automatic exchange of information regarding savings income in the form of interest payments”, I have the honour to propose to you that the United Kingdom of Great Britain and Northern Ireland and the Kingdom of the Netherlands in respect of the Netherlands Antilles apply this Convention provisionally, so as far as is possible under their respective domestic constitutional requirements, as from 1 January 2005, or the date of application of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, whichever is later.

I have the honour to propose that, if the above is acceptable to your Government, this letter together with its Appendix 1 and your confirmation to that effect shall together constitute an Agreement between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of the Netherlands in respect of the Netherlands Antilles.

Please accept, Your Excellency, the assurance of our highest consideration,”

In reply, I am able to confirm that foregoing proposal is acceptable to the Kingdom of the Netherlands in respect of the Netherlands Antilles who will regard your letter, together with its Appendix 1, and this reply as constituting an agreement between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of the Netherlands in respect of the Netherlands Antilles.

Please accept, Sir, the assurance of my highest consideration,

E.T.M. Delanooy

Willemstad, 12 April 2005

EXPLANATORY NOTE

(This note is not part of the Order)

The Tax Information Exchange Agreement between the United Kingdom and the Netherlands Antilles is set out in the Schedule to this Order.

Article 1 of the Order provides for its citation.

Article 2 makes a declaration as to the effect and content of the arrangements set out in the Agreement contained in Part I, and the exchange of Notes contained in Part II of the Schedule to the Order, and that it is expedient that those arrangements should have effect.

The Tax Information Exchange Agreement secures application in the Netherlands Antilles of the same measures as are contained in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments ("the Directive"). It is based on a model reflecting the provisions of the Directive, which was proposed by the Government of the Kingdom of the Netherlands and approved by the EU Council of Ministers.

The Agreement constitutes a reciprocal arrangement between the United Kingdom and the Netherlands Antilles for the exchange of information on savings income in the form of interest payments made cross-border from one Party to individuals resident in the other Contracting Party.

As the Agreement enshrines all the measures corresponding to the Directive, it provides not only for the exchange arrangements between competent authorities but also the details of the mechanisms to be followed by paying agents for the identification of individual owners, and for collecting the information to be exchanged.

For an initial transitional period corresponding to the transitional period in the Directive, the Netherlands Antilles will levy a withholding tax on relevant payments, unless the individual owner opts for the interest to be reported. (This arrangement corresponds to the transitional provisions granted under the Directive to Austria, Belgium and Luxembourg.) Income generated by the withholding tax will be shared with the United Kingdom, and relieved in the same manner as in withholding tax is to be relieved under the Directive.

The United Kingdom will apply automatic exchange of information from the start of the Agreement. At the end of the transitional period, however, both parties will apply full automatic exchange of information in respect of the information covered by the Agreement.

The detailed provisions of the Agreement are as follows.

Article 1 sets out the scope of the Agreement.

Article 2 provides definitions, including the definitions corresponding to those in the Directive of beneficial owner, paying agent and interest.

Article 3 sets out the procedures to be followed to identify the beneficial owners of savings income and their residence.

Article 4 provides for the categories of information to be exchanged automatically, both during the transitional period and thereafter.

Articles 5 to 9 provides details of the transitional withholding tax, confirms that the Netherlands Antilles will share 75% of the revenue obtained from the withholding tax with the United Kingdom and provides that the United Kingdom will make provision to ensure income subject to retention is not subject to double taxation.

Article 10 provides for transposition of the Agreement by each party.

Articles 12 to 13 deal with commencement and the conditions for application of the Agreement.

The Agreement will enter into force on the thirtieth day after the date of the later of the notifications by each country of the completion of its legislative procedures. It will take effect on 1st January 2005 or the date of application of the Directive, whichever is later. The date of application of the Directive is 1st July 2005.

The date of entry into force will in due course be published in the *London, Edinburgh and Belfast Gazettes*.

2005 No. 1460

INCOME TAX

The Tax Information Exchange Agreement (Taxes on
Income) (Netherlands Antilles) Order 2005

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