

AGREEMENT
IN THE FORM OF AN EXCHANGE OF LETTERS
ON THE TAXATION OF SAVINGS INCOME AND THE PROVISIONAL APPLICATION
THEREOF

A. Letter from the Republic of Austria

Madam/Sir,

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 or 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 or 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 Republic of Austria and the Kingdom of the Netherlands in respect of the Netherlands Antilles apply this Convention provisionally, within the framework of our 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 and your confirmation shall together constitute an Agreement between the Republic of Austria and the Kingdom of the Netherlands in respect of the Netherlands Antilles.

Please accept, Madam/Sir, the assurance of our highest consideration,

For the Republic of Austria

Gregor Woschnagg

Done at Vienna, on 1st June 2004, in the English language in three copies.

B. Letter from the Netherlands Antilles

Sir,

I have the honour to acknowledge receipt of your letter of today's date, which reads as follows:

" Sir,

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 or 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 or 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 Republic of Austria and the Kingdom of the Netherlands in respect of the Netherlands Antilles apply this Convention provisionally, within the framework of our 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 and your confirmation shall together constitute an Agreement between the Republic of Austria and the Kingdom of the Netherlands in respect of the Netherlands Antilles.

Please accept, Madam/Sir, the assurance of our highest consideration,"

I am able to confirm that the Netherlands Antilles is in agreement with the contents of your letter.

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

For the Netherlands Antilles

E. De Lannooy

Done at Den Haag, on 27.8.2004, in the English language in three copies.

Appendix 1

CONVENTION BETWEEN THE KINGDOM OF THE NETHERLANDS IN RESPECT OF
THE NETHERLANDS ANTILLES AND THE REPUBLIC OF AUSTRIA 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 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 Republic of Austria and the Republic of Austria 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 Republic of Austria, 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.

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 Republic of Austria 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 Republic of Austria;
- 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 Republic of Austria: 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 Republic of Austria 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 a Contracting State and the Paying Agent is resident in the other Contracting State, the other Contracting State 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 Contracting States shall not be required to apply the provisions of Article 4.
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 a Contracting State shall not preclude the other Contracting State from taxing the income in accordance with its national law.
4. During the transitional period, a Contracting State 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 other Contracting State 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 Contracting States 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, a Contracting State 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 Contracting States levying withholding tax in accordance with article 5, paragraph 1, shall retain 25% of the revenue of the withholding tax and transfer 75% of the revenue to the other Contracting State.

2. If a Contracting State levies withholding tax in accordance with Article 5, paragraph 4, that Contracting State shall retain 25% of the revenue and transfer 75% to the other Contracting State 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 other Contracting State.

3. Such transfers shall take place at the latest within a period of six months following the end of the tax year of the Contracting State of the paying agent in the case of paragraph 1, or of that of the Contracting State of the economic operator in the case of paragraph 2.

4. The Contracting States shall take the necessary measures to ensure the proper functioning of this revenue-sharing system.

Article 7

Exceptions to the withholding procedure

1. The Contracting States 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 Contracting State of residence of the Beneficial Owner 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, paragraph 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 and of Article 7 of Directive 77/799/EEC of the Council of the European Union of 19 December, 1977 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 the German, 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 Republic of Austria

Gregor Woschnagg

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

E. De Lannooy

ANNEX

Article 7

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,
- 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 of 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(8).

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.
