

NETHERLANDS ANTILLES COMMITMENT LETTER



MINISTER VAN
FINANCIEN

NEDERLANDSE ANTILLEN

Mr. Donald Johnston
Secretary General
OECD
2 Rue Abdré Pascal
75775 Paris Cedex 16
France

November 30, 2000

Dear Mr. Johnston,

Level One Commitment – The Netherlands Antilles

I am writing in connection with the OECD's project on harmful tax competition and the OECD's Report, *"Harmful Tax Competition: An Emerging Global Issue"* (the "OECD Report").

In view of the above, I am pleased to inform you that the Government of the Netherlands Antilles hereby commits to the elimination of tax practices that have been determined by the Forum on harmful Tax Competition to be harmful in accordance with the OECD Report. The Netherlands Antilles undertakes to implement such measures (including through any legislative changes) as are necessary to fulfil this commitment.

We commit in particular to a programme of effective exchange of information in tax matters, transparency, and the elimination of any aspects of the regimes for financial and other services that attract with no substantial domestic activities.

Details of these steps and a specific timetable will be agreed with the Forum. This timetable will involve the phased elimination, concluding by the end of the year 2005, of any aspects of the Netherlands Antilles regimes that are determined by the Forum on Harmful Tax Competition to be harmful.


We understand that the OECD is prepared to assist us in establishing, improving, or maintaining such practices and procedures as are necessary to comply with that commitment.

We further commit to refrain from:

- (1) introducing any new regime that would constitute a harmful tax practice under the OECD Report;
- (2) for any existing regime related to financial and other services that currently does not constitute a harmful tax practice under the OECD Report, modifying the regime in such a way that, after the modifications, it would constitute a harmful tax practice under the OECD Report; and
- (3) strengthening or extending the scope of any existing measure that currently constitutes a harmful tax practice under the OECD Report.

We intend to release this letter of commitment and its transmittal letter to the public and would welcome the OECD's release of this letter after the Committee on Fiscal Affairs reports to the OECD Council on the progress of its work, which we understand is expected by mid-July 2001.

Yours truly,


Mr. W.R. Voges
Minister of Finance

For and on behalf of the
Government of the Netherlands Antilles

Netherlands Antilles

Annex

This attachment outlines the measures that the Government of the Netherlands Antilles will take on a phased basis by 31 December 2005 to implement its commitment to eliminate harmful tax practices in accordance with the principles of the OECD Tax Competition Report.

1. Establish effective exchange of information

- The Government of the Netherlands Antilles is prepared to adopt legal mechanisms that allow tax information to be exchanged with other tax authorities upon request. To this end, the Government of the Netherlands Antilles is prepared to enter into tax information exchange agreements with OECD countries that do not presently have an arrangement for exchange of information with the Netherlands Antilles.
- The Government of the Netherlands Antilles will make such domestic law changes as are necessary to allow information to be exchanged with tax authorities of other states through administrative means in the context of civil or criminal tax matters.
- ✓ This information would be provided without regard to whether or not there is an interest of the Netherlands Antilles in the case.
- ✓ The Government of the Netherlands Antilles would preclude any impediment to the disclosure of any exchanged information to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxes.
- ✓ In the case of information required for the investigation and prosecution of criminal tax cases, the information will be provided without the requirement that the conduct being investigated would constitute a crime under the laws of the Netherlands Antilles, if it occurred in the Netherlands Antilles.
- The Government of the Netherlands Antilles will provide mechanisms that allow its regulatory or tax authorities to exchange information relevant to determining a taxpayer's tax affairs in the state requesting the information. This would include the exchange of information on beneficial ownership, bank information, annual accounts (whether audited or filed) and other related financial information.
- The Government of the Netherlands Antilles will maintain administrative practices and resources in place so that the legal mechanism for exchange of information will function effectively and can be monitored.

2. Transparency

- The Government of the Netherlands Antilles commits to make such domestic law changes as are necessary so as to ensure that information on beneficial ownership of the Netherlands Antilles' companies, partnerships and other entities, of managers and beneficiaries of the Netherlands Antilles' collective investment funds, and of those setting up and benefiting from the Netherlands Antilles' trusts, is available to its tax or regulatory authorities. The commitment may be undertaken by making beneficial ownership information available to the public or by ensuring that such information is

reliably available to tax or regulatory authorities and can be exchanged with tax authorities of foreign jurisdictions.

- The Government of the Netherlands Antilles commits that its regulatory or tax authorities will have access to bank information to the extent the information is relevant to a taxpayer's tax affairs in another state.
- The Government of the Netherlands Antilles must require the keeping and auditing or filing of accounts by the Netherlands Antilles companies, collective investment funds, managers, etc., carrying on business in the Netherlands Antilles (whether or not they are resident in the Netherlands Antilles for tax purposes).

3. No Substantial Activities

- The Government of the Netherlands Antilles commits to remove any restrictions on the ability of the Netherlands Antilles entities to do business on the preferential tax terms in the Netherlands Antilles, including but not limited to Exempt companies. Moreover, the Government of the Netherlands Antilles commits to remove any restrictions on the ability of residents to gain access to regimes providing for a preferential tax rate.

4. Other

- The Netherlands Antilles commits to ensure that there are no non-transparency features of its tax system, such as rules that depart from accepted laws and practices, secret rulings, or the ability of investors to "elect" or "negotiate" the rate of tax to be applied.