



International treaty examination of the Agreement between the Government of New Zealand and the Government of the Kingdom of the Netherlands in respect of the Netherlands Antilles for the Exchange of Information with respect to Taxes

Report of the Finance and Expenditure
Committee

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Recommendation

The Finance and Expenditure Committee has conducted the International treaty examination of the Agreement between the Government of New Zealand and the Government of the Kingdom of the Netherlands in respect of the Netherlands Antilles for the Exchange of Information with respect to Taxes and recommends that the House take note of its report

The Finance and Expenditure Committee has conducted an International treaty examination of the Agreement between the Government of New Zealand and the Government of the Kingdom of the Netherlands in respect of the Netherlands Antilles for the exchange of Information with respect to Taxes, and has no matters to bring to the attention of the House.

The National Interest Analysis for the treaty is appended to this report.

Appendix

Agreement between the Government of New Zealand and the Government of the Kingdom of the Netherlands in respect of the Netherlands Antilles for the Exchange of Information with respect to Taxes

Executive Summary

1 The purpose of the Agreement between the Government of New Zealand and the Government of the Kingdom of the Netherlands in respect of the Netherlands Antilles for the Exchange of Information with respect to Taxes (“the TIEA”) is to enhance the ability of tax officials to detect and prevent tax avoidance and evasion. Specifically, it will enable New Zealand tax officials to request information from the Netherlands Antilles (such as tax records, business books and accounts, bank information, and ownership information). The Netherlands Antilles will be able to request similar information from New Zealand. The information will be used by tax officials of the requesting jurisdiction to ensure that the correct amount of tax is being paid by that jurisdiction's tax residents. The TIEA requires the Parties to maintain strict confidentiality in relation to any information received pursuant to a request.

Date and nature of proposed binding treaty action

2 The TIEA was signed in Canberra on 1 March 2007. It is proposed that the TIEA enter into force by way of an exchange of notes between New Zealand and the Netherlands¹ (“the Parties”), in which each Party will notify the other of the completion of their respective domestic constitutional and legal procedures for the entry into force of the TIEA (Netherlands so notified New Zealand on 1 November 2007). The TIEA will enter into force on the date of the last (i.e. New Zealand's) notification, and its provisions will have effect from 1 January next following entry into force. In New Zealand, the domestic constitutional and legal procedures for entry into force comprise the successful completion of the Parliamentary treaty examination process and incorporation of the TIEA into domestic legislation through an Order in Council. These procedures are expected to be completed in early 2008.

3 The Netherlands Antilles is about to undergo constitutional reform. Information now available indicates that the constitutional reforms will take effect on 15 December 2008. The Netherlands Antilles as an entity will then no longer exist. The islands of Curacao and St Maarten will become autonomous countries with the Netherlands responsible for their international relations, and the remaining islands of the Netherlands Antilles will become part of the Netherlands. It is understood that Curacao and St Maarten will take on the international obligations previously undertaken by the Netherlands Antilles. New Zealand's key concern in entering into the TIEA with the Netherlands Antilles was to extend information exchange arrangements to Curacao, which is a significant financial centre.

¹ The Netherlands Antilles is an overseas territory of the Netherlands and as such does not have capacity to enter into this treaty independently. Accordingly, this treaty is between New Zealand and the Netherlands in respect of the Netherlands Antilles, hereafter referred to as being between New Zealand and the Netherlands Antilles

Bringing the TIEA into force with the Netherlands before the constitutional reforms will give New Zealand more certainty that the obligations in the Treaty will continue in respect of Curacao and St Maarten.

Reasons for New Zealand taking the treaty action

4 To fully enforce their respective tax laws, and to better detect and prevent tax avoidance and tax evasion, many countries (including New Zealand) are striving to build networks of treaties that authorise exchange of information on tax matters. In the absence of specific treaty authorisation, countries are typically constrained from assisting other states to enforce their tax laws.

5 The most common type of treaty which feature exchange of information provisions are double tax agreements (DTAs). New Zealand currently has 33 DTAs in force. However, DTAs are generally only concluded between trading and investment partners. To cater for other situations, the OECD, in 2002, produced a model agreement that provides solely for the exchange of information on tax matters. The TIEA with the Netherlands Antilles is New Zealand's first agreement to be negotiated on the basis of the 2002 OECD model. It represents a significant step forward for New Zealand in terms of extending its exchange of information arrangements beyond the DTA network.

Advantages and disadvantages to New Zealand of the treaty action

6 The TIEA will enable New Zealand tax officials to request information from the Netherlands Antilles (such as tax records, business books and accounts, bank information, and ownership information). Access to this previously unobtainable information will enhance the ability of the Inland Revenue Department to detect and prevent the avoidance or evasion of New Zealand tax. Any reduction in tax avoidance or tax evasion will be beneficial to New Zealand in financial, fiscal and economic terms.

7 The TIEA is reciprocal in nature, meaning that the Netherlands Antilles is also able to request information from New Zealand. New Zealand is likely to raise more requests for information than the Netherlands Antilles but, to the extent that requests for information are received from the Netherlands Antilles, New Zealand will incur administrative costs in obtaining and providing the requested information. However, streamlined and effective mechanisms for dealing with exchange of information requests have already been established in relation to New Zealand's existing 33 DTAs, and the administrative costs of responding to requests from the Netherlands Antilles are only expected to be marginal. In addition, the TIEA provides that “extraordinary costs” (such as the cost of hiring translators or interpreters) must be reimbursed by the requesting Party.

8 The TIEA provides a comprehensive set of rules to support the exchange of information. These rules are designed to ensure that requested information is provided in a timely and effective manner. Interference from bank secrecy and domestic tax interest rules is specifically prohibited as an obstacle to effective information exchange. Other rights and safeguards, however, which are secured to residents of either country by domestic law or administrative practice, remain in effect. For example, the Parties are required to maintain strict confidentiality in relation to any information received pursuant to a request. Such information may only be disclosed to authorised persons and may only be used for specific

purposes (principally the administration and enforcement of the domestic tax laws of the respective Party).

9 The TIEA closely follows the 2002 OECD model. There are some wording differences but, with one exception, these have non-substantive effect. The exception relates to the taxes covered by the agreement. The TIEA will only enable the Parties to request information in respect of income tax,² whereas the 2002 OECD model generally contemplates the exchange of information in respect of all taxes. Therefore, New Zealand will not be able to request information relating to, for example, a New Zealand goods and services tax assessment. This is not expected to be a significant disadvantage for New Zealand as the primary concern the TIEA addresses is avoidance or evasion of income tax. (Many of New Zealand's DTAs only permit exchange of information in relation to income tax.)

10 On balance, it is in New Zealand's interest to conclude a TIM with the Netherlands Antilles, and to do so prior to the constitutional reforms proposed for December 2008. Experience gained from the exchange of information arrangements already entered into under New Zealand's existing 33 DTAs indicates that the benefits arising from the enhanced ability to reduce tax avoidance and evasion outweigh the administrative costs incurred from having to respond to incoming requests.

Obligations which would be imposed on New Zealand by the treaty action, the position of reservations to the treaty, and an outline of any dispute settlement mechanisms

11 The TIEA places a reciprocal obligation on each Party, upon request, to obtain and provide information that is foreseeably relevant to the administration and enforcement of the taxes covered by the Agreement.

12 The obligation to obtain and provide information extends to all information in the possession or control of persons within that Party's jurisdiction. However, there is no obligation to provide information where:

- the requesting Party would not be able to obtain the information under its own laws;
- complying with the request would disclose a trade, business, industrial, commercial or professional secret or trade process (although bank secrecy and domestic tax interest rules receive no protection under this exception);
- the information is subject to legal professional privilege;
- disclosure of the information would be contrary to public policy;
- the information is requested in order to administer or enforce a discriminatory tax law.

² For the Netherlands Antilles, the actual taxes specified are the income tax (inkomstenbelasting), the wages tax (loonbelasting), the profit tax (winstbelasting) and the surtaxes on the income and profit taxes. Collectively, however, these taxes are equivalent in scope to New Zealand income tax.

An information request must be supported by sufficient detail to enable the requested Party to efficiently comply with the request or (if applicable) to determine that one or more of the above exceptions applies.

13 The Parties are required to maintain strict confidentiality in relation to any information received pursuant to a request. Such information may only be disclosed to authorised persons and may only be used for specified purposes (principally the administration and enforcement of the domestic tax laws of the respective Party).

14 The requesting Party is required to reimburse the requested Party for “extraordinary costs” (such as the cost of engaging an interpreter or translator) incurred in responding to the request. Otherwise costs are to be borne by the requested Party.

15 Reservations are not provided for under the TIEA.

16 Article 11 of the TIEA provides that any difficulties or doubts arising as to the interpretation or application of the agreement are to be resolved by mutual agreement between nominated persons (the “competent authorities”). The Parties may also agree on other forms of dispute resolution.

Measures the Government could or should adopt to implement the treaty action, including the specific reference to implementing the legislation

17 Subject to the successful completion of the Parliamentary treaty examination process, the TIEA will be implemented under New Zealand domestic law in accordance with section BH 1 of the Income Tax Act 2004.

18 Section BH 1 authorises the giving of effect to certain tax agreements under New Zealand domestic law by overriding Regulation. That is, the Governor-General may declare by Order in Council that an agreement to which section BH 1 pertains will (within certain specified limits) override the Inland Revenue Acts, the Official Information Act 1982, and the Privacy Act 1993. This override is necessary to give effect to the terms of tax agreements, including this TIEA.

19 After the Order in Council has entered into force, New Zealand will notify the Netherlands by diplomatic note that all domestic constitutional and legal procedures for giving effect to the TIEA are complete. The Netherlands notified New Zealand by diplomatic note on 1 November 2007 that it has completed its domestic constitutional and legal procedures for giving effect to the TIEA. The TZBA will enter into force on the date of the last notification (i.e. New Zealand's). Its provisions will then have effect from 1 January next following entry into force.

Economic, social, cultural and environmental costs and effects of the treaty action

20 No social, cultural or environmental effects are anticipated. Any economic effects are expected to be favourable, as noted above.

The costs to New Zealand of compliance with the treaty

21 New Zealand will be required to reimburse the Netherlands Antilles for extraordinary costs (such as the cost of hiring translators or interpreters) that may arise from a New Zealand request. However, an administrative (less-than-treaty status) arrangement on costs to be entered into between the Parties will provide for consultation if extraordinary costs appear likely to exceed US\$1,000. This arrangement will ensure that New Zealand will only progress information requests giving rise to significant reimbursement costs if the need to obtain the information justifies the expenditure.

22 New Zealand is likely to raise more requests for information than the Netherlands Antilles but, to the extent that requests for information are received from the Netherlands Antilles, New Zealand will incur administrative costs in complying with those information requests. As noted above, however, streamlined and effective mechanisms for dealing with exchange of information requests have already been established in relation to New Zealand's existing DTA network. The administrative costs of responding to requests from the Netherlands Antilles are therefore expected to be marginal.

23 All costs arising to the New Zealand Inland Revenue Department as a result of the operation of the TIEA will be met within existing baselines.

Completed or proposed consultation with the community and Parties interested in the treaty action

24 The Ministry of Foreign Affairs and Trade and the Treasury have been consulted and concur with the terms of the TIEA. No private sector consultation was entered into.

Subsequent protocols or amendments to the treaty and their likely effects

25 No future amendments are anticipated. However, if the need arises to amend the TIEA, this would be done by way of a Protocol.

Withdrawal or denunciation provision in the treaty

26 Article 13 of the TIEA provides that either Party may, after the expiration of two years from the date of entry into force, terminate the TIEA by giving six months' written notice through the diplomatic channel.

Adequacy statement

27 The Inland Revenue Department has prepared this extended national interest analysis and has assessed it as adequate in accordance with the Code of Good Regulatory Practice.