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2d Session }

SENATE

{ TREATY DOC.  
104-23 }

PROTOCOL AMENDING ARTICLE VIII OF THE 1948 TAX  
CONVENTION WITH RESPECT TO THE NETHERLANDS  
ANTILLES

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MESSAGE

FROM

**THE PRESIDENT OF THE UNITED STATES**

TRANSMITTING

THE PROTOCOL BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS IN RESPECT OF THE NETHERLANDS ANTILLES AMENDING ARTICLE VIII OF THE 1948 CONVENTION WITH RESPECT TO TAXES ON INCOME AND CERTAIN OTHER TAXES AS APPLICABLE TO THE NETHERLANDS ANTILLES, SIGNED AT WASHINGTON ON OCTOBER 10, 1995



JANUARY 3, 1996.—Treaty was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE

29-118

WASHINGTON : 1996



## LETTER OF TRANSMITTAL

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THE WHITE HOUSE, *January 3, 1996.*

*To the Senate of the United States:*

I transmit herewith for Senate advice and consent to ratification, the Protocol between the Government of the United States of America and the Government of the Kingdom of the Netherlands in Respect of the Netherlands Antilles Amending Article VIII of the 1948 Convention with Respect to Taxes on Income and Certain Other Taxes as Applicable to the Netherlands Antilles, signed at Washington on October 10, 1995. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Protocol.

The Protocol amends Article VIII (1) of the Convention to limit the exemption from U.S. taxation of interest on debt instruments to interest paid on instruments issued on or before October 15, 1984, by a U.S. person to a related controlled foreign corporation that was in existence before October 15, 1984.

I recommend that the Senate give early and favorable consideration to the Protocol, and give its advice and consent to ratification.

WILLIAM J. CLINTON.



## LETTER OF SUBMITTAL

DEPARTMENT OF STATE,  
*Washington, November 27, 1995.*

The PRESIDENT,  
*The White House.*

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Protocol between the Government of the United States of America and the Government of the Kingdom of the Netherlands in Respect of the Netherlands Antilles Amending Article VIII of the 1948 Convention with Respect to Taxes on Income and Certain Other Taxes as Applicable to the Netherlands Antilles, signed at Washington on October 10, 1995.

The tax treaty regime between the United States and the Netherlands Antilles consists of the Convention between the United States and the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes, signed at Washington on April 29, 1948, and general later agreements. In 1988, the United States effected termination of the 1948 Convention, as extended to the Netherlands Antilles, except for Article VIII (interest) and such ancillary provisions as apply to effectuate, modify, or limit the Article.

In 1992, the United States and the Netherlands signed a new Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, which replaced the 1948 Convention. The 1992 Convention entered into force on December 31, 1993. However, the 1992 Convention provided that its entry into force would not affect the preexisting tax regime applicable as between the United States and the Netherlands Antilles.

In 1992, the United States and the Netherlands signed a new Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, which replaced the 1948 Convention. The benefits of the Convention are limited to residents of the two countries meeting certain standards designed to prevent residents of third countries from inappropriately deriving benefits from the Convention. The 1992 Convention entered into force December 31, 1993. However, the 1992 Convention provided that its entry into force would not affect the preexisting tax regime applicable as between the United States and the Netherlands Antilles. Although standards similar to those in the 1992 Convention are found in other recent U.S. income tax conventions, the 1948 convention does not contain similarly effective provisions concerning limitation on benefits.

Article VIII of the 1948 Convention generally exempts interest on debt instruments derived from sources in the United States and paid to residents of the Netherlands Antilles from taxation by the United States. Applying the terms of Article VIII, Netherlands Antilles subsidiaries of U.S. companies lent to the U.S. companies the proceeds of bonds, "Eurobonds," that has been issued in the international capital markets. The interest paid by the U.S. companies on these bonds to the subsidiaries was not subject to U.S. income taxes and thus was not withheld in the United States. However, in most cases, the Eurobonds were subject to being called by the Netherlands Antilles subsidiaries if the interest such subsidiaries received became subject to withholding in the United States. Article VIII was left in force to avoid the potential negative impact of its termination on financial markets by triggering the Eurobonds' call provisions. (In fact, changes in U.S. tax law in 1984 that generally exempted interest on new corporate indebtedness from U.S. withholding had rendered Article VIII's protection necessary only for corporate debt instruments issued before mid-1984.) However, the result of leaving Article VIII in force with respect to all types of debt instruments has been to allow inappropriate use of the 1948 Convention's tax benefits by third-country residents.

The Protocol amends Article VIII (1) to limit the exemption from U.S. taxation on interest on debt instruments to interest paid on instruments issued on or before October 15, 1984, by a U.S. person to a related controlled foreign corporation that was in existence before October 15, 1984. Thus, only those debt instruments related to the issuance of pre-October 15, 1984, Eurobonds will continue to be exempt from U.S. taxes pursuant to the Convention. Residents of third countries will no longer be able to claim the benefits of the treaty exemption, other than with respect to such Eurobonds.

The Protocol will enter into force upon the later of June 30, 1996, or the exchange of instruments of ratification. If the Protocol has not entered into force prior to January 1, 1997, it shall not enter into force.

A technical memorandum explaining in detail the provisions of the Protocol will be prepared by the Department of the Treasury and will be submitted separately to the Senate Committee on Foreign Relations.

The Department of the Treasury and the Department of State cooperated in the negotiation of the Protocol. It has the full approval of both Departments.

Respectfully submitted,

WARREN CHRISTOPHER.

PROTOCOL BETWEEN THE GOVERNMENT OF THE UNITED STATES  
OF AMERICA AND THE GOVERNMENT OF THE KINGDOM OF THE  
NETHERLANDS IN RESPECT OF THE NETHERLANDS ANTILLES  
AMENDING ARTICLE VIII OF THE 1948 CONVENTION WITH  
RESPECT TO TAXES ON INCOME AND CERTAIN OTHER  
TAXES AS APPLICABLE TO THE NETHERLANDS ANTILLES

The Government of the United States of America and the  
Government of the Kingdom of the Netherlands in respect of the  
Netherlands Antilles, hereinafter the Contracting States;

Recognizing that the Convention Between the Government of  
the United States of America and the Government of the Kingdom  
of the Netherlands with Respect to Taxes on Income and Certain  
Other Taxes signed at Washington April 29, 1948, was extended  
to the Netherlands Antilles in accordance with Article XXVII  
thereof and that, notwithstanding its subsequent partial  
termination, Article VIII of the Convention and such other  
ancillary provisions in the Convention as apply to effectuate,  
modify or limit the exemption from tax provided in Article  
VIII continue to apply as between the United States and the  
Netherlands Antilles;

Desiring to amend Article VIII in light of developments  
that have affected the application of the Convention with  
respect to the Netherlands Antilles;

Have agreed as follows:

ARTICLE I

Article VIII [Interest] of the Convention shall be amended by adding the following sentence at the end of Paragraph (1):

"The exemption provided by this paragraph shall apply only to interest paid with respect to debt instruments issued on or before October 15, 1984 by a U.S. person to a related controlled foreign corporation that was in existence before October 15, 1984, the principal purpose of which consisted of the issuing of debt obligations or the holding of short-term obligations and lending the proceeds of such obligations to affiliates."

ARTICLE II

1. This Protocol shall be subject to ratification in accordance with the applicable procedures of each Contracting State. The Protocol shall enter into force upon the later of June 30, 1996, or the exchange of instruments of ratification.

2. Notwithstanding Paragraph 1, if this Protocol has not entered into force prior to January 1, 1997, it shall not enter into force.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Protocol.

Done at Washington, this 10<sup>th</sup> day of October 1995, in duplicate, in the English language.

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA:

*Leslie Samuels*

FOR THE GOVERNMENT OF THE  
KINGDOM OF THE NETHERLANDS:

*J. van der ...*  
*R. ...*