TD 93/218 - Income tax: does the definition of "the Netherlands" in the Australia-Netherlands Double Tax Agreement ("the DTA") include Aruba and the Netherlands Antilles?

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Australian Taxation Office

Taxation Determination TD 93/218

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part . Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

Taxation Determination

Income tax: does the definition of "the Netherlands" in the Australia-Netherlands Double Tax Agreement ("the DTA") include Aruba and the Netherlands Antilles?

1. No. Article 3(1)(b) of the DTA defines the Netherlands as follows:

> "the term 'the Netherlands' means that part of the Kingdom of the Netherlands that is situated in Europe and that part of the seabed and its sub-soil under the North Sea over which the Kingdom of the Netherlands has sovereign rights in accordance with international law."

2. According to *Dutch Business Law* (S R Schuit, M Romyn, G H Zevenboom and B Shifman, Kluwer Law and Taxation Publishers, 1989) the Kingdom of the Netherlands consists of the Netherlands, the Netherlands Antilles (Curaçoa, Bonaire, St. Maarten, Saba and St. Eustatius) and Aruba. The Netherlands Antilles and Aruba are located in the Caribbean and are clearly not "part of the Kingdom of the Netherlands that is situated in Europe". Accordingly, these islands are not included in the definition of the Netherlands for the purposes of the DTA.

3. Note also that Article 28 of the DTA provides, in effect, for diplomatic notes to be exchanged to extend the Agreement to the Netherlands Antilles or Aruba. To date no such notes have been exchanged.

Commissioner of Taxation
4/11/93

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