



Kingdom of the Netherlands

Financial Services and the Treasury Bureau
Hong Kong

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Kingdom of the Netherlands
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Date 22 March 2011
Re *Agreement between the Netherlands and the Hong Kong SAR of the
People's Republic of China for the avoidance of double taxation and
the prevention of fiscal evasion with respect to taxes on income*

The Consulate General of the Netherlands presents its compliments to the Financial Services and the Treasury Bureau and has the honour to enclose a note regarding the date of entry into force of the *Agreement between the Kingdom of the Netherlands and the Hong Kong Special Administrative Region of the People's Republic of China for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income*.

The Consulate General of the Netherlands avails itself of this opportunity to renew to the Financial Services and the Treasury Bureau, the assurances of its highest consideration.



Consulaat-Generaal van het
Koninkrijk der Nederlanden

The Consulate-General of the Kingdom of the Netherlands presents its compliments to the Financial Services and the Treasury Bureau of the Government of the Hong Kong Special Administrative Region of the People's Republic of China and has the honour to refer to discussions on the interpretation of Article 29 of the *Agreement between the Kingdom of the Netherlands and the Hong Kong Special Administrative Region of the People's Republic of China for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income* (the Agreement), signed in Hong Kong on 22 March 2010, which led to the following understanding.

Paragraph 1 of Article 29 specifies that the Agreement shall enter into force when the formalities required by the laws for the bringing into force of the Agreement have been complied with by the Contracting Parties, while paragraph 2 of Article 29 contains dates as of which the provisions of the Agreement shall have effect in the territory of the Contracting Parties. With regard to the relation between paragraphs 1 and 2 of Article 29, the Netherlands and Hong Kong agree, that paragraph 2 cannot be implemented as long as the Agreement has not entered into force in accordance with paragraph 1, unless the Agreement would be applied retroactively.

The Hong Kong authorities informed the authorities of the Netherlands that its domestic laws do not allow a retroactive application of the Agreement. In view of the uncertainty of the date of entry into force of the Agreement, the Netherlands and Hong Kong decided, taking into account the prevailing character of paragraph 1 in relation to paragraph 2 of Article 29, to clarify the meaning of paragraph 2 of Article 29 in order to make clear that the provisions of the Agreement shall not have effect for years of assessment or taxable years and periods beginning before the entry into force of the Agreement. It is also mutually understood that neither Contracting Party is obliged to comply with a request for information which pertains to periods prior to which the Agreement commences to have effect for that Party. The Netherlands and Hong Kong thus stipulate that Article 29, paragraph 2 should be read as follows:

- “The provisions of this Agreement shall have effect:
- a) in the Hong Kong Special Administrative Region, in respect of Hong Kong Special Administrative Region tax, for any year of assessment that either begins on or begins after 1 April 2011;
 - b) in the Netherlands, in respect of Netherlands tax, for any taxable years and periods that either begins on or begins after 1 January 2011.”

The Consulate-General of the Kingdom of the Netherlands requests the Financial Services and the Treasury Bureau of the Government of the Hong Kong Special Administrative Region of the People's Republic of China to confirm that the Kingdom of the Netherlands and the Hong Kong Special Administrative Region of the People's Republic of China have come to the understanding as described above.

Moreover, the Consulate-General informs the Financial Services and the Treasury Bureau of the Government of Hong Kong that the relevant Dutch authorities consider it of vital importance that the clarification as described above will come to the attention of all those concerned. Therefore, the Ministry of Foreign Affairs of the Kingdom of the Netherlands will publish this Note and the Government of Hong Kong's Note in Reply to this Note in the Treaty Series of the Kingdom of the



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Netherlands. It requests the Hong Kong Government to confirm that it will do likewise in the Hong Kong Inland Revenue Department official website on tax treaties.

The Consulate-General avails itself of this opportunity to renew to the Financial Services and the Treasury Bureau of the Government of the Hong Kong Special Administrative Region of the People's Republic of China the assurances of its highest consideration.

財經事務及庫務局

香港雪廠街
中區政府合署



FINANCIAL SERVICES AND THE
TREASURY BUREAU

Central Government Offices,
Ice House Street,
Hong Kong

Hong Kong, 29 March 2011

The Financial Services and the Treasury Bureau of the Government of the Hong Kong Special Administrative Region of the People's Republic of China (HKSARG) presents its compliments to the Consulate-General of the Kingdom of the Netherlands and has the honour to acknowledge receipt of the latter's Note (Note No: HON-20/11) of 22 March 2011, which reads as follows :

"The Consulate-General of the Kingdom of the Netherlands presents its compliments to the Financial Services and the Treasury Bureau of the Government of the Hong Kong Special Administrative Region of the People's Republic of China and has the honour to refer to discussions on the interpretation of Article 29 of the Agreement between the Kingdom of the Netherlands and the Hong Kong Special Administrative Region of the People's Republic of China for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (the Agreement), signed in Hong Kong on 22 March 2010, which led to the following understanding.

Paragraph 1 of Article 29 specifies that the Agreement shall enter into force when the formalities required by the laws for the bringing into force of the Agreement have been complied with by the Contracting Parties, while paragraph 2 of Article 29 contains dates as of which the provisions of the Agreement shall have effect in the territory of the Contracting Parties. With regard to the relation between paragraphs 1 and 2 of Article 29, the Netherlands and Hong Kong agree, that paragraph 2 cannot be implemented as long as the Agreement has not entered into force in accordance with paragraph 1, unless the Agreement would be applied retroactively.

The Hong Kong authorities informed the authorities of the Netherlands that its domestic laws do not allow a retroactive application of the Agreement. In view of the uncertainty of the date of entry into force of the Agreement, the Netherlands and Hong Kong decided, taking into account the prevailing character of paragraph 1 in relation to paragraph 2 of Article 29, to clarify the meaning of paragraph 2 of Article 29 in order to make clear that the provisions of the Agreement shall not have effect for years of assessment or taxable years and periods beginning before the entry into force of the Agreement. It is also mutually understood that neither Contracting Party is obliged to comply with a request for information which pertains to periods prior to which the Agreement commences to have effect for that Party. The Netherlands and Hong Kong thus stipulate that Article 29, paragraph 2 should be read as follows:

“The provisions of this Agreement shall have effect:

- a) in the Hong Kong Special Administrative Region, in respect of Hong Kong Special Administrative Region tax, for any year of assessment that either begins on or begins after 1 April 2011;*
- b) in the Netherlands, in respect of Netherlands tax, for any taxable years and periods that either begins on or begins after 1 January 2011.”*

The Consulate-General of the Kingdom of the Netherlands requests the Financial Services and the Treasury Bureau of the Government of the Hong Kong Special Administrative Region of the People’s Republic of China to confirm that the Kingdom of the Netherlands and the Hong Kong Special Administrative Region of the People’s Republic of China have come to the understanding as described above.

Moreover, the Consulate-General informs the Financial Services and the Treasury Bureau of the Government of Hong Kong that the relevant Dutch authorities consider it of vital importance that the clarification as described above will come to the attention of all those concerned. Therefore, the Ministry of Foreign Affairs of the Kingdom of the Netherlands will publish this Note and the Government of Hong Kong’s Note in Reply to this Note in the Treaty Series of the Kingdom of the Netherlands. It requests the Hong Kong Government to confirm that it will do likewise in the Hong Kong Inland Revenue Department official website on tax treaties.

The Consulate-General avails itself of this opportunity to renew to the Financial Services and the Treasury Bureau of the Government of the Hong Kong Special Administrative Region of the People’s Republic of China the assurances of its highest consideration. ”

The Financial Services and the Treasury Bureau has the honour to confirm that it agrees with the above understanding and that as requested, the Inland Revenue Department of the HKSARG will publish the aforementioned Note and this Note on its official website on tax treaties.

The Financial Services and the Treasury Bureau of the HKSARG avails itself of this opportunity to renew to the Consulate-General of the Kingdom of the Netherlands the assurances of its highest consideration.

Consulate-General of the Kingdom of the Netherlands