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The U.S. And The Netherlands Develop New Administrative Arrangements for Mutual Agreement Procedure

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WASHINGTON — The competent authorities of the United States and the Netherlands have agreed to new Administrative Arrangements that outline guiding principles to follow when using the Mutual Agreement Procedure (the MAP) found in Article 29 of the U.S.-Netherlands income Tax Convention. The Arrangements were developed to ensure that the MAP process works as efficiently and effectively as possible.

The text of the Agreement is as follows:

Administrative Arrangements for the Implementation of the Mutual Agreement Procedure (Article 29) of the Convention Between the Kingdom of the Netherlands and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains (Signed on December 18, 1992, as Amended by Protocols) (the “Convention”)

The competent authorities of the Netherlands and the United States hereby enter into an agreement under the Mutual Agreement Procedure Article (Article 29) of the Convention, with a view to the effective administration and resolution of cases conducted between them under the process. The Mutual Agreement Procedure (the “MAP”) of the Convention provides that the competent authorities of the two Contracting States shall endeavour to resolve by mutual agreement cases of taxation not in accordance with this Convention. The Netherlands and the United States are committed to assisting taxpayers in the conduct of cases under the MAP, to ensuring taxpayers know what they can expect from the competent authorities, and to making the MAP as expeditious and effective as possible.

Particular areas in which MAP cases arise include, but are not limited to:

- i. determination of appropriate transfer pricing methodologies to be applied to cross-border transactions between associated enterprises and/or whether transfer prices used in cross-border transactions between associated enterprises are established at arm's length;
- ii. determination of appropriate attributions of profits to the permanent establishments of enterprises; and

iii. determination of residence under Article 4 of the Convention.

In these and other areas of difficulties and doubts arising as to the interpretation or application of the Convention, the Netherlands and the United States are committed to promoting and supporting domestic initiatives and programs designed to assist taxpayers and to helping taxpayers in avoiding or resolving disputes which might arise.

These Arrangements set out certain objectives and practices the Netherlands and the United States will adopt in dealing with cases under the MAP of the Convention with a view to ensuring taxation in accordance with the Convention.

Progress of the Mutual Agreement Procedure

The Netherlands and the United States agree that requests presented under Article 29 of the Convention shall be dealt with as expeditiously as possible. The objective is to resolve cases accepted for consideration by the competent authorities within 18 months from transmittal of a position paper by one Contracting State to the other, excluding time during which the issues presented for competent authority consideration are under consideration by appellate or judicial authorities where permitted under applicable national procedures.

In order to ensure timely progress in the procedure, the competent authority of the country that made the adjustment (the "relevant competent authority") will endeavour to deliver a position paper to its counterpart (the "responding competent authority") within 120 days of acceptance of a case from a taxpayer. The case will be discussed without a written response unless such a response is needed to facilitate substantive discussion. If a written response is needed in a case concerning attribution of profits or transfer pricing adjustments under Article 7 or 9 of the Convention, the responding competent authority will endeavor to provide a position paper within 240 days after receipt of the first position paper. In all other cases in which a written response is needed, the responding competent authority will endeavor to deliver a position paper within 120 days of receipt of the first position paper. In cases of Advance Pricing Agreements or Arrangements, the competent authorities will endeavor to agree upon a joint target timetable for each stage of the consideration, with the aim of securing Mutual Agreements within a similar overall timeframe, taking into account the complexities of the particular cases involved.

The role of the taxpayer during procedure

The Netherlands and the United States agree that, in law, the negotiation of a MAP is a government-to-government process. A taxpayer has no legal right to attend negotiations between the competent authorities or to observe the negotiations.

However, it is also recognized that the taxpayer is a key stakeholder in the MAP process. The competent authorities therefore agree that they will keep taxpayers informed about the progress of a case under the MAP and will invite them to provide such further information as may be helpful in reaching a resolution. At their discretion, they may allow information to be provided to them in a joint presentation by the taxpayer.

Resolution of cases

While the staff of the respective competent authority offices will continue to carry on the primary negotiation of cases arising under Mutual Agreement Article of the Convention, the Netherlands and the United States agree that in any case that extends beyond the applicable timeframe agreed upon above, senior officials who have not been present at the competent authority meetings when the case was discussed or otherwise been personally involved in the decision making on the case will undertake a review of the case to ensure that all appropriate action is being taken to facilitate resolution of the matter.

The Netherlands and the United States will upon request also seek to resolve the issue for subsequent taxable periods, to the extent permitted under their respective national procedures.

Collection and interest

It is understood that where the competent authorities are endeavoring to resolve a case pursuant to Article 29 of the Convention, the Netherlands and the United States generally will not seek to collect the tax in dispute until the mutual agreement procedure has been completed. Any tax that is due upon the completion of the mutual agreement procedure shall, however, be subject to interest charges, and, if appropriate, surcharges or penalties, to the extent provided by applicable national law. Any tax that is refunded upon completion of the mutual agreement procedure will be subject to interest payable on refunds, to the extent provided by applicable national law.

Confidentiality of taxpayer information

The Netherlands and the United States are committed to ensuring confidentiality concerning taxpayer information, under the Convention and their respective laws.

Meetings Schedule

The Netherlands and the United States agree to meet at least twice a year to conduct face-to-face discussions. Interim meetings and other communications also will be conducted as necessary in an effort to resolve cases.

The Netherlands and the United States have agreed to publish these Arrangements to assist taxpayers in understanding and making full and appropriate use of the MAP in the Convention. The Arrangements will be reviewed from time to time.

Agreed to August 25, 2003:

For the United States:

Carol A. Dunahoo
Director for International (LMSB)

Internal Revenue Service

For the Netherlands:

Paul Vlaanderen
Director for International Tax Policy and
Legislation
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