TD 93/D218 - Income tax: does the definition of "the Netherlands" in the Australia-Netherlands Double Tax Agreement ("the DTA") include Aruba and the Netherlands Antilles?

This cover sheet is provided for information only. It does not form part of *TD 93/D218 - Income tax: does the definition of "the Netherlands" in the Australia-Netherlands Double Tax Agreement ("the DTA") include Aruba and the Netherlands Antilles?*

This document has been finalised by TD 93/218.

Australian Taxation Office

Taxation Determination TD 93/D218

Draft Taxation Determinations (TDs) represent the preliminary, though considered, views of the ATO. Draft TDs may not be relied on; only final TDs are authoritative statements of the ATO.

Draft 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(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 internatonal 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
26/8/93

FOI INDEX DETAIL: Reference No.

Subject Ref: Australia-Netherlands Double Taxation Agreement; definition of Netherlands, Aruba, Netherlands Antilles

Legislative Ref: *Income Tax (International Agreements) Act 1953*, Section 11A, Schedule 10

ATO Ref: NAT 93/2738-0

ISSN 1038 - 8982