

ARUBA COMMITMENT LETTER



ARUBA

MINISTER VAN FINANCIEN

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Mr. Donald Johnston
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Uw kenmerk:

Uw brief:

Ons kenmerk:

Onderwerp:

Oranjestad, 31 MEI 2001

Dear Mr. Johnston,

COMMITMENT OF ARUBA

I am writing in connection with the OECD's project on harmful tax competition and in particular the OECD's Report, "Harmful Tax Competition: An Emerging Global Issue", 1998 ("the 1998 Report"), which sets forth the criteria of Harmful Tax Competition, and the OECD's Report, "Towards Global Tax Co-operation", 2000 ("the 2000 Report").

In 1995 the Government of Aruba has initiated a process of changing the part of its legislation and tax practice that have caused Aruba – which has a substantial tourist and petroleum industry - to be perceived as a tax haven. Since then, the Government of Aruba has been working on reforming its tax system, and on modifying the Aruba Exempt Company regime, for its relatively small off-shore sector. Aruba's aim is to bring these laws in line with the internationally accepted principles of taxation and transparency and to join ranks with the OECD-member countries and committed non-member countries.

The Government of Aruba realizes that it can significantly advance the further development and diversification of its economy if it is able to strengthen its ties with other OECD countries. By publicly committing and by implementing the internationally accepted principles of taxation, the Government removes what it believes to be the main obstacle for other countries to conclude tax treaties with Aruba.

The Government of Aruba has recently discussed with a delegation of the OECD the amendments to its tax reform within the context of the principles of effective exchange of information, transparency, and ring fencing.

In view of the positive outcome of these discussions, I am pleased to inform you that the Government of Aruba commits to the elimination of features that have been determined by the

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Forum on Harmful Tax Practices to be in breach with the principles referred to above, and that have resulted in the listing of Aruba in the 2000 Report. Consequently, Aruba undertakes to implement such legislative and non-legislative measures as are necessary to fulfill this commitment.

The commitment is given on the basis that:

1. Aruba is not included on the OECD list of un-cooperative tax havens in July 2001;
2. The principles referred to above which apply to Aruba are equally applied to OECD member countries;
3. Aruba will be enabled to participate on an equal basis in the Global Forum that is engaged in developing internationally accepted standards for the application of the principles referred to above.

In addition, Aruba commits to refrain from:

- Introducing any new regime that falls within the scope of the 1998 Report and that would constitute a harmful tax practice under this report;
- Modifying any existing regime that falls within the scope of the 1998 Report in such a way that, after the modifications, it would constitute a harmful tax practice under this report;
- Strengthening or extending the scope of any existing measure that currently constitutes a harmful tax practice under the 1998 Report.

Yours truly,


Dr. Robertico R. Croes
Minister of Finance

For and on behalf of the
Government of Aruba

Attachment

This attachment outlines the measures that the Government of Aruba will take on a phased basis by 31 December 2005 to implement its commitment to eliminate harmful tax practices in accordance with the principles of effective exchange of information, transparency, and ring fencing.

1. Establish effective exchange of information

- The Government of Aruba is prepared to adopt legal mechanisms that allow tax information to be exchanged with other tax authorities upon request. To this end, the Government of Aruba is prepared to enter into tax information exchange agreements with OECD countries that do not presently have an arrangement for exchange of information with Aruba.
- The Government of Aruba will make such domestic law changes as are necessary to allow information to be exchanged with tax authorities of other states through administrative means in the context of civil or criminal tax matters.
- √ This information would be provided without regard to whether or not there is an interest of Aruba in the case.
- √ The Government of Aruba would preclude any impediment to the disclosure of any exchanged information to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxes.
- √ In the case of information required for the investigation and prosecution of criminal tax cases, the information will be provided without the requirement that the conduct being investigated would constitute a crime under the laws of Aruba, if it occurred in Aruba.
- The Government of Aruba will provide mechanisms that allow its regulatory or tax authorities to exchange information relevant to determining a taxpayer's tax affairs in the state requesting the information. This would include the exchange of information on beneficial ownership, bank information, annual accounts (whether audited or filed) and other related financial information.
- The Government of Aruba will maintain administrative practices and resources in place so that the legal mechanism for exchange of information will function effectively and can be monitored.

2. Transparency

- The Government of Aruba commits to make such domestic law changes as are necessary so as to ensure that information on beneficial ownership of Aruban companies, partnerships and other entities, of managers and beneficiaries of Aruban collective investment funds, is available to its tax or regulatory authorities. The commitment may be undertaken by making beneficial ownership information available to the public or by ensuring that such information is reliably available to tax or regulatory authorities and can be exchanged with tax authorities of foreign jurisdictions.

- The Government of Aruba commits that its regulatory or tax authorities will have access to bank information to the extent the information is relevant to a taxpayer's tax affairs in another state.
- The Government of Aruba must require the keeping and auditing or filing of accounts by Aruban companies, collective investment funds, managers, and other entities carrying on business in Aruba (whether or not they are resident in Aruba for tax purposes).

3. No Substantial Activities

- The Government of Aruba commits to remove any elements of ring fencing as defined by the OECD's Forum on Harmful Tax Practices.

4. Other

- Aruba commits to ensure that there are no non-transparency features of its tax system, such as rules that depart from accepted laws and practices, secret rulings, or the ability of investors to "elect" or "negotiate" the rate of tax to be applied.

