

ภาคผนวก จ

ตัวอย่างหนังสือตอบข้อหารือภาษีอากร
ในลักษณะสัญญากำหนดความรับผิดชอบล่วงหน้าของประเทศเนเธอร์แลนด์¹

Parties

The taxpayer, [name], residing in [address], represented by [representative], as is evident from the power of attorney attached to this agreement.

Hereinafter referred to as PARTY A

and

the tax authorities,

represented in this matter by the tax inspector of the APA/ATR team of the Local Office for Business Taxpayer/Large Companies in Rotterdam,

hereinafter referred to as PARTY B,

whereas, in compliance with the Decree of 30 March 2001, number IFZ2004/125M,

the parties wish to enter into a determination agreement that lays down the tax consequences of intended transactions or existing facts and circumstances.

¹ Rijkele Betten, (ED.), The New Netherlands Transfer Pricing Regime: Amended Advance Pricing Agreement and Advance Tax Rulings Procedures, Netherlands: IBFD, 2002, p.125-128.

1. In view of the facts and circumstances mentioned hereafter the parties agree as follows:

The shares in [name subsidiary or subsidiaries] will not be regarded as stock or as a portfolio investment. Provided that the remaining conditions laid down in article 13 of the Netherlands Corporate Income Tax Act are met, the Netherlands participation exemption will apply to the shares.

2. Facts and circumstances underlying this agreement

[Specification of facts; reference may be made to the request letter and/or other documents.]

3. Critical assumptions

- The facts and circumstances described under point 2 will not change substantially.
- At least 15% of the cost price of (the) (each) participation(s) as mentioned under 1 will be financed with equity.
- Pursuant to Netherlands domestic tax law and tax treaties concluded by the Netherlands, the applicant resides in the Netherlands and can accordingly obtain a certificate of residence.
- Correct and complete information was given and will be given to the Netherlands tax authorities concerning the activities of Party A. Correct and complete information was given and will be given to foreign tax authorities concerning the activities of Party A and its tax treatment in the Netherlands.

4. Way of processing

In its annual corporate income tax return Party A will refer to this agreement and explicitly state that all conditions as laid down in this agreement are met.

If the facts and/or circumstances as mentioned under 2 are subject to change, Party A will contact Party B immediately to inform Party B about these changes.

5. Termination

This agreement terminates if one or more of the following situations occur:

- Relevant change of law: as from the moment this new law comes into force and a possible transitional rule does not apply (anymore);
- If the critical assumptions as mentioned under 3. are no longer satisfied, unless the parties concerned agree to an amendment of this agreement after mutual consultation;
- If the activities subject to this agreement do not start before [date].

6. Fulfillment, amendment or termination

In the case of non-observance by Party A of the agreement, Party B has the option to (a) require fulfillment of the agreement and issue assessments accordingly for the relevant years, (b) modify the agreement after consultation with the taxpayer, or (c) terminate the agreement.

7. International Assistance Law for Levying Taxes

Party A declares that the information contained in this determination agreement and the enclosures thereto is not subject to the one of the clause of exception of article 13(3) of the Act on International Assistance in Levying Taxes (AIA).

8. Objection and appeal

In respect of the matters settled in this agreement, Party A relinquishes its rights to file a notice of objection or to lodge an appeal with a (tax) court. Accordingly, Party A retains

the right to file a notice of objection or to lodge an appeal with respect to the AIA, subject to the representation made under 7.

9. Scope of this agreement

Party A acknowledges and confirms by signing the agreement that the positions taken by Party B in this agreement apply within the specific scope of this agreement. This means Party B is no bound to the positions taken in this agreement outside the scope of this agreement or after this agreement has expired.

10. Governing Law

This agreement shall be governed by the laws of the Netherlands.

11. Competent court

Any dispute between parties concerning the application of this agreement may be brought only before a Netherlands court.

12. Duration

This agreement shall be effective only for the period starting [date] and ending [date].