

# TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

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**JAARGANG 2010 Nr. 14**

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A. TITEL

*Verdrag tussen de Regering van het Koninkrijk der Nederlanden en de Regering van het Vorstendom Liechtenstein inzake de uitwisseling van informatie betreffende belastingen;  
(met Protocol)  
Brussel, 10 november 2009*

B. TEKST

**Agreement between the Government of the Kingdom of the Netherlands and the Government of the Principality of Liechtenstein on the Exchange of Information with respect to Taxes**

The Government of the Kingdom of the Netherlands

and

the Government of the Principality of Liechtenstein,

hereinafter referred to as “the Contracting Parties”;

Have agreed as follows:

Article 1

*Object and scope of the Agreement*

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement.

Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the

recovery and enforcement of tax claims, or the investigation in or prosecution of tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8.

The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

## Article 2

### *Jurisdiction*

A requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

## Article 3

### *Taxes covered*

1. The taxes which are the subject of this Agreement are:
  - a) in the Netherlands:
    - (i) income tax (*inkomstenbelasting*),
    - (ii) wages tax (*loonbelasting*),
    - (iii) company tax, including the Government share in the net profits of the exploitation of natural resources levied pursuant the Mining Act (*vennootschapsbelasting, daaronder begrepen het aandeel van de Regering in de netto-winsten behaald met de exploitatie van natuurlijke rijkdommen geheven krachtens de Mijnbouwwet*),
    - (iv) dividend tax (*dividendbelasting*),
    - (v) gift tax (*schenkingsrecht*),
    - (vi) inheritance tax (*successierecht*),
    - (vii) value added tax (*omzetbelasting*);
  - b) in Liechtenstein:
    - (i) the personal income tax (*Erwerbssteuer*),
    - (ii) the corporate income tax (*Ertragssteuer*),
    - (iii) the corporation taxes (*Gesellschaftssteuern*),
    - (iv) the real estate capital gains tax (*Grundstücksgewinnsteuer*),
    - (v) the wealth tax (*Vermögenssteuer*),
    - (vi) the coupon tax (*Couponsteuer*),
    - (vii) the estate, inheritance and gift taxes (*Nachlass-, Erbanfalls- und Schenkungssteuern*), and
    - (viii) Value added tax (*Mehrwertsteuer*).

2. This Agreement shall also apply to any identical or substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Contracting Parties so agree. Furthermore, the taxes covered may be expanded or modified by mutual agreement of the Contracting Parties in the form of an exchange of letters. The competent authorities of the Contracting Parties shall notify each other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

#### Article 4

##### *Definitions*

1. For the purposes of this Agreement, unless otherwise defined:
  - a) the term “Contracting Party” means the Netherlands or Liechtenstein as the context requires;
  - b) the term “the Netherlands” means the part of the Kingdom of the Netherlands that is situated in Europe, including its territorial sea, and any area beyond the territorial sea within which the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights with respect to the sea bed, its sub soil and its superjacent waters, and their natural resources;
  - c) the term “Liechtenstein” means the Principality of Liechtenstein, and, when used in a geographical sense, the area in which the tax laws of the Principality of Liechtenstein apply;
  - d) the term “competent authority” means:
    - (i) in the case of the Netherlands, the Minister of Finance or his authorized representative;
    - (ii) in the case of Liechtenstein, the Government of the Principality of Liechtenstein or its authorized representative;
  - e) the term “person” includes an individual, a company and any other body of persons;
  - f) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - g) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public; shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
  - h) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
  - i) the term “recognised stock exchange” means any stock exchange that fulfils the material requirements of Article 4 of the directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004;

j) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form; the term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public; units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;

k) the term “tax” means any tax to which this Agreement applies;

l) the term “applicant Party” means the Contracting Party requesting information;

m) the term “requested Party” means the Contracting Party requested to provide information;

n) the term “information gathering measures” means administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;

o) the term “information” means any fact, statement or record in any form whatever;

p) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party;

q) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 13 of this Agreement, have the meaning that it has at that time under the law of that Contracting Party, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

## Article 5

### *Exchange of information upon request*

1. The competent authority of the requested Party shall provide upon request of the applicant Party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party. The competent authority of the applicant Party shall only make a request for information pursuant to this Article when it is unable to obtain the

requested information by other means available in its own territory, except where recourse to such means would give rise to disproportionate difficulty.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the applicant Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authorities for the purposes specified in Article 1 and in accordance with the terms of this Agreement, have the authority to obtain and provide upon request:

a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;

b) information regarding the ownership of legal persons, including companies, partnerships, collective investment funds or schemes, Anstalten (where appropriate), and other persons, including, within the constraints of Article 2, information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; in the case of foundations information on founders, members of the foundation council and beneficiaries; and equivalent information in the case of entities that are neither trusts nor foundations.

Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the applicant Party shall formulate the request with the greatest detail possible by in all cases specifically providing the following information to the competent authority of the requested Party when making a request for information under this Agreement to demonstrate the foreseeable relevance of the information to the request:

a) the identity of the person under examination or investigation;

b) the period for which the information is sought;

- c) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
- d) the purpose for which the information is sought;
- e) grounds for believing that the information requested is foreseeably relevant to the administration and enforcement of the domestic tax laws of the applicant Party with regard to the person specified in subparagraph (a);
- f) grounds for believing that the information requested is held in the requested Party or is in the possession or control of a person within the jurisdiction of the requested Party;
- g) to the extent known, the name and address of any person believed to be in possession of the requested information;
- h) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement; and
- i) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the requested Party shall acknowledge receipt of the request in writing to the competent authority of the applicant Party and shall use its best endeavours within its means to forward the requested information to the competent authority of the applicant Party with the least reasonable delay.

## Article 6

### *Tax examinations abroad*

1. By reasonable notice given in advance, the applicant Party may request and the requested Party may allow representatives of the competent authority of the applicant Party to enter the territory of the requested Party, to the extent permitted under its laws, to interview individuals and examine records with the prior written consent of the persons concerned. The competent authority of the requested Party shall notify the competent authority of the applicant Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of the applicant Party, the competent authority of the requested Party may allow representatives of the competent authority of the applicant Party to be present at the appropriate part of a tax examination in the requested Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the requested Contracting Party conducting the examination shall, as soon as possible, notify the competent authority of the applicant Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the requested Party conducting the examination.

## Article 7

### *Possibility of declining a request*

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws or in the normal course of administrative practice for purposes of the administration or enforcement of its own tax laws or in response to a valid request made in similar circumstances from the requested Party under this Agreement. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement or any other instrument to which the Contracting Parties are parties.

2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information subject to legal privilege or which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in Article 5, paragraph 4 shall not by reason of that fact alone be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

3. The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information, which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:

- a) produced for the purposes of seeking or providing legal advice; or
- b) produced for the purposes of use in existing or contemplated legal proceedings.

4. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy (*ordre public*) of the requested Party.

5. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.

6. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.

#### Article 8

##### *Confidentiality*

Any information provided or received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement.

Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

Personal data may be transmitted to the extent necessary for carrying out the provisions of this Agreement and subject to the provisions of the law of the supplying Party. Information received by the requested Party in conjunction with a request for assistance under this Agreement shall likewise be treated as confidential in the requested Party.

#### Article 9

##### *Costs*

Incidence of costs incurred in providing assistance shall be agreed by the Contracting States.

#### Article 10

##### *Implementation legislation*

The Contracting Parties shall enact any legislation necessary to comply with, and give effect to, the terms of this Agreement by December 31, 2010.



## Article 11

*Language*

Requests for assistance and answers thereto shall be drawn up in English.

## Article 12

*Other international agreements or arrangements*

The possibilities of assistance provided by this Agreement do not limit, nor are they limited by, those contained in other international Agreements or arrangements between the Contracting Parties which relate to co-operation in tax matters.

## Article 13

*Mutual agreement procedure*

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of this Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.

2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually agree on the procedures to be used under this Agreement.

3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.

4. If any difficulty or doubt arising as to the interpretation or application of the Agreement cannot be resolved by the competent authorities of the Contracting Parties in a mutual agreement procedure pursuant to the previous paragraphs of this Article within a period of two years after the question was raised, the case may, at the request of either Contracting Party, be submitted for arbitration, but only after fully exhausting the procedure available under paragraphs 1 and 3 of this Article and provided the taxpayer or taxpayers involved agree in writing to be bound by the decision of the arbitration board.

The decision of the arbitration board in a particular case shall be binding on both Contracting Parties and the taxpayers involved with respect to that case.

5. The Contracting Parties may also agree on other forms of dispute resolution.

#### Article 14

##### *Entry into force*

This Agreement shall enter into force on the first day of the second month after the latter of the respective Contracting Parties have notified each other in writing through diplomatic channels that the formalities required under their respective domestic laws have been complied with, and its provisions shall have effect with respect to the exchange of information for all tax matters on that date, but only in respect of taxable periods beginning on or after January 1, 2010 or, where there is no taxable period, all charges to tax arising on or after that date.

#### Article 15

##### *Termination*

1. This Agreement shall remain in force until terminated by one of the Contracting Parties. Either Contracting Party may terminate the Agreement, through diplomatic channels, by giving notice of termination to the other Contracting Party at least six months before the end of any calendar year. In such event the Agreement shall cease to have effect for taxable years and periods beginning after the end of the calendar year in which the notice of termination has been given.

2. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the other Contracting Party. Nevertheless, all requests received before the effective date of termination shall be dealt with in accordance with this Agreement.

3. In the event of termination, both Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information provided or received under this Agreement.

IN WITNESS whereof the undersigned, duly authorized thereto, have signed this Agreement.

DONE at Brussels this 10<sup>th</sup> day of November 2009, in duplicate, in the English language.

*For the Government of the Kingdom of the Netherlands:*

J. C. DE JAGER

*For the Government of the Principality of Liechtenstein:*

K. TSCHÜTSCHER

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**Protocol between the Government of the Kingdom of the  
Netherlands and the Government of the Principality of  
Liechtenstein concerning the Interpretation and Application of the  
Agreement between the Government of the Kingdom of the  
Netherlands and the Government of the Principality of  
Liechtenstein on the Exchange of Information with respect to Tax  
Matters**

The Government of the Kingdom of the Netherlands  
and

the Government of the Principality of Liechtenstein,  
hereinafter referred to as the “Contracting Parties”;

Whereas the Contracting Parties recognize that the well-developed economic ties between the Contracting Parties call for further cooperation;

Whereas the Contracting Parties wish to develop their relationship further by co-operating to their mutual benefits in the field of taxation;

Whereas the Contracting Parties wish to strengthen the ability of both Contracting Parties to enforce their respective tax laws;

Whereas the Contracting Parties wish to establish the terms and conditions governing the exchange of information on tax matters, and

Whereas the Contracting Parties take note that the Agreement between the Government of the Kingdom of the Netherlands and the Government of the Principality of Liechtenstein on the exchange of information with respect to taxes (“the Agreement”) integrates the standards of the OECD as expressed in the OECD Model Agreement on Exchange of Information on Tax Matters of 2002, including its Commentary;

Desiring to facilitate the exchange of information with respect to taxes;

Have further agreed as follows:

## Article 1

*(Ad article 5)*

If personal data are exchanged under the Agreement, the following additional provisions shall apply:

a) The receiving authority may use such data only for the stated purpose and shall be subject to the conditions prescribed by the supplying authority; such use is also permitted, subject to the written consent required under Article 8, for the prevention and prosecution of serious crimes and for the purpose of addressing serious threats to public security.

b) The receiving authority shall on request inform the supplying authority about the use of the supplied data and the results achieved thereby.

c) Personal data may be supplied only to the responsible agencies. Any subsequent supply to other agencies may be effected only with the prior approval of the supplying authority.

d) The supplying authority shall be obliged to take all reasonable care to ensure that the data to be supplied are accurate and that they are necessary for and proportionate to the purpose for which they are supplied; any bans on data supply prescribed under applicable domestic law shall be observed. If it emerges that inaccurate data or data which should not have been supplied have been supplied, the receiving authority shall be informed of this without delay. That authority shall be obliged to correct or erase such data without delay.

e) Upon application the person concerned shall be informed of the supplied data relating to him and of the use to which such data are to be put; there shall be no obligation to furnish this information if on balance it turns out that the public interest in withholding it outweighs the interest of the person concerned in receiving it; in all other respects, the right of the person concerned to be informed of the existing data relating to him shall be governed by the domestic law of the Contracting State in whose sovereign territory the application for the information is made.

f) The receiving authority shall bear liability in accordance with its domestic laws in relation to any person suffering unlawful damage as a result of supply of data pursuant to this Agreement; in relation to the damaged person, the receiving authority may not plead in its defence that the damage had been caused by the supplying agency.

g) If the domestic law of the supplying authority provided, with respect to the personal data supplied, for erasure within a certain period of time that authority shall inform the receiving authority accordingly; irrespective of such periods, supplied personal data shall be erased once they are no longer required for the purpose for which they were supplied.

h) The supplying and the receiving authority shall be obliged to keep official records of the supply and receipt of personal data.

i) The supplying and the receiving authority shall be obliged to take effective measures to protect the personal data supplied against unauthorised access, unauthorised alteration and unauthorised disclosure.

#### Article 2

*(Ad article 5)*

With respect to Article 5, paragraph 5, subparagraph a, it is understood that it is not necessary to provide the name of the taxpayer in order to define its identity, if this identity can be determined from equivalent elements.

#### Article 3

*(ad article 7)*

In the event a request is believed to be deficient in some respect, but other parts of such request meet the requirements of this Agreement, the competent authority of the requested party shall provide any information that is responsive to that part of the request that meets the requirements of the Agreement.

#### Article 4

*(Ad article 5)*

It is understood that the provisions of article 5, paragraph 5, of the Agreement contain important procedural requirements that are intended to ensure that fishing expeditions do not occur. The subparagraphs of article 5, paragraph 5, of the Agreement nevertheless need to be interpreted with a view not to frustrate effective exchange of information.

#### Article 5

Documents or information created on or derived from a date preceding the taxable periods mentioned in Article 14 of the Agreement (hereinafter referred to as “the covered periods”) shall be provided:

- (i) only to the extent that such document or information is foreseeably relevant and of critical importance to an ongoing tax investigation relating to the covered periods; and
- (ii) only if accompanying documents or information not of such foreseeable relevance and critical importance may be redacted prior to being exchanged.

For the avoidance of doubt:

a) such documents or information may be used only for the purposes of an ongoing investigation or examination of the covered periods;

b) where a request relating to a criminal tax matter involves bank transactions occurring on or after 1 January 2010 and documents (such as a signature card) for the bank account in question were executed prior to 1 January 2010, the Contracting Parties may exchange such documents; and

c) where a request involves a trust or a foundation, the Requested Party may provide to the competent authority of the Requesting Party a copy of the deed of settlement or the foundation statutes and/or by laws as the case may be.

#### Article 6

Formal communications, including requests for information, made in connection with or pursuant to the provisions of the Agreement entered into will be in writing directly to the competent authority of the provisions of the other Contracting Party at the addresses given below, or such other address as may be notified by one Contracting Party to the other from time to time. Any subsequent communications regarding requests for information will be in writing between the earlier mentioned competent authorities or their authorized entities, whereas the possibility of direct consultation is being given.

#### Article 7

This Protocol shall form an integral part of the Agreement between the Government of the Kingdom of the Netherlands and the Government of the Principality of Liechtenstein on the Exchange of Information with respect to taxes, and shall enter into force on the same date as the Agreement.

#### Article 8

The Contracting Parties may, through mutual arrangement, amend this Protocol at any time in writing. Such amendment shall enter into force on the first day of the second month after the Contracting Parties have notified<sup>1)</sup> each other in writing through diplomatic channels that the constitutional or internal requirements for the entry into force of the amendments have been complied with.

IN WITNESS WHEREOF the undersigned, being duly authorised in that behalf by the respective Contracting Parties, have signed this Protocol.

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<sup>1)</sup> Noot redactie Tractatenblad: kennelijk wordt hier „notified” bedoeld.

DONE at Brussels this 10<sup>th</sup> day of November 2009, in duplicate, in the English language.

*For the Government of the Kingdom of the Netherlands:*

J. C. DE JAGER

*For the Government of the Principality of Liechtenstein:*

K. TSCHÜTSCHER

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D. PARLEMENT

Het Verdrag, met Protocol, behoeft ingevolge artikel 91 van de Grondwet de goedkeuring van de Staten-Generaal, alvorens het Koninkrijk aan het Verdrag, met Protocol, kan worden gebonden.

G. INWERKINGTREDING

De bepalingen van het Verdrag, met Protocol, zullen ingevolge artikel 14 van het Verdrag juncto artikel 7 van het Protocol, in werking treden op de eerste dag van de tweede maand na de laatste van de data waarop beide Verdragsluitende partijen elkaar er via diplomatieke kanalen schriftelijk van in kennis hebben gesteld dat is voldaan aan de formaliteiten die ingevolge hun onderscheiden nationale wetgeving zijn vereist.

J. VERWIJZINGEN

Titel : Verdrag nopens de Organisatie voor Economische Samenwerking en Ontwikkeling;  
Parijs, 14 december 1960  
Tekst : *Trb.* 1961, 42 (Engels en Frans)  
*Trb.* 1961, 60 (vertaling)  
Laatste *Trb.* : *Trb.* 1994, 193

Uitgegeven de *dertiende* januari 2010.

*De Minister van Buitenlandse Zaken,*

M. J. M. VERHAGEN