

# TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

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JAARGANG 2007 Nr. 148

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A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden en de Staten van Jersey inzake de uitwisseling van informatie betreffende belastingzaken;  
(met Memorandum van Overeenstemming)  
's-Gravenhage, 20 juni 2007*

B. TEKST

**Agreement between the Kingdom of the Netherlands and the States of Jersey for the exchange of information relating to tax matters**

Whereas the Kingdom of the Netherlands and the States of Jersey (“the parties”) recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters;

Whereas the parties have long been active in international efforts in the fight against financial and other crimes, including the targeting of terrorist financing;

Whereas it is acknowledged that Jersey has the right, under the terms of the Entrustment from the UK to negotiate, conclude, perform and subject to the terms of this agreement terminate a tax information exchange agreement with the Netherlands;

Whereas Jersey on the 22<sup>nd</sup> February 2002 entered into a political commitment to the OECD’s principles of effective exchange of information;

Whereas the parties wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes;

Now, therefore, the parties have agreed to conclude the following agreement which contains obligations on the part of the Netherlands and Jersey only:

## Article 1

*Scope of the Agreement*

The parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the parties concerning the taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, enforcement or collection of tax with respect to persons subject to such taxes, or to the investigation of tax matters or the prosecution of criminal tax matters in relation to such persons. A requested party is not obliged to provide information which is neither held by its authorities nor in the possession of or obtainable by persons who are within its territorial jurisdiction. 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

*Taxes Covered*

1. This Agreement shall apply to the following taxes imposed by the parties:

- a) in the case of 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)
- b) in the case of Jersey: the income tax.

2. This Agreement shall apply also to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes, or any substantially similar taxes if the parties so agree. The competent authority of each party shall notify the other of substantial changes in laws which may affect the obligations of that party pursuant to this Agreement.

## Article 3

*Definitions*

1. In this Agreement:

“the Netherlands” means the part of the Kingdom of the Netherlands that is situated in Europe, including its territorial seas and any area beyond the territorial sea within which the Netherlands, in accordance with international law, exercises jurisdiction or sovereign rights;

“Jersey” means the Bailiwick of Jersey, including its territorial sea;

“company” means any body corporate or any entity that is treated as a body corporate for tax purposes;

“competent authority” means, in the case of the Netherlands the Minister of Finance or his authorised representative; in the case of Jersey, the Treasury and Resources Minister or his authorised representative;

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

“criminal tax matters” means tax matters involving intentional conduct whether before or after the entry into force of this Agreement which is liable to prosecution under the criminal laws of the requesting party;

“information gathering measures” means laws and administrative or judicial procedures enabling a requested party to obtain and provide the information requested;

“information” means any fact, statement, document or record in whatever form;

“person” means a natural person, a company or any other body or group of persons;

“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;

“principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;

“recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;

“public collective investment scheme” means any scheme or fund, in which the purchase sale or redemption of shares or other interests is not implicitly or explicitly restricted to a limited group of investors;

“requested party” means the party to this Agreement which is requested to provide or has provided information in response to a request;

“requesting party” means the party to this Agreement submitting a request for or having received information from the requested party;

“tax” means any tax covered by this Agreement;

3. As regards the application of this Agreement at any time by a party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws of that party, any meaning under the applicable tax laws of that party prevailing over a meaning given to the term under other laws of that party.

## Article 4

*Exchange of Information Upon Request*

1. The competent authority of the requested party shall provide upon request by the requesting party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested party if it had occurred in the territory of the requested party. The competent authority of the requesting party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means, 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, the requested party shall use at its own discretion all relevant information gathering measures necessary to provide the requesting 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 requesting 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 party shall ensure that it has the authority, subject to the terms of Article 1, to obtain and provide, through its competent authority and upon request:

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

b) (i) information regarding the beneficial ownership of companies, partnerships, foundations and other persons, including in the case of collective investment schemes, information on shares, units and other interests;

(ii) in the case of trusts, information on settlors, trustees and beneficiaries,

provided that this Agreement does not create an obligation for a party to obtain or provide ownership information with respect to publicly traded companies or public collective investment schemes, unless such information can be obtained without giving rise to disproportionate difficulties.

5. Any request for information shall be formulated with the greatest detail possible in specifying in writing;

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

- b) the period for which the information is requested;
- c) the nature of the information requested and the form in which the requesting party would prefer to receive it;
- d) the tax purpose for which the information is sought;
- e) the reasons for believing that the information requested is foreseeably relevant to tax administration and enforcement of the requesting party, with respect to the person identified in subparagraph a) of this paragraph;
- f) grounds for believing that the information requested is present in the requested party or is in the possession of or obtainable by 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 or control of the information requested;
- h) a statement that the request is in conformity with the laws and administrative practices of the requesting party, that if the requested information was within the jurisdiction of the requesting party then the competent authority of the requesting party would be able to obtain the information under the laws of the requesting party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- i) a statement that the requesting party has pursued all means available in its own territory to obtain the information, except where that would give rise to disproportionate difficulty.

6. The competent authority of the requested party shall acknowledge receipt of the request to the competent authority of the requesting party and shall use its best endeavours to forward the requested information to the requesting party with the least reasonable delay.

#### Article 5

##### *Tax Examinations Abroad*

1. With reasonable notice, the requesting party may request that the requested party allow representatives of the competent authority of the requesting party to enter the territory of the requested party, to the extent permitted under its domestic laws, to interview individuals and examine records with the prior written consent of the individuals or other persons concerned. The competent authority of the requesting party shall notify the competent authority of the requested party of the time and place of the intended meeting with the individuals concerned.

2. At the request of the competent authority of the requesting party, the competent authority of the requested party may permit representatives of the competent authority of the requesting party to attend a tax examination in the territory of the requested party.

3. If the request referred to in paragraph 2 is granted, the competent authority of the requested party conducting the examination shall, as

soon as possible, notify the competent authority of the requesting party of the time and place of the examination, the authority or person authorised to carry out the examination and the procedures and conditions required by the requested party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the requested party conducting the examination.

#### Article 6

##### *Possibility of Declining a Request*

1. The competent authority of the requested party may decline to assist:

- a) where the request is not made in conformity with this Agreement; where the requesting party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
- c) where the disclosure of the information requested would be contrary to public policy.

2. This Agreement shall not impose upon a requested party any obligation to provide items subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 4, paragraph 4, shall not by reason of that fact alone be treated as such a secret or trade process.

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

4. The requested party shall not be required to obtain and provide information which if the requested information was within the jurisdiction of the requesting party the competent authority of the requesting party would not be able to obtain under its laws or in the normal course of administrative practice.

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

#### Article 7

##### *Confidentiality*

1. All information provided and received by the competent authorities of the parties shall be kept confidential.

2. Such information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.

3. Such information may not be used for any purpose other than for the purposes stated in Article 1 without the express written consent of the competent authority of the requested party.

4. Information provided to a requesting party under this Agreement may not be disclosed to any other jurisdiction.

#### Article 8

##### *Costs*

Unless the competent authorities of the parties otherwise agree, indirect costs incurred in providing assistance shall be borne by the requested party, and direct costs incurred in providing assistance (including costs of engaging external advisors in connection with litigation or otherwise) shall be borne by the requesting party. The respective competent authorities shall consult from time to time with regard to this Article, and in particular the competent authority of the requested party shall consult with the competent authority of the requesting party in advance if the costs of providing information with respect to a specific request are expected to be significant.

#### Article 9

##### *Language*

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

#### Article 10

##### *Mutual Agreement and Arbitration Procedures*

1. Where difficulties or doubts arise between the parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.

2. In addition to the agreements referred to in paragraph 1, the competent authorities of the parties may mutually agree on the procedures to be used under Articles 4, 5 and 8.

3. The parties shall agree on other forms of dispute resolution should this become necessary.

## Article 11

*Entry into Force*

This Agreement shall enter into force 30 days after receipt of written notification by the latter party of completion of all legal formalities required for entry into force. Upon the date of entry into force, it shall have effect;

- a) for criminal tax matters on that date; and
- b) for all other matters covered in Article 1 on that date, but only in respect of taxable periods beginning on or after that date or, where there is no taxable period, all charges to tax arising on or after that date.

## Article 12

*Termination*

1. This Agreement shall remain in force until terminated by either party.

2. Either party may after the expiration of two years from the date of its entry into force terminate this Agreement by giving notice of termination in writing. Such termination shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notice of termination by the other party. All requests received up to the effective date of termination will be dealt with in accordance with the terms of this Agreement.

3. If the Agreement is terminated the parties shall remain bound by the provisions of Article 7 with respect to any information obtained under this Agreement.

IN WITNESS whereof the undersigned, being duly authorised in that behalf by the respective parties, have signed the Agreement.

DONE at the Haque in duplicate this 20th day of June, 2007, in the English language.

*For the Kingdom of the Netherlands*

J. C. DE JAGER

*For the States of Jersey*

FRANK WALKER

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### Memorandum of Understanding

The Netherlands and Jersey seek a broader economic and trading relationship. Both parties have long been active in international efforts in the fight against financial and other crimes including fiscal crimes and each recognises the other's commitment to comply with international standards on money laundering, terrorist financing and financial regulation.

The Netherlands and Jersey are committed to deepening their relationship through cooperation on greater transparency and exchange of information on tax matters and with the objective of achieving a double taxation agreement taking account of the specific characteristics of the tax systems of both parties. Thereby the relationship between the Netherlands and Jersey is and will continue to be enhanced to the parties mutual benefit.

The Netherlands recognises Jersey's commitment to a policy of improving co-operation, reflected, inter alia, in the signing by Jersey of an Agreement on the Taxation of Savings Income with the Netherlands and each of the other EU Member States. Furthermore, the Netherlands recognises Jersey's commitment towards the work of the OECD's Global Forum on Taxation to achieve a global level playing field in the areas of transparency and effective exchange of information for tax purposes. The Netherlands and Jersey have decided to introduce immediately:

- a tax information exchange agreement;
- a mutual agreement procedure in connection with the adjustment of profits of associated enterprises;
- a mutual agreement procedure in connection with the conditions for the application of the Netherlands participation exemption and, on this basis, a mutual understanding that will secure the application of the Netherlands participation exemption in accordance with the rules as set out in the Netherlands corporate income tax Act.

Six months after the entry into force of these agreements negotiations will continue on further measures needed to alleviate undesired tax barriers and other obstacles of a discriminatory nature that may be included in the domestic tax legislation of the parties. In preparation for resuming negotiations the Netherlands and Jersey will study their respective tax systems to identify which undesired tax barriers and other obstacles should be addressed. In due course it is the intention to integrate partial results achieved into a double taxation agreement.

Two years after the date of the entry into force of the agreements signed today, the Netherlands and Jersey will jointly evaluate the results achieved and will consider which further steps may be necessary.

Formal communications, including requests for information, made in connection with or pursuant to the provisions of the Agreements entered into will be in writing directly to the competent authority of the other

party at the addresses given below, or such other address as may be notified by one party to the other from time to time. Any subsequent communications regarding requests for information will be either in writing or verbally, whichever is most practical, between the earlier mentioned competent authorities or their authorised representatives.

In the case of the Netherlands the address is:

The Fiscal Information and Investigation Service/Economic Investigation Service,  
Belastingdienst/FIOD-ECD/Team Internationaal,  
Postbus 59395  
1040 KJ Amsterdam

In the case of Jersey the address is:

The Minister for Treasury and Resources  
PO Box 353  
Cyril Le Marquand House  
The Parade  
St Helier  
JE4 8UL

*For the Government of the Kingdom of the Netherlands*

J. C. DE JAGER

*For the States of Jersey*

FRANK WALKER

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D. PARLEMENT

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

G. INWERKINGTREDING

De bepalingen van het Verdrag zullen ingevolge artikel 11 van het Verdrag in werking treden 30 dagen na de ontvangst door de laatste par-

tij van een schriftelijke kennisgeving dat alle wettelijke formaliteiten vereist voor de inwerkingtreding zijn afgerond.

Uitgegeven de *vijftiende* augustus 2007.

*De Minister van Buitenlandse Zaken,*

M. J. M. VERHAGEN