

# TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

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JAARGANG 2008 Nr. 114

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A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden en de Staten van Guernsey inzake de toegang tot onderlinge overlegprocedures in verband met de toerekening van winsten van verbonden ondernemingen en de toepassing van de Nederlandse deelnemingsvrijstelling;  
St. Peter Port, 25 april 2008*

B. TEKST

**Agreement between the Kingdom of the Netherlands and the States of Guernsey on the access to mutual Agreements procedures in connection with the adjustment of profits of associated enterprises and the application of the Netherlands participation exemption**

The Kingdom of the Netherlands

and

the States of Guernsey

(“the Parties”),

Desiring to strengthen their economic relationship and to encourage international trade;

Have agreed to conclude the following Agreement which contains obligations on the part of the Parties only:

## CHAPTER I

## TAXES COVERED AND DEFINITIONS

## Article 1

*Taxes covered*

This Agreement shall apply to taxes on income and profits.

## Article 2

*Definitions*

1. For the purposes of this Agreement, unless otherwise defined:
  - a. 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;
  - b. the term “Guernsey” means Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands, in accordance with international law;
  - c. 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 Guernsey, the Administrator of Income Tax or his delegate;
  - d. the term “enterprise” applies to the carrying on of any business.
2. 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 law 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.

## CHAPTER II

## THE ADJUSTMENT OF PROFITS OF ASSOCIATED ENTERPRISES

## Article 3

*Scope of Chapter II*

1. Chapter II of this Agreement shall apply where, for the purposes of taxation, profits which are included in the profits of an enterprise of a

Party are also included or are also likely to be included in the profits of an enterprise of the other Party on the grounds that the principles set out in Article 4, and applied either directly or in corresponding provisions of the law of the Party concerned, have not been observed.

2. Paragraph 1 shall also apply where any of the enterprises concerned have made losses rather than profits.

#### Article 4

##### *Principles applying to the adjustment of profits of associated enterprises*

Where:

- a. an enterprise of a Party participates directly or indirectly in the management, control or capital of an enterprise of the other Party, or
- b. the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Party and an enterprise of the other Party,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

#### Article 5

##### *General provision*

Where a Party intends to adjust the profits of an enterprise in accordance with the principles set out in Article 4, it shall inform the enterprise of the intended action in due time and give it the opportunity to inform the other enterprise so as to give that other enterprise the opportunity to inform in turn the other Party. However, the Party providing such information shall not be prevented from making the proposed adjustment.

#### Article 6

##### *Mutual agreement procedures*

1. Where an enterprise considers that, in any case to which this Agreement applies, the principles set out in Article 4 have not been observed, it may, irrespective of the remedies provided by the domestic law of the Party concerned, present its case to the competent authority of the Party of which it is an enterprise. The case must be presented

within three years of the first notification of the action which is contrary or is likely to be contrary to the principles set out in Article 4. The competent authority shall then without delay notify the competent authority of the other Party.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Party, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Parties.

3. The competent authorities of the Parties may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraph.

4. The competent authority of a Party shall not be obliged to initiate the mutual agreement procedure where legal or administrative proceedings have resulted in a final ruling that by actions giving rise to an adjustment of transfers of profits under Article 4 one of the enterprises concerned is liable to a serious penalty. In addition, the competent authority of a Party shall not be obliged to initiate the mutual agreement procedure if the enterprise has not fulfilled the domestic documentation and/or information requirements of the adjusting Party before the assessment in which the adjustment is incorporated was finalized.

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

6. Notwithstanding the previous paragraphs of this Article, the competent authorities of the Parties may mutually agree to amend the procedures to be used under this Article taking into account the developments with respect to the EU Convention on the Elimination of Double Taxation in connection with the Adjustment of Profits of Associated Enterprises and the developments relating to the mutual agreement procedure discussion within the OECD.

## CHAPTER III

THE APPLICATION OF THE NETHERLANDS PARTICIPATION  
EXEMPTION

## Article 7

*Specific rules for the application of the Netherlands Participation  
Exemption*

The competent authorities of the Parties may agree on the conditions for the application of the participation exemption of the Netherlands with regard to participations in Guernsey with a view to prevent double taxation.

## CHAPTER IV

## FINAL PROVISIONS

## Article 8

*Entry into force*

1. 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. The Agreement shall apply to proceedings referred to in Article 6, paragraph 1, which are initiated after its entry into force.

2. Notwithstanding paragraph 1 of this Article, the Agreement shall only enter into force when the Agreement between the States of Guernsey and the Kingdom of the Netherlands for the exchange of information relating to tax matters shall have effect for criminal as well as civil tax matters.

## Article 9

*Termination*

1. This Agreement is concluded for a period of five years. Six months before the expiry of that period, the Parties will meet to decide on the extension of this Agreement and any other relevant measure.

2. Notwithstanding paragraph 1 of this Article, this Agreement will be terminated, without giving notice of termination, on the date of termination of the Agreement between the States of Guernsey and the Kingdom of the Netherlands for the exchange of information relating to tax matters.

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

DONE at St. Peter Port in duplicate this 25th day of April 2008, in the English language.

*For the Kingdom of the Netherlands*

J.C. DE JAGER

*For the States of Guernsey*

MICHAEL WILLIAM TORODE

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### **Memorandum of understanding**

Guernsey and the Netherlands desire to strengthen their 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.

Guernsey and the Netherlands 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 Guernsey and the Netherlands is and will continue to be enhanced to the Parties mutual benefit.

The Netherlands recognises Guernsey's commitment to a policy of improving co-operation, reflected, inter alia, in the signing by Guernsey of an Agreement on the Taxation of Savings Income with the Netherlands and each of the other EU Member States. Furthermore, the Netherlands recognises Guernsey'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.

Guernsey and the Netherlands have agreed 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.

As soon as is practicable, and preferably no later than twelve months after the signing of these agreements, Guernsey and the Netherlands shall continue negotiations with the objective of entering into an agreement for the avoidance of double taxation with respect to enterprises operating ships or aircraft in international traffic.

Six months after the entry into force of these instruments 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 Guernsey and the Netherlands 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 measures signed today, Guernsey and the Netherlands 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 Guernsey the address is  
– The Administrator of Income Tax  
Income Tax Office  
PO Box No. 37  
Guernsey  
GY1 3AZ

In the case of the Netherlands the address is  
– The Fiscal Information and Investigations Service /Economic Investigation Service,  
Belastingdienst /FIOD-ECD /Team Internationaal,  
Postbus 59395  
1040 KJ Amsterdam

*For the Kingdom of the Netherlands*

J.C. DE JAGER

*For the States of Guernsey*

MICHAEL WILLIAM TORODE

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D. PARLEMENT

Het Verdrag heeft 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 8, eerste lid, in werking treden 30 dagen na de ontvangst van een schriftelijke kennisgeving door de laatste partij dat alle wettelijke formaliteiten vereist voor de inwerkingtreding zijn afgerond, mits ook de voorwaarden van artikel 8, tweede lid, zijn vervuld.

Uitgegeven de *zevenentwintigste* mei 2008.

*De Minister van Buitenlandse Zaken,*

M. J. M. VERHAGEN