

# TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

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JAARGANG 2009 Nr. 235

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A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden en de Cookeilanden  
inzake de uitwisseling van informatie betreffende belastingzaken;  
(met Protocol)  
Rarotonga, 23 oktober 2009*

B. TEKST

**Agreement between the Kingdom of the Netherlands and the Cook  
Islands on the Exchange of Information relating to Tax Matters**

The Government of the Kingdom of the Netherlands

and

the Government of the Cook Islands,

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

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 or prosecution of tax matters. Information shall be exchanged in accordance with the provi-

sions 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, including income-related supplements based social supplements regulations (Inkomstenbelasting, inclusief inkomensafhankelijke toeslagen op grond van regelgeving inzake toeslagen);
    - (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);
    - (viii) tax on games of chance (Kansspelbelasting);
    - (viii) motor vehicle tax, including the additional percentages of the provinces (Motorrijtuigenbelasting, inclusief provinciale opcenten);
    - (ix) environmental taxes, including energy taxes (Belastingen op milieugrondslag, inclusief energiebelastingen);
    - (x) insurance tax (Assurantiebelasting);
    - (xi) tax on the ownership and/or use of real property (Onroerendezaakbelasting);
    - (xii) levies, duties, fines or exemptions relating to the importation, exportation, transshipment, transit, storage and circulation of

goods, as well as to prohibitions, restrictions and other similar controls on the movement of controlled items across national boundaries);

b) in the Cook Islands:

- (i) the personal income tax;
- (ii) the company income tax;
- (iii) the withholding tax on dividends, interest and royalties, and
- (iv) the value added tax.

2. This Agreement shall also apply to any identical taxes imposed after the date of signature of this Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of this 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 this Agreement.

#### Article 4

##### *Definitions*

1. For the purposes of this Agreement, unless otherwise defined:

- a) the term “Contracting Party” means the Netherlands or the Cook Islands 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 seas, 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 subsoil and its superjacent waters, and their natural resources;
- c) the term “the Cook Islands” means the territory of the Cook Islands;
- d) the term “competent authority” means:
  - (i) in the case of the Netherlands, the Minister of Finance or his authorised representative;
  - (ii) in the case of the Cook Islands, the Collector of Inland Revenue or an authorised representative of the Collector;
- e) the term “person” includes an individual, a company and any other body of persons;
- f) the term “company” means anybody 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 provid-

ed 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 agreed upon by the competent authorities of the Contracting Parties;

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 laws and 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, 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.

## Article 5

### *Exchange of information upon request*

1. The competent authority of the requested Party shall provide upon request 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.

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 an 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 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 companies, partnerships, trusts, foundations, “Anstalten” and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. 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 provide 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) 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;

c) the tax purpose for which the information is sought;

d) 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;

e) to the extent known, the name and address of any person believed to be in possession of the requested information;

f) 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;

g) 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 forward the requested information as promptly as possible to the applicant Party. To ensure a prompt response, the competent authority of the requested Party shall:

a) Confirm receipt of a request in writing to the competent authority of the applicant Party and shall notify the competent authority of the applicant Party of deficiencies in the request, if any, within 60 days of the receipt of the request.

b) If the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the applicant Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.

## Article 6

### *Tax examinations abroad*

1. A Contracting Party may allow representatives of the competent authority of the other Contracting Party to enter the territory of the first-mentioned Contracting Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the second-mentioned Contracting Party shall notify the competent authority of the first-mentioned Contracting Party of the time and place of the meeting with the individuals concerned.

2. At the request of the competent authority of one Contracting Party, the competent authority of the other Contracting Party may allow representatives of the competent authority of the first-mentioned Contracting Party to be present at the appropriate part of a tax examination in the second-mentioned Contracting Party.

3. If the request referred to in paragraph 2 is acceded to, the competent authority of the Contracting Party conducting the examination shall,

as soon as possible, notify the competent authority of the other Contracting 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 first-mentioned Contracting Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the Contracting 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 for purposes of the administration or enforcement of its own tax laws. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.

2. The provisions of this Agreement shall not impose on a Contracting Party the obligation to supply information 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 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).

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 con-

nected 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 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.

#### Article 9

##### *Costs*

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

#### Article 10

##### *Implementation legislation*

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

#### Article 11

##### *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 Articles 5 and 6.



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

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

## Article 12

### *Entry into force*

This Agreement shall enter into force when each Party has notified the other of the completion of its necessary internal procedures for entry into force. Upon 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 13

### *Termination*

1. Either Contracting Party may terminate this Agreement by serving a notice of termination either through diplomatic channels or by letter to the competent authority of the other Contracting Party.

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.

3. Following termination of this Agreement the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Agreement.

DONE at Mexico City (Mexico) this first day of September 2009, and at Rarotonga this 23<sup>rd</sup> October day of 2009, in duplicate, in the English language.

*For the Kingdom of the Netherlands:*

W. J. LOK

*For the Cook Islands:*

T. MAOATE

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**Protocol between the Kingdom of the Netherlands and the Cook Islands concerning the interpretation and application of the Agreement between the Kingdom of the Netherlands and the Cook Islands on the Exchange of Information relating to Tax Matters**

The Government of the Kingdom of the Netherlands

and

the Government of the Cook Islands,

(hereinafter referred to as “the Contracting Parties”),

Whereas the Government of the Netherlands recognises the commitment the Cook Islands made to the Organisation for Economic Co-operation and Development (OECD) in 2002 to respect the principles of transparency and exchange of information and the Netherlands considers that this Agreement demonstrates the commitment of the Cook Islands to high standards for effective exchange of information with respect to both criminal and civil taxation matters;

Whereas the Government of the Netherlands also recognises the progressive steps that the Cook Islands have taken to demonstrate its commitment to high standards for effective exchange of information with respect to both criminal and civil taxation matters in negotiation of Tax Information Exchange Agreements with other countries and recognises that the Cook Islands are committed to combating tax abuse by putting in place mechanisms which enhance transparency; for example, the proactive steps taken to amend the domestic legislation of the Cook Islands for the purpose of fulfilling this Agreement and upon entering into the Agreement, the Netherlands does not consider the Cook Islands to be engaging in any harmful tax practises and thus is not referred to as a tax haven;

Desiring to facilitate the exchange of information relating to taxes,

Have further agreed as follows:

## Article 1

*(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 Party 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 provides, 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

### *(Article 12)*

In the event that a Contracting Party applies prejudicial or restrictive measures based on harmful tax practices to residents or nationals of the other Contracting Party, either Contracting Party may immediately initiate competent authority proceedings to resolve the matter. A prejudicial or restrictive measure based on harmful tax practices is a measure applied by one Contracting Party to residents or nationals of either Contracting Party on the basis that any one or more of the following applies:

- a) the other Contracting Party does not engage in effective exchange of information;
- b) it lacks transparency in the operation of its laws, regulations or administrative practices; or
- c) that there is no or nominal taxes.

Without limiting the generality of the term, “prejudicial or restrictive measure” is not limited solely to taxation matters and includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements, but does not include any generally applicable measure, applied by either contracting party against, amongst others, members of the OECD generally.

## Article 3

In light of the experience of operating the Agreement, or to reflect changing circumstances, either Contracting Party may wish to propose a variation in the terms of this Agreement. If so, it is understood that the other Contracting Party will agree to hold timely discussions with a view to revising the terms of the Agreement.

- a) The competent authorities may initiate discussions should:
  - (i) the Kingdom of the Netherlands enter into an agreement with another jurisdiction comparable to the Cook Islands which provides for other forms of exchange of information;
  - (ii) the Cook Islands enter into an agreement with another jurisdiction which provides for other forms of exchange of information;
  - (iii) the Cook Islands introduce new legislation which enables other forms of exchange of information.
- b) If the Netherlands enters into arrangements with another jurisdiction comparable to the Cook Islands for the provision of information

with respect to taxes that are less burdensome in any material respect than the provisions of the Agreement, the Cook Islands may initiate discussions with the Netherlands with a view to modifying the Agreement to have similar effect.

#### Article 4

This Protocol shall form an integral part of the Agreement between the Kingdom of the Netherlands and the Cook Islands on the exchange of information relating to taxes, and shall enter into force on the same date as the Agreement.

#### Article 5

The Contracting Parties may by 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 each other in writing that the constitutional or internal requirements for the entry into force of the amendment have been complied with.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Protocol.

DONE at Mexico City (Mexico) this first day of September 2009, and at Rarotonga this 23<sup>rd</sup> October day of 2009, in duplicate, in the English language.

*For the Kingdom of the Netherlands:*

W. J. LOK

*For the Cook Islands:*

T. MAOATE

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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 kan worden gebonden.

G. INWERKINGTREDING

De bepalingen van het Verdrag, met Protocol, zullen ingevolge artikel 12 van het Verdrag juncto artikel 4 van het Protocol, in werking treden wanneer beide partijen elkaar er van in kennis hebben gesteld dat de vereiste nationale procedures voor inwerkingtreding zijn voltooid.

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 *drieëntwintigste* december 2009.

*De Minister van Buitenlandse Zaken,*

M. J. M. VERHAGEN