

# TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

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JAARGANG 2010 Nr. 31

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A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden en Montserrat (zoals gemachtigd door de Regering van het Verenigd Koninkrijk van Groot-Brittannië en Noord-Ierland) inzake de uitwisseling van informatie betreffende belastingen;  
(met Protocol)  
Londen, 10 december 2009*

B. TEKST

**Agreement between the Kingdom of the Netherlands and Montserrat (as authorised by the Government of the United Kingdom of Great Britain and Northern Ireland) for the exchange of information relating to taxes**

Whereas Montserrat and the Kingdom of the Netherlands (hereinafter referred to as “the Contracting Parties”) recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters;

Whereas it is acknowledged that Montserrat under the terms of its Entrustment from the United Kingdom has the right to negotiate, conclude and perform a tax information exchange agreement with the Netherlands;

Whereas the Government of the Kingdom of the Netherlands welcomes the conclusion of this Agreement with the Government of Montserrat, which represents an important step in delivering the commitment the Government of Montserrat made to the OECD on the 27th February 2002 to respect the principles of transparency and exchange of information;

Whereas the Government of the Kingdom of the Netherlands considers that this Agreement demonstrates Montserrat's commitment to high standards for effective exchange of information with respect to both criminal and civil taxation matters, consistent with the aims and objectives of the Global Forum on Transparency and Exchange of Information;

Whereas the Government of the Kingdom of the Netherlands also recognizes that Montserrat is committed to combating tax abuse by putting in place mechanisms which enhance transparency, including by amending the domestic legislation of Montserrat for the purpose of fulfilling this Agreement, and therefore the Netherlands considers Montserrat is not engaging in any harmful tax practices and is not a tax haven;

Whereas the Contracting Parties wish to enhance and facilitate the terms and conditions governing the exchange of information with respect to taxes;

Now, therefore, the Contracting Parties have agreed to conclude the following Agreement which contains obligations on the part of the Contracting Parties only:

#### 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 the taxes and the tax matters covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, verification, enforcement, recovery or collection of tax claims with respect to persons subject to such taxes, or the investigation or prosecution of tax matters in relation to such persons. 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.

#### Article 2

##### *Jurisdiction*

Information shall be exchanged in accordance with this Agreement without regard to whether the person to whom the information relates is a resident, national or citizen of a Contracting Party, or whether the person by whom the information is held is a resident, national or citizen of a Contracting Party. However, a requested Party is not obliged to pro-

vide information that is neither held by its authorities nor in the possession or control of a person who is within its territorial jurisdiction.

### Article 3

#### *Taxes covered*

1. The existing taxes which are the subject of this Agreement are:
  - a) in the Netherlands, taxes of every kind and description; and
  - b) in Montserrat, direct taxes of every kind and description.

2. This Agreement shall also apply to any identical or substantially similar taxes imposed by either territory after the date of signature of this Agreement in addition to, or in place of, any of the taxes referred to in sub-paragraph 1. The competent authorities of the Contracting Parties shall notify each other of any relevant 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) “Montserrat” means the United Kingdom Overseas Territory of Montserrat;
  - b) “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 “collective investment scheme” means any pooled investment vehicle irrespective of legal form;
  - d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - e) the term “competent authority” means in the case of the Netherlands, the Minister of Finance or his authorised representative, and, in the case of Montserrat, the Comptroller of Inland Revenue.
  - f) the term “Contracting Party” means the Kingdom of the Netherlands or Montserrat as the context requires;
  - g) the term “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether they are contained in the tax laws, the criminal code or other statutes;
  - h) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting Contracting Party;

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

j) the term “information gathering measures” means judicial, regulatory or administrative laws and procedures enabling a Contracting Party to obtain and provide the information requested;

k) the term “person” means a natural person, a company or any entity that is treated as a body corporate for tax purposes, or any other body or group of persons;

l) the term “public collective investment scheme” means any collective 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,

m) the term “requested Party” means the Contracting Party to this Agreement which is requested to provide or has provided information in response to a request;

n) the term “requesting Party” means the Contracting Party to this Agreement submitting a request for or having received information from the requested Party;

o) the term “tax” means any tax covered by this Agreement.

p) 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;

q) 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;

r) the term “recognized stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;

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 a requested Party shall provide upon request in writing by the requesting Party information for the purposes specified in Article 1 of this Agreement. 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 it occurred in the territory of the requested Party. If the information

received by the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, it shall advise the competent authority of the requesting Party of that fact and request such additional information as may be required to enable the effective processing of the request.

2. If the information in possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for the information, the requested Party shall use all relevant information gathering measures 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 Contracting Party shall ensure that its competent authority, for the purposes specified in Article 1 of this Agreement, has the authority to obtain and provide 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) information regarding the legal and beneficial ownership of companies, partnerships, trusts, foundations 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, beneficiaries and protectors; and in the case of foundations, information on founders, members of the foundation council and beneficiaries.

5. 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.

6. The competent authority of the requesting Party shall provide the following information to the competent authority of the requested Party when making a request for information under this Agreement in order to demonstrate the foreseeable relevance of the information to the request:

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

b) the nature and type of the information requested, including a description of the specific evidence sought and the form in which the requesting Party would prefer to receive the information;

c) the tax purposes for which the information is sought and the reasons for believing that the information requested is foreseeably relevant to the administration or enforcement of the domestic laws of the requesting Party;

d) reasonable grounds for believing that the information requested is present in the territory of the requested Party or is in the possession or control of a person subject to the jurisdiction of the requested Party;

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

f) a statement that the request is in conformity with this Agreement and the laws and administrative practices of the requesting Party, and that if the requested information were 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.

g) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

7. Notwithstanding the provisions of Article 10 in particular, the competent authority of the Requested Party shall forward the requested information as promptly as possible to the requesting Party. To ensure a prompt response, the competent authority of the Requested Party shall:

a) confirm the receipt of a request in writing to the competent authority of the requesting Party and shall notify the competent authority of the requesting Party of any deficiencies in the request within 60 days of receipt of the request; and

b) if the competent authority of the requested Party has been unable to obtain and provide the information requested within 90 days of receipt of the request, including if obstacles are encountered in furnishing the information, or if the competent authority of the requested Party refuses to provide the information, it shall immediately inform the competent authority of the requesting Party to explain the reasons for its inability or the obstacles or its refusal.

## Article 6

### *Tax examinations (or investigations) abroad*

1. The requested Party may, to the extent permitted under its domestic laws, allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party in connection with a request to interview persons and examine records with the prior written consent of the 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 persons 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 be present at the appropriate part of 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 7

##### *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;
- b) 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;
- c) where the disclosure of the information requested would be contrary to the public policy (ordre public) of the requested Party;
- d) the requesting Party would not be able to obtain the information
  - (i) under its own laws for purposes of administration or enforcement of its own tax laws or
  - (ii) in response to a valid request from the Requested Party under this Agreement.

2. This Agreement shall not impose upon a Contracting Party any obligation to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Information described in Article 5(4) shall not by reason of that fact alone constitute such a secret or process.

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 a professional legal advisor where such communications are:

- (i) produced for the purposes of seeking or providing legal advice; or
- (ii) produced for the purposes of use in existing or contemplated legal proceedings;

but this paragraph shall not prevent an attorney, solicitor or barrister from providing the name and address of a client where doing so would not constitute a breach of legal privilege.

4. A request for information shall not be refused on the ground that the tax liability giving rise to the request is disputed by the taxpayer.

5. 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.

6. 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 8

### *Confidentiality*

1. All information provided and received by the competent authorities of the Contracting Parties shall be kept 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 or the oversight of the above. 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.

2. The information may not be disclosed to any other person or entity or authority without the express written consent of the competent authority of the requested Party.

3. Information provided to a requesting Party shall not be disclosed to any other jurisdiction.



## Article 9

*Safeguards*

The rights and safeguards secured to persons by the laws or administrative practices of the Requested Party remain applicable. The rights and safeguards may not be applied by the Requested Party in a manner that unduly prevents or delays effective exchange of information.

## Article 10

*Administration costs or difficulties*

Incidence of costs incurred in providing assistance (including reasonable costs of third Contracting Parties and external advisors in connection with litigation or otherwise) shall be agreed by the competent authorities of the Contracting Parties.

## Article 11

*Implementing legislation*

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

## Article 12

*Language*

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

## 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 use their best efforts to resolve the matter by mutual agreement.

2. The competent authorities of the Contracting Parties may mutually determine the procedures to be used under Articles 5 and 6 of this Agreement.

3. The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of this Agreement.

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

#### Article 14

##### *Entry into force*

1. This Agreement shall enter into force on the first day of the second month after the later of the dates on which each of the Contracting Parties has notified the other in writing that the formalities constitutionally or otherwise required in their respective Contracting Party have been complied with.

2. Upon entry into force, the provisions of this Agreement 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 15

##### *Termination*

1. Either Contracting Party may terminate the Agreement by serving a notice of termination 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. A Contracting Party shall remain bound by the provisions of Article 8 with respect to any information obtained under the Agreement.

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

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

*For the Kingdom of the Netherlands,*

P. W. WALDECK

*For Montserrat,*

R. T. MEADE

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**Protocol between the Kingdom of the Netherlands and Montserrat  
(as authorised by the Government of the United Kingdom of Great  
Britain and Northern Ireland) concerning the interpretation and  
application of the Agreement between the Kingdom of the  
Netherlands and Montserrat (as authorised by the Government of  
the United Kingdom of Great Britain and Northern Ireland) for  
the exchange of information relating to taxes**

The Government of the Kingdom of the Netherlands and the Govern-  
ment of Montserrat (hereinafter referred to as the “Contracting Parties”),

Desiring to facilitate the exchange of information relating to taxes,

Have further agreed as follows:

Article 1

*(ad article 5)*

If personal data are exchanged under the Agreement between the Kingdom of the Netherlands and Montserrat (as authorised by the Government of the United Kingdom of Great Britain and Northern Ireland) for the exchange of information relating to taxes (the “Agreement”), the following additional provisions shall apply:

a) The competent authority of the Contracting Party which received the information (“the receiving authority”) may use such data only for the stated purpose and shall be subject to the conditions prescribed by the competent authority of the Contracting Party which supplied the data (“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 the 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 provide, 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

1. 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 the 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.

2. The competent authorities may initiate discussions should:

- (i) the Kingdom of the Netherlands enter into an agreement with another jurisdiction comparable to Montserrat which provides for other forms of exchange of information;
- (ii) Montserrat enter into an agreement with another jurisdiction which provides for other forms of exchange of information;

- (iii) Montserrat introduce new legislation which enables other forms of exchange of information.

3. If the Kingdom of the Netherlands enters into arrangements with another jurisdiction comparable to Montserrat for the provision of information with respect to taxes that are less burdensome in any material respect than the provisions of the Agreement, Montserrat may initiate discussions with the Netherlands with a view to modifying the Agreement to have similar effect.

#### Article 3

This Protocol shall form an integral part of the Agreement between the Kingdom of the Netherlands and Montserrat (as authorised by the Government of the United Kingdom of Great Britain and Northern Ireland) for the exchange of information relating to taxes, and shall enter into force on the same date as that Agreement.

#### Article 4

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 this Protocol have been complied with.

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

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

*For the Kingdom of the Netherlands,*

P. W. WALDECK

*For Montserrat,*

R. T. MEADE

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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, eerste lid, van het Verdrag, juncto artikel 3 van het Protocol, in werking treden op de eerste dag van de tweede maand na de laatste van de data waarop de verdragsluitende partijen elkaar er schriftelijk van in kennis hebben gesteld dat is voldaan aan hun constitutioneel of anderszins vereiste formaliteiten.

J. VERWIJZINGEN

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

Uitgegeven de *negenentwintigste* januari 2010.

*De Minister van Buitenlandse Zaken,*

M. J. M. VERHAGEN