

No. 49463

**Netherlands (for the European part of the Netherlands)
and
Cook Islands**

Agreement between the Kingdom of the Netherlands and the Cook Islands on the exchange of information relating to tax matters (with protocol). Mexico City, 1 September 2009, and Rarotonga, 23 October 2009

Entry into force: *7 September 2011, in accordance with article 12*

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**Pays-Bas (pour la partie européenne des Pays-Bas)
et
Îles Cook**

Accord entre le Royaume des Pays-Bas et les Îles Cook relatif à l'échange de renseignements en matière fiscale (avec protocole). Mexico, 1^{er} septembre 2009, et Rarotonga, 23 octobre 2009

Entrée en vigueur : *7 septembre 2011, conformément à l'article 12*

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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);
 - (vii) 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 (Onroerende-zaakbelasting);
 - (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