

No. 50063

**Netherlands (for the European part of the Netherlands)
and
United Kingdom of Great Britain and Northern Ireland
(in respect of Guernsey)**

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 (with memorandum of understanding). St. Peter Port, 25 April 2008

Entry into force: *5 November 2009, in accordance with article 8*

Authentic text: *English*

Registration with the Secretariat of the United Nations: *Netherlands, 6 August 2012*

**Pays-Bas (pour la partie européenne des Pays-Bas)
et
Royaume-Uni de Grande-Bretagne et d'Irlande du Nord
(à l'égard de Guernesey)**

Accord entre le Royaume des Pays-Bas et les États de Guernesey relatif à l'accès à des procédures amiables en cas de correction des bénéfices d'entreprises associées et à l'application de l'exonération de participation des Pays-Bas (avec memorandum d'accord). Saint-Pierre-Port, 25 avril 2008

Entrée en vigueur : *5 novembre 2009, conformément à l'article 8*

Texte authentique : *anglais*

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[ENGLISH TEXT – TEXTE ANGLAIS]

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.