

No. 50230

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

**Agreement between the States of Guernsey and the Kingdom of the Netherlands for the exchange of information relating to tax matters (with memorandum of understanding).
St. Peter Port, 25 April 2008**

Entry into force: *11 April 2009, in accordance with article 11*

Authentic text: *English*

Registration with the Secretariat of the United Nations: *Netherlands, 1 November 2012*

**Pays-Bas (à l'égard du Royaume en Europe)
et
Royaume-Uni de Grande-Bretagne et d'Irlande du Nord (à
l'égard de Guernesey)**

Accord entre les États de Guernesey et le Royaume des Pays-Bas relatif à l'échange de renseignements en matière fiscale (avec mémorandum d'accord). Saint-Pierre-Port, 25 avril 2008

Entrée en vigueur : *11 avril 2009, conformément à l'article 11*

Texte authentique : *anglais*

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1^{er} novembre 2012*

[ENGLISH TEXT – TEXTE ANGLAIS]

Agreement between the States of Guernsey and the Kingdom of the Netherlands for the exchange of information relating to tax matters

Whereas the States of Guernsey and the Kingdom of the Netherlands (“the Parties”) recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters;

Whereas the Parties have long been active in international efforts in the fight against financial and other crimes, including the targeting of terrorist financing;

Whereas it is acknowledged that the States of Guernsey has the right, under the terms of the Entrustment from the United Kingdom of Great Britain and Northern Ireland, to negotiate, conclude, perform and subject to the terms of this agreement terminate a tax information exchange agreement with the Netherlands;

Whereas the States of Guernsey on the 21st February 2002 entered into a political commitment to the OECD’s principles of effective exchange of information;

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

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

Article 1

Scope of the Agreement

The Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning the taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, enforcement or collection of tax with respect to persons subject to such taxes, or to the investigation of tax matters or the prosecution of criminal tax matters in relation to such persons. A requested Party is not obliged to provide information which is neither held by its authorities nor in the possession of or obtainable by persons who are within its territorial jurisdiction. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable. The requested Party shall use its best endeavours to ensure that the effective exchange of information is not unduly prevented or delayed.

Article 2

Taxes Covered

1. This Agreement shall apply to the following taxes imposed by the Parties:

- a) in the case of the Netherlands:
 - (i) Income tax (Inkomstenbelasting)
 - (ii) Wages tax (Loonbelasting)
 - (iii) Company tax, including the Government share in the net profits of the exploitation of natural resources levied pursuant to 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)
- b) in the case of Guernsey:
 - (i) income tax;
 - (ii) dwellings profits tax.

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

agree. The competent authority of each Party shall notify the other of substantial changes in laws which may affect the obligations of that Party pursuant to this Agreement.

Article 3

Definitions

1. In this Agreement:

a) “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;

b) “Guernsey” means Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands, in accordance with international law;

c) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;

d) “competent authority” means,

– in the case of the Netherlands, the Minister of Finance or his authorised representative;

– in the case of Guernsey, the Administrator of Income Tax or his delegate;

e) “criminal laws” means all criminal laws designated as such under domestic law, irrespective of whether such are contained in the tax laws, the criminal code or other statutes;

f) “criminal tax matters” means tax matters involving intentional conduct whether before or after the entry into force of this Agreement which is liable to prosecution under the criminal laws of the requesting Party;

g) “information gathering measures” means laws and administrative or judicial procedures enabling a requested Party to obtain and provide the information requested;

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

i) “person” means a natural person, a company or any other body or group of persons;

j) “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;

k) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;

l) “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;

m) “public collective investment scheme” means any 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;

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

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

p) “tax” means any tax covered by this Agreement.

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 laws 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 4

Exchange of Information Upon Request

1. The competent authority of the requested Party shall provide upon request by the requesting Party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Party if it had occurred in the territory of the requested Party. The competent authority of the requesting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means, except where recourse to such means would give rise to disproportionate difficulty.

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, the requested Party shall use at its own discretion all relevant information gathering measures necessary 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 Party shall ensure that it has the authority, subject to the terms of Article 1, to obtain and provide, through its competent authority and upon request: