

PROTOCOL OF 11TH SEPTEMBER, 2009

The Netherlands

between the Kingdom of the Netherlands and the British Virgin Islands concerning the interpretation and implementation of the Agreement between the Kingdom of the Netherlands and the British Virgin Islands for the exchange of information with respect to tax

The Government of the Kingdom of the Netherlands and the Government of the British Virgin Islands, (hereinafter referred to as “the Contracting Parties”), desiring to facilitate the exchange of information with respect to taxes, have further agreed as follows:

Article 1 **(Article 5 - Data Protection)**

1. If personal data are exchanged under the Agreement between the Kingdom of the Netherlands and the British Virgin Islands for the Exchange of Information With Respect to Taxes (hereinafter referred to as “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;
- c) personal data may be supplied only to the responsible agencies. Any subsequent supply of the information to other agencies may be effected only with the prior written 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 ban 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 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 of 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 the supply of data pursuant to this Protocol. In relation to the person suffering unlawful damage, the receiving authority may not plead in its defence that the damage had been caused by the supplying authority;
- 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 authorities shall be obliged to keep official records of the supply and receipt of personal data;
- i) the supplying and the receiving authorities shall be obliged to take effective measures to protect the personal data supplied against unauthorized access, unauthorized alteration and unauthorized disclosure.

Article 2 **(Article 5 - Notification on Request)**

For the purpose of facilitating the exchange of information under the Agreement, where information received by the competent authority of the Requesting Party is not sufficient to enable it to comply with the request, 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.

Article 3 **(Modifications to the Agreement)**

At any time after the entry into force of this Protocol, a Contracting Party may propose modifications, for the purpose of bringing the Agreement into conformity with the internationally agreed standards on exchange of information for tax purposes. Upon receipt of such a proposal, the other Contracting Party shall enter into good faith negotiations concerning the proposal.

Article 4 **(Non Prejudicial and Restrictive Measures)**

1. Neither of the Contracting Parties shall apply prejudicial or restrictive measures based on harmful tax practices to residents or nationals of either Contracting Party so long as this Agreement is in force and effective.
2. 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 the other Contracting Party does not engage in effective exchange of information and/or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes and one of the preceding criteria.
3. Without limiting the generality of paragraph 2, 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 measures, applied by either Contracting Party against, amongst others, members of the OECD generally.

Article 5 **(Variation of Protocol)**

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 Protocol. 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 authority may initiate discussions should:

- (i) the Kingdom of the Netherlands enter into an agreement with another jurisdiction which provides for other forms of exchange of information;
 - (ii) the British Virgin Islands enter into an agreement with another jurisdiction which provides for other forms of exchange of information;
 - (iii) either Contracting Party introduce new legislation which enables other forms of exchange of information;
- b) If the Netherlands enters into arrangements with other jurisdiction for the provision of information with respect to taxes that are less burdensome in any material respect than the provisions of the Agreement, the British Virgin Islands may initiate discussions with the Netherlands with a view to modifying the Agreement to have similar arrangements.

Article 6

This Protocol shall form an integral part of the Agreement between the Kingdom of the Netherlands and the British Virgin Islands for the Exchange of Information With Respect to Taxes, and shall enter into force on the same date as the Agreement.

Article 7

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 through diplomatic channels that the constitutional or internal requirements for the entry into force of the amendment have been complied with.