

PROTOCOL OF 14TH SEPTEMBER, 2009

The Netherlands

BETWEEN THE KINGDOM OF THE NETHERLANDS AND SAMOA CONCERNING THE INTERPRETATION AND APPLICATION OF THE AGREEMENT BETWEEN THE KINGDOM OF THE NETHERLANDS AND SAMOA ON THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS

The Government of the Kingdom of the Netherlands and the Government of Samoa (hereinafter referred to as “the Contracting Parties”),

Whereas the Government of the Netherlands recognises the commitment Samoa made to the Organisation for Economic Co-operation and Development (OECD) in 2002 to respect the principles of transparency and exchange of information and the Netherlands considers that this Agreement demonstrates the commitment of Samoa to high standards for effective exchange of information with respect to both criminal and civil taxation matters;

Whereas the Government of the Netherlands also recognises the progressive steps that Samoa has taken to demonstrate its commitment to high standards for effective exchange of information with respect to both criminal and civil taxation matters in negotiation of Tax Information Exchange Agreements with other countries and recognises that Samoa is committed to combating tax abuse by putting in place mechanisms which enhance transparency; for example, the proactive steps taken to amend the domestic legislation of Samoa for the purpose of fulfilling this Agreement and upon entering into the Agreement, the Netherlands does not consider Samoa to be engaging in any harmful tax practises and thus is not referred to as a tax haven;

Desiring to facilitate the exchange of information relating to taxes, have further agreed as follows:

Article 1

(Article 5)

If personal data are exchanged under 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 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 this 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 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 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

(Article 12)

In the event that a Contracting Party applies prejudicial or restrictive measures based on harmful tax practices to residents or nationals of the other Contracting Party, either Contracting Party may immediately initiate competent authority proceedings to resolve the matter. 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 any one or more of the following applies:

- a)* the other Contracting Party does not engage in effective exchange of information;
- b)* it lacks transparency in the operation of its laws, regulations or administrative practices; or
- c)* that there is no or nominal taxes.

Without limiting the generality of 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 measure, applied by either contracting party against, amongst others, members of the OECD generally.

Article 3

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 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.

- a)* The competent authorities may initiate discussions should:
 - (i)* the Kingdom of the Netherlands enter into an agreement with another jurisdiction comparable to Samoa which provides for other forms of exchange of information;

- (ii) Samoa enters into an agreement with another jurisdiction which provides for other forms of exchange of information;
 - (iii) Samoa introduces new legislation which enables other forms of exchange of information.
- b) If the Netherlands enters into arrangements with another jurisdiction comparable to Samoa for the provision of information with respect to taxes that are less burdensome in any material respect than the provisions of the Agreement, Samoa may initiate discussions with the Netherlands with a view to modifying the Agreement to have similar effect.

Article 4

This Protocol shall form an integral part of the Agreement between the Kingdom of the Netherlands and Samoa on the exchange of information relating to taxes, and shall enter into force on the same date as the Agreement.

Article 5

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 the amendment have been complied with.