

P.U. (A) 177/2010
Signed: 4 December 2009
Effective Date: 19 October 2010

SECOND PROTOCOL AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF MALAYSIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AS AMENDED BY PROTOCOL

**THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS
AND
THE GOVERNMENT OF MALAYSIA**

Desiring to further amend the Agreement between the two Governments for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at The Hague on 7 March 1988, as amended by the first Protocol to that Agreement, signed at The Hague on 4 December 1996 (hereinafter referred to as “the Agreement”);

Have agreed as follows:

Article 1

Article 26 of the Agreement shall be deleted and replaced by the following:

**“Article 26
Exchange of information**

“(1) The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

(2) Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

(3) In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).

(4) If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

(5) In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person”.

Article 2

(1) Each of the Contracting States shall notify the other, through diplomatic channels on the completion of the procedures required by its law for the bringing into force of this Protocol which shall form an integral part of the Agreement. This Protocol shall enter into force on the date of the latter of these notifications, and its provisions shall have effect for requests made on or after the date of the entry into force of this Protocol with regard to tax years beginning on or after 1 January 2010.

(2) This Protocol shall cease to be effective at such a time as the Agreement ceases to be effective in accordance with Article 29 of that Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Protocol.

Done in duplicated at The Hague this 4 day of December 2009 in the Netherlands language, in Bahasa Malaysia and in the English language, all texts being equally authentic. In the case of any divergence of interpretation between any of the texts, the English text shall prevail.