



## **Overeenkomst tussen de bevoegde autoriteiten van Canada en Nederland met betrekking tot de fiscale kwalificatie van een fonds dat naar Nederlands belastingrecht kwalificeert als besloten fonds voor gemene rekening**

*1 juni 2010*

*Nr. IFZ2010/284M*

*Directoraat-Generaal voor Fiscale Zaken, Directie Internationale Fiscale Zaken*

De Minister van Financiën deelt de uitkomst van een overleg met de bevoegde autoriteiten van Canada mede.

*De Minister van Financiën,  
namens deze:  
de Directeur-Generaal Fiscale Zaken,  
A. Berg.*



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## COMPETENT AUTHORITY AGREEMENT

The competent authorities of Canada and the Netherlands have reached the following mutual agreement regarding the application of the Convention Between the Government of Canada and the Government of the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (Canada-Netherlands Convention) to investors in a closed *fonds voor gemene rekening* (hereinafter: closed FGR) established in the Netherlands.

This Agreement applies to a closed FGR formed in conformity with Dutch civil and taxation laws that acts as a pooled investment vehicle for the assets of pension funds and other investors. The closed FGR invests these assets on behalf of those investors.

The competent authorities of Canada and the Netherlands agree that a closed FGR is not the beneficial owner of the income derived by the fund; the income derived by the fund belongs to its investors in proportion to their respective participations in the fund. As such, a closed FGR is not entitled to benefits under the Convention in respect of income derived on behalf of its investors.

A closed FGR can also consist of several closed FGRs. Such an umbrella fund is also not entitled to benefits under the Convention in respect of income derived on behalf of its investors.

### **Claim for application of the benefits on behalf of the investors**

A closed FGR which is established in the Netherlands and which receives income arising in Canada may itself (on behalf of the investors in the closed FGR), represented by its fund manager or its depository, in lieu of and instead of, the investors in the closed FGR claim the benefits (by way of a refund request) of a Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion to which Canada is a Contracting State and which is applicable to those investors.

Such refund claims are subject to enquiry and a fund manager or depository shall provide relevant information which includes a schedule of investors (names, addresses and, where requested, a statement by the investor confirming they are the beneficial owner of the income and resident in a country that has a Convention with Canada) and the allocated income relevant to the claim.

A closed FGR may not make a claim for benefits on behalf of an investor in the closed FGR if the investor has itself made a claim for benefits in respect of the same income. If a closed FGR intends to make a claim for benefits on behalf of an investor, the fund manager or its depository should clearly communicate this to the investor to avoid duplicate claims in respect of the same income.

In respect of refund claims, the Canada Revenue Agency will currently require the closed FGR (fund manager or depository) to file an affidavit containing (i) the names and addresses of all investors, separated by applicable treaty rate and (ii) a statement that the fund manager/depository will file a new affidavit on the earlier of three years from the date the last affidavit was sworn and the date any of the investors change. In addition, a separate refund application (NR7-R) should be submitted for each tax rate and payment date. The application should reference the affidavit discussed above, referencing that the affidavit is still valid and, if not still valid, attach a new affidavit. The competent authority of Canada will advise the competent authority of the Netherlands of any changes to the procedure for refund claims made by the closed FGR.

*For the Competent Authority of Canada,  
J. Leroux-Lafontaine,  
Director International, Provincial and Strategic Policy Division.*

*For the Competent Authority of the Netherlands,  
E. Visser,  
Director for International Tax, Policy and Legislation.*