



## **Besluit bekendmaking van het op 14 juli 2015 tussen de Ministers van Financiën van Duitsland en Nederland gesloten Memorandum van Overeenstemming inzake de intensivering van de spontane inlichtingenuitwisseling m.b.t. grensoverschrijdende belastingafspraken met en beslissingen van de belastingdiensten**

17 juli 2015

nr. DGB 2015 – 3524 M

Directoraat-generaal Belastingdienst, Cluster Fiscaliteit / Directe belastingen, Internationale inlichtingenuitwisseling; Duitsland

### **De Staatssecretaris van Financiën maakt het volgende bekend.**

*Dit besluit bevat een bekendmaking van het op 14 juli 2015 tussen de ministers van Financiën van Duitsland en Nederland gesloten Memorandum van Overeenstemming inzake de intensivering van de spontane inlichtingenuitwisseling m.b.t. grensoverschrijdende belastingafspraken met en beslissingen van de belastingdiensten. Het Memorandum heeft betrekking op de spontane uitwisseling van de volgende informatie:*

- *Unilaterale advance pricing agreements (APA's) en beslissingen,*
- *Bilaterale of multilaterale APA's en beslissingen in geval de andere Staat geen partij is bij deze overeenkomst of beslissing,*
- *Andere typen rulings, zoals gedefinieerd door het OESO Forum on Harmful Tax Practices,*
- *Overeenkomsten en beslissingen betreffende preferentiële belastingregimes, zoals innovatieboxen.*

*De eerste uitwisseling heeft betrekking op het jaar 2015, maar in onderling overleg kunnen beide ministeries overeenkomen dat ook informatie wordt uitgewisseld die betrekking heeft op voorgaande jaren.*

### **MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL MINISTRY OF FINANCE OF GERMANY AND THE MINISTRY OF FINANCE OF THE NETHERLANDS ON THE INTENSIFICATION OF THE SPONTANEOUS EXCHANGE OF INFORMATION REGARDING CROSS-BORDER TAX AGREEMENTS AND DECISIONS**

The Federal Ministry of Finance of Germany and the Ministry of Finance of the Netherlands (hereinafter referred to as 'the Participants'),

Having regard to,

The provisions of Article 9 of the Council Directive number 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation (hereinafter referred to as the 'Directive'),

The EU Model Instruction for the spontaneous exchange of cross-border rulings and unilateral advance transfer pricing agreements of 2013 (hereinafter referred to as 'EU Model Instruction'),

The forthcoming changes in EU legislation on exchange of information,

The general principle of reciprocity, which both Participants consider as an important aspect of their mutual cooperation in the field of taxation,

Their desire to,

Be as transparent as possible in the field of taxation

Intensify the spontaneous exchange of information regarding all information with a potential impact on tax assessment(s) executed in the other participating State.

Have agreed the following:



## Article 1

1. For the application of this Memorandum the competent authorities are:
  - a. In the case of the Federal Republic of Germany the Federal Ministry of Finance or the agency to which it has delegated its powers.
  - b. In the case of the Netherlands, the Minister of Finance or his authorized representative.
2. The Participants shall inform each other by exchange of letters about the names and addresses of the authorized representatives concerned and about any subsequent changes in these representatives.

## Article 2

1. The competent authorities of the participating States will provide each other spontaneously with information about any agreement or decision of their tax authorities which has a potential cross border impact on the tax assessment(s) of the other participating State and in particular information about the following agreements and decisions:
  - a. unilateral advance pricing agreements and decisions;
  - b. bilateral or multilateral advance pricing agreements and decisions if the other participating State is not a party of the bilateral or multilateral agreement or decision,
  - c. other types of tax rulings as defined by the OECD Forum on Harmful Tax Practices,
  - d. agreements and decisions regarding preferential tax regimes, e.g. innovation boxes.
2. For the purpose of paragraph 1 letter a. and b. a unilateral, bilateral or multilateral advance pricing agreement is any binding agreement or ruling between a taxpayer and one or more than one State (or its political sub-divisions or local authorities) that determines, in advance of controlled transactions, a set of criteria (e.g. transfer pricing method, comparables and appropriate comparable adjustments, critical assumptions as to future events) for the determination of the transfer pricing or the transfer price itself for those controlled transactions over a fixed period of time. Advance pricing agreements as mentioned in this paragraph also include decisions of the tax authorities with corresponding contents.
3. The information referred to in paragraph 1 will be forwarded to the competent authority of the other State as quickly as possible and no later than one month after it becomes available.
4. If it should appear that the provided information is incorrect or incomplete, the competent authorities are obliged to contact each other about this as soon as possible.

## Article 3

Any exchange of information shall be either in English or accompanied by an English translation of the relevant information.

## Article 4

This Memorandum does not bind in any way the Participants with respect to the forthcoming changes in EU legislation on exchange of information.

## Article 5

1. If necessary, the Participants confer on the way in which the obligations resulting from this Memorandum are executed.
2. The information referred to in Article 2 of this Memorandum is provided electronically by using the EU common communication network (CCN). In joint consultation both Participants will agree upon the form they will use for the information exchange.
3. The information to be exchanged includes, if available, the information as mentioned under 5.1 and 5.2 of the EU Model Instruction.

## Article 6

1. This Memorandum is concluded for a period of two years and will take effect from the date of signature.
2. This Memorandum will be applicable for the first time to information according to Article 2 in the



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calendar year 2015. In joint consultation both Participants can agree that information will be exchanged related to previous years.

3. This Memorandum may be modified at any time by a written agreement between the Participants.
4. The Memorandum may be terminated at any time by written notification by either Participant and will remain operative for six months from the date of receiving such notification by the other Participant.

#### **Article 7**

This Memorandum may be referred to as 'Memorandum of Understanding between Germany and the Netherlands on the intensification of spontaneous exchange of information regarding cross-border tax agreements and decisions.'

#### **Article 8**

This Memorandum will be evaluated two years after the date of commencement, unless new EU legislation requires an earlier review. However, questions with regard to this Memorandum can be addressed at any time by one of the Participants.

Done on 14 July 2015 in Brussels in duplicate in the English language.

*The Minister of Finance of the Federal Republic of Germany,  
W. Schäuble*

*The Minister of Finance of the Netherlands,  
J. Dijsselbloem*