



## Overeenkomst tussen de bevoegde autoriteiten van Zwitserland en Nederland inzake de fiscale behandeling van de Nederlandse fiscale beleggingsinstelling en de Zwitserse Fonds Commun de Placement en de Société d'Investissement à Capital Variable

18 april 2018  
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De directeur Internationale Zaken en Verbruiksbelastingen heeft namens de Staatssecretaris van Financiën het volgende besloten.

### COMPETENT AUTHORITY AGREEMENT

The competent authorities of Switzerland and the Netherlands (hereinafter: 'the competent authorities') have reached the following mutual agreement regarding the application of the Convention between the Kingdom of the Netherlands and the Swiss Confederation for the avoidance of double taxation with respect to taxes on income signed at The Hague on February 26<sup>th</sup>, 2010 and the related Protocol ('the Convention') with respect to a Netherlands fiscal investment institution (*fiscale beleggingsinstelling*, 'FBI'), by a Swiss contractual fund (*fonds commun de placement*, 'FCP') and a Swiss open ended investment fund (*société d'investissement à capital variable*, 'SICAV'). This Competent Authority Agreement ('Agreement') is entered into under Article 25, paragraph 3 (Mutual Agreement Procedure) of the Convention.

#### **Purpose of the Agreement**

1. The competent authorities consider that difficulties or doubts may arise as to the application of the provisions of the Convention on items of income received by a FBI, a SICAV and a FCP (abbreviated 'CIVs').

In this respect reference is made to the issues raised in paragraphs 6.17 to 6.20 of the OECD Commentary on Article 1 of the OECD Model Tax Convention (as it read on 15 July 2014). The purpose of this Agreement is to clarify the application of the provisions of the Convention and to establish accompanying procedures with respect to refund of withholding taxes on items of income received by the above mentioned CIVs.

The competent authorities agree that in principle the entitlement to treaty benefits should not be restricted in case of investments through CIVs. On the other hand, the competent authorities agree that an entitlement to the benefits of the Convention that would not have been available in case of a direct investment should be avoided.

#### **Scope of the Agreement**

2. In the case of the Netherlands, the relevant vehicles are FBIs, which are tax liable entities as defined in Article 28 of the Dutch Corporate Income Tax Act ('Wet op de vennootschapsbelasting 1969').

In the case of Switzerland, the relevant vehicles are FCPs as defined in Article 25 and SICAVs as defined in Article 36 of the Federal Act on Collective Investment Schemes of 23 June 2006, which are fiscally transparent.

#### **For FBI**

3. Provided that persons who are residents according to Article 4 of the Convention of a Contracting State in which a vehicle mentioned in paragraph 2 is organised ('Residents') beneficially own more than 95% of the capital of such a vehicle, that vehicle may claim refund of the withholding tax on income derived from the other Contracting State ('Source State') under Articles 10 or 11 of the Convention.
4. Where the percentage of ownership by such Residents does not exceed 95%, the vehicles mentioned in paragraph 2 may claim refund of the withholding tax under Articles 10 or 11 of the Convention limited to that proportion of the capital of the vehicles beneficially owned by Residents.



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#### For FCP and SICAV

5. A FCP or SICAV, which is established in Switzerland and which receives items of income to which the Convention applies, may itself, represented by its fund manager or its depository, claim the benefits of the Convention on behalf of the investors which are residents of Switzerland under the Convention.
6. A FCP or SICAV may not make a refund claim for benefits in respect of an item of income on behalf of any investor in a FCP or SICAV if the investor has itself made a refund claim for benefits in respect of the same item of income.

#### Administrative procedure

7. The vehicle or its authorised representatives must indicate, based on data established at the due date of withholding tax in the Source State or at least once every year, and in accordance with the regulations of the Source State, the percentage of ownership of the capital of the vehicle beneficially owned by Residents. For a vehicle mentioned in paragraph 2 with a large number of investors, this may be done through pooled information per country. This vehicle or its authorized representatives may provide the percentage of investors per country in that vehicle on a pooled basis per 1 January of the respective year. Each State may apply appropriate control mechanisms.
8. The vehicle or its authorized representatives making a claim for treaty benefits under paragraph 3, 4 or 5 using the yearly determination method described in paragraph 7 shall make the determinations described therein to the best of his knowledge and belief. A financial intermediary need not provide investor-specific information to the vehicle or its authorized representatives, or to other financial intermediaries between the owner of beneficial interests and the CIV, at the time the determination is made, but may provide pooled information regarding the owners of beneficial interests. Investor residence may also be determined on the basis of pooled information provided to the financial intermediary by a lower-tier financial intermediary. It is a condition of making a claim pursuant to this competent authority agreement, that the CIV, also regarding pooled information provided by any financial intermediary, must, upon request from the Contracting State in which the income arises, provide to that Contracting State a certification of an accountant. This certification is to include the confirmation of the pooled information regarding the residence of the owners of the beneficial interest and the reliability regarding the method used to make those determinations.

#### ***Final Provisions***

9. Paragraph 4 shall not limit the entitlement to treaty benefits of investors in a vehicle mentioned in paragraph 2 who are residents of a third state.
10. This agreement will replace the Competent Authority Agreement regarding FBIs, FCPs and SICAVs signed in March 2016 and shall apply to all pending and future claims for refunds.

Agreed by the undersigned competent authorities:

*Date: 21 March 2018 (Berne)*

*For the Swiss Competent Authority  
Pascal Duss  
State Secretariat for International Financial Matters*

*Date: 12 March 2018 (The Hague)*

*For the Netherlands Competent Authority  
Harry Roodbeen  
Ministry of Finance*