



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

11 juni 2012

Nr. IFZ/2012/334M

Directoraat-Generaal voor Fiscale Zaken, Directie Internationale Fiscale Zaken

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De Staatssecretaris van Financiën deelt de uitkomst van een overleg met de bevoegde autoriteiten van de Verenigde Staten mede.

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

Competent authority agreement

The Competent Authorities of the Netherlands and the United States enter into the following agreement (the 'Agreement') to clarify the application of the Convention between the Kingdom of the Netherlands and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, signed on December 18, 1992, and amended by Protocols signed on October 13, 1993 and March 8, 2004 (the 'Treaty') with respect to U.S. source dividends and interest paid to a besloten fonds voor gemene rekening (limited fund for mutual account) ('LFMA'). The Agreement is entered into under Article 29 (Mutual Agreement Procedure) of the Treaty.

A LFMA is a Dutch arrangement whereby participants in the LFMA agree to pool their capital to invest collectively in a variety of assets and to share in the proceeds of the investment. A LFMA is not a legal entity, but is an aggregate of the LFMA's assets and obligations. Each participant in a LFMA is entitled to a pro rata share, based on the size of the investor's interest in the LFMA, of the LFMA's assets and any income generated by the LFMA's assets. A participant's interest in a LFMA is based on the amount of participations held by the participant. Participations are recorded in registered form and no certificates are issued. Each participation represents an equal interest in the net asset value of the LFMA.

Under Dutch law, a LFMA is treated as a fiscally transparent entity and the participants in the LFMA, wherever resident, are required to take into account separately, on a current basis, the participant's respective share of an item of income paid to the LFMA, whether or not distributed to the participant. In addition, the character and source of the item of income in the hands of the participant are determined as if such item of income were realized directly from the source from which realized by the LFMA. Accordingly, participants in a LFMA are subject to tax on their proportionate share of the LFMA's income in the same manner as if they had received the income or assets directly.

It is understood that a LFMA organized under Dutch law is not a 'resident' of the Netherlands within the meaning of Article 4 (Resident) of the Treaty because it is not a person that is liable to tax in the Netherlands. Therefore, a LFMA is not eligible to claim benefits in its own right under the Treaty.

Paragraph 4 of Article 24 (Basis of Taxation) of the Treaty provides that:

In the case of an item of income, profit or gain derived through a person that is fiscally transparent under the laws of either State, such item shall be considered to be derived by a resident of a State to the extent that the item is treated for the purposes of the taxation law of such State as the income, profit or gain of a resident.

Pursuant to Article 24(4), the Competent Authorities agree that U.S. source dividends and interest received by a LFMA will be treated as income derived by a resident of the Netherlands to the extent



that such income is subject to tax as the income of a resident of the Netherlands. Thus, a person who is a resident of the Netherlands that derives dividends or interest income through a LFMA may be entitled to treaty benefits if such person otherwise meets all applicable requirements under the Treaty.

Procedures for claiming treaty benefits

A LFMA may claim treaty benefits on behalf of its participants by filing a Form W-8IMY (Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding), in accordance with all applicable U.S. procedures, as either a withholding foreign partnership or a nonwithholding foreign partnership.

Notwithstanding the previous paragraph, a LFMA whose participants are exclusively Netherlands resident tax-exempt companies referred to in points 1) or 2) of Chapter IV of the mutual agreement entered into on August 6, 2007 with respect to the qualification of certain Netherlands entities for benefits under Article 35 (Exempt Pension Trusts) of the Treaty may continue to follow the procedures set forth in Chapter V of that agreement with respect to claims for benefits under Article 35 of the Treaty.

Publication

The Agreement will be published in the Dutch Government Gazette (in Dutch: '*Staatscourant*') and in the Internal Revenue Bulletin. The Agreement will enter into force from the date of signing the Agreement by the competent authorities of the United States of America and the Netherlands and shall be subject to regular review.

Agreed to by the undersigned competent authorities:

Washington D.C., May 21st, 2012

*M. Danilack,
U.S. Competent Authority.*

The Hague, May 15th, 2012

*H.G.(Harry) Roodbeen,
Netherlands Competent Authority.*