



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

*1 februari 2013*

*Nr. IFZ/2013/26M*

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

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

*De Staatssecretaris van Financiën*

*namens deze:*

*de Directeur-Generaal Fiscale Zaken,*

*A. Berg.*



## COMPETENT AUTHORITY AGREEMENT

The competent authorities of Spain and the Netherlands have reached the following mutual agreement regarding the application of the Convention between the Government of the State of Spain and the Government of the Kingdom of the Netherlands for the Avoidance of Double Taxation with respect to taxes on income and on capital and the related Protocol signed at Madrid on 16 June 1971 to investors in closed funds for mutual account 'besloten fonds voor gemene rekening' (hereinafter: 'closed FGR').

This Agreement applies to closed FGRs formed in conformity with the Decree of 11 January 2007, CPP2006/1870M, Dutch. Gov. Gaz. No 15, 2007. A closed FGR can act 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 the Netherlands and Spain agree that a closed FGR<sup>(1)</sup> is fiscally transparent.

A closed FGR can also consist of several closed FGRs as described in par. 4 of the Decree of 11 January 2007, CPP2006/1870M, Dutch. Gov. Gaz. No 15, 2007. Such an umbrella fund is also fiscally transparent.

Since a closed FGR is fiscally transparent, all income and gains derived by the fund from the fund assets are allocated to the investors in the closed FGR in proportion to their participations in the fund.

### **Request for application of the benefits of a Convention on behalf of the participants**

A closed FGR which is established in the Netherlands and which receives income arising in Spain may itself, represented by its fund manager or its depository, in lieu of and instead of the investors in the closed FGR, claim the benefits of an agreement for the avoidance of double taxation to which Spain is a party and which is applicable to those investors on behalf of those investors in the closed FGR.

Such claims may be subject to enquiry and a fund manager or depository shall provide relevant information which should include a schedule of investors (names, addresses, country of residence, certificates of residence and a statement by the investor confirming that the investor is the beneficial owner of the income) and allocated income relevant to a claim.

An investor may not make a claim for benefits if the closed FGR has itself made a claim on the investor's behalf 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.

This Agreement shall be subject to regular review.

This Agreement will enter into force as of January 1<sup>st</sup>, 2013.

Agreed by the undersigned competent authorities:

Madrid,  
Date: 18 December 2012  
Mr. Diego Martín-Abril Calvo  
Spanish Competent Authority

The Hague  
Date: 18 December 2012  
Mr. Harry Roodbeen  
Netherlands Competent Authority.

<sup>1</sup> Various translations of 'Besloten Fonds voor Gemene Rekening' are possible, such as 'closed fund for mutual account' or 'closed fund for joint account'.