

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2020 Nr. 120

A. TITEL

Verdrag tussen het Koninkrijk der Nederlanden en de Verenigde Staten van Amerika tot verbetering van de internationale naleving van de belastingplicht en tenuitvoerlegging van de FATCA (met Bijlagen); 's-Gravenhage, 18 december 2013

Voor een overzicht van de verdragsgegevens, zie verdragsnummers 012858 en 013795 in de Verdragenbank.

B. TEKST

Op 23 juli 2020 is te Washington een wijziging van Bijlage II bij het Verdrag tot stand gekomen, houdende een aanvulling van onderdeel II van die Bijlage. De Engelse tekst van de nieuwe subonderdelen C en D van onderdeel II van Bijlage II van het Verdrag luidt als volgt:

"C. Sponsored Investment Entity and Controlled Foreign Corporation. A Financial Institution described in subparagraph C(1) or C(2) of this section having a sponsoring entity that complies with the requirements of subparagraph C(3) of this section.

1. A Financial Institution is a sponsored investment entity if (a) it is an Investment Entity established in the Netherlands that is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust pursuant to relevant U.S. Treasury Regulations; and (b) an Entity has agreed with the Financial Institution to act as a sponsoring entity for the Financial Institution.
2. A Financial Institution is a sponsored controlled foreign corporation if
 - a) the Financial Institution is a controlled foreign corporation¹⁾ organized under the laws of the Netherlands that is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust pursuant to relevant U.S. Treasury Regulations;
 - b) the Financial Institution is wholly owned, directly or indirectly, by a Reporting U.S. Financial Institution that agrees to act, or requires an affiliate of the Financial Institution to act, as a sponsoring entity for the Financial Institution; and
 - c) the Financial Institution shares a common electronic account system with the sponsoring entity that enables the sponsoring entity to identify all Account Holders and payees of the Financial Institution and to access all account and customer information maintained by the Financial Institution including, but not limited to, customer identification information, customer documentation, account balance, and all payments made to the Account Holder or payee.
3. The sponsoring entity complies with the following requirements:
 - a) The sponsoring entity is authorized to act on behalf of the Financial Institution (such as a fund manager, trustee, corporate director, or managing partner) to fulfill applicable registration requirements on the IRS FATCA registration website;
 - b) The sponsoring entity has registered as a sponsoring entity with the IRS on the IRS FATCA registration website;

¹⁾ A "controlled foreign corporation" means any foreign corporation if more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, or the total value of the stock of such corporation, is owned, or is considered as owned, by "United States shareholders" on any day during the taxable year of such foreign corporation. The term a "United States shareholder" means, with respect to any foreign corporation, a United States person who owns, or is considered as owning, 10 percent or more of the total combined voting power of all classes of stock entitled to vote of such foreign corporation, or 10 percent or more of the total value of shares of all classes of stock of such foreign corporation.

- c) If the sponsoring entity identifies any U.S. Reportable Accounts with respect to the Financial Institution, the sponsoring entity registers the Financial Institution pursuant to applicable registration requirements on the IRS FATCA registration website on or before the date that is 90 days after such a U.S. Reportable Account is first identified;
- d) The sponsoring entity agrees to perform, on behalf of the Financial Institution, all due diligence, withholding, reporting, and other requirements that the Financial Institution would have been required to perform if it were a Reporting Netherlands Financial Institution;
- e) The sponsoring entity identifies the Financial Institution and includes the identifying number of the Financial Institution (obtained by following applicable registration requirements on the IRS FATCA registration website) in all reporting completed on the Financial Institution's behalf; and
- f) The sponsoring entity has not had its status as a sponsor revoked.

D. *Sponsored, Closely Held Investment Vehicle.* A Netherlands Financial Institution satisfying the following requirements:

1. The Financial Institution is a Financial Institution solely because it is an Investment Entity and is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust pursuant to relevant U.S. Treasury Regulations;
2. The sponsoring entity is a Reporting U.S. Financial Institution, Reporting Model 1 FFI²⁾, or Participating FFI³⁾, is authorized to act on behalf of the Financial Institution (such as a professional manager, trustee, or managing partner), and agrees to perform, on behalf of the Financial Institution, all due diligence, withholding, reporting, and other requirements that the Financial Institution would have been required to perform if it were a Reporting Netherlands Financial Institution;
3. The Financial Institution does not hold itself out as an investment vehicle for unrelated parties;
4. Twenty or fewer individuals own all of the debt interests and Equity Interests in the Financial Institution (disregarding debt interests owned by Participating FFIs and deemed-compliant FFIs and Equity Interests owned by an Entity if that Entity owns 100 percent of the Equity Interests in the Financial Institution and is itself a sponsored Financial Institution described in this paragraph D); and
5. The sponsoring entity complies with the following requirements:
 - a) The sponsoring entity has registered as a sponsoring entity with the IRS on the IRS FATCA registration website;
 - b) The sponsoring entity agrees to perform, on behalf of the Financial Institution, all due diligence, withholding, reporting, and other requirements that the Financial Institution would have been required to perform if it were a Reporting Netherlands Financial Institution and retains documentation collected with respect to the Financial Institution for a period of six years;
 - c) The sponsoring entity identifies the Financial Institution in all reporting completed on the Financial Institution's behalf; and
 - d) The sponsoring entity has not had its status as a sponsor revoked."

D. PARLEMENT

De wijzigingen van 23 juli 2020 van Bijlage II bij het Verdrag behoeven ingevolge artikel 7, onderdeel f, van de Rijkswet goedkeuring en bekendmaking verdragen niet de goedkeuring van de Staten-Generaal.

²⁾ The term Reporting Model 1 FFI means a Financial Institution with respect to which a non-U.S. government or agency thereof agrees to obtain and exchange information pursuant to a Model 1 IGA, other than a Financial Institution treated as a Nonparticipating Financial Institution under the Model 1 IGA. For purposes of this definition, the term Model 1 IGA means an arrangement between the United States or the Treasury Department and a non-U.S. government or one or more agencies thereof to implement FATCA through reporting by Financial Institutions to such non-U.S. government or agency thereof, followed by automatic exchange of such reported information with the IRS.

³⁾ The term Participating FFI means a Financial Institution that has agreed to comply with the requirements of an FFI Agreement, including a Financial Institution described in a Model 2 IGA that has agreed to comply with the requirements of an FFI Agreement. The term Participating FFI also includes a qualified intermediary branch of a Reporting U.S. Financial Institution, unless such branch is a Reporting Model 1 FFI. For purposes of this definition, the term FFI Agreement means an agreement that sets forth the requirements for a Financial Institution to be treated as complying with the requirements of section 1471(b) of the U.S. Internal Revenue Code. In addition, for purposes of this definition, the term Model 2 IGA means an arrangement between the United States or the Treasury Department and a non-U.S. government or one or more agencies thereof to facilitate the implementation of FATCA through reporting by Financial Institutions directly to the IRS in accordance with the requirements of an FFI Agreement, supplemented by the exchange of information between such non-U.S. government or agency thereof and the IRS.

G. INWERKINGTREDING

De wijzigingen van Bijlage II bij het Verdrag zijn, ingevolge het bepaalde in de inleidende tekst van Bijlage II, op 23 juli 2020 in werking getreden, met dien verstande dat de wijzigingen ingevolge diezelfde inleidende tekst terugwerkende kracht hebben tot 25 maart 2019.

Wat betreft het Koninkrijk der Nederlanden, gelden de wijzigingen voor Nederland (het Europese deel en het Caribische deel).

In overeenstemming met artikel 19, tweede lid, van de Rijkswet goedkeuring en bekendmaking verdragen heeft de Minister van Buitenlandse Zaken bepaald dat de wijzigingen van 23 juli 2020 van de Bijlage bij het Verdrag zullen zijn bekendgemaakt in Nederland (het Europese en het Caribische deel) op de dag na de datum van uitgifte van dit Tractatenblad.

Uitgegeven de *zeventiende* november 2020.

De Minister van Buitenlandse Zaken,

S.A. BLOK