

EMBASSY OF THE  
UNITED STATES OF AMERICA

December 18, 2013

Excellency,

I have the honor to refer to the Agreement between the United States of America and the Kingdom of the Netherlands to Improve International Tax Compliance and to Implement FATCA (hereafter referred to as 'the Agreement') signed today and to propose on behalf of the Government of the United States the following:

In the course of the negotiations of the Agreement signed today, the negotiators developed the Memorandum of Understanding that is attached to this note. The Memorandum of Understanding reflects the shared understanding regarding the interpretation of certain provisions of the Agreement reached by the delegations of the United States and the Netherlands on behalf of their respective governments.

The United States understands that the Netherlands plans to present the Agreement to its parliament for its approval in 2014 and, to propose implementing legislation with the goal of having the Agreement enter into

force by September 30, 2015. Based on this understanding, as of the date of signature of the Agreement, the United States Department of the Treasury intends to treat each Netherlands Financial Institution, as that term is defined in the Agreement, as complying with, and not subject to withholding under section 1471 of the U.S. Internal Revenue Code during such time as the Netherlands is pursuing the necessary internal procedures for entry into force of the Agreement. The United States further understands that the Netherlands Ministry of Finance intends to contact the United States Department of the Treasury as soon as it is aware that there might be a delay in the Netherlands internal approval process for entry into force of the Agreement such that the Netherlands would not be able to provide its notification under paragraph 1 of Article 10 of the Agreement prior to September 30, 2015. If upon consultation with the Netherlands, the United States Department of the Treasury receives credible assurances that such a delay is likely to be resolved in a reasonable period of time, the United States Department of the Treasury may decide to continue to apply FATCA to Netherlands Financial Institutions in the manner described above as long as the United States Department of the Treasury assesses that the Netherlands is likely to be able to send its notification under paragraph 1 of Article 10 by September 30, 2016. It is understood that should the

Agreement enter into force after September 30, 2015, any information that would have been reportable under the Agreement thereafter (and prior to its entry into force) had the Agreement been in force by September 30, 2015, is owed on the September 30 next following the date of entry into force.

The United States notes that both the United States and the Netherlands provide high levels of data protection with information they receive in the exchange of information in tax matters, as confirmed in the Peer Reviews in the context of the Global Forum on Transparency and Exchange of Information for Tax Purposes. Pursuant to paragraph 7 of Article 3 of the Agreement, the information exchanged under the Agreement is subject to the confidentiality and other protections provided for in the Convention between the United States of America and the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, done at Washington on 18 December 1992, as amended on 13 October 1993 and 8 March 2004 (“Double Tax Convention”) and the Convention on Mutual Administrative Assistance in Tax Matters, done at Strasbourg on 25 January 1988 (“the Mutual Assistance Convention”). Those protections include those set out in paragraph 1 sentences 3 through 7 of Article 30 of the Double Tax

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Convention and Article 22 of the Mutual Assistance Convention. In the context of the implementation of the Agreement, the competent authorities are expected by mutual arrangement to establish procedures on data protection specific to the exchange of information under the Agreement.

If the above understandings, including those set forth in the attached Memorandum of Understanding are acceptable to the Government of the Netherlands, this note and your note reflecting such acceptance memorialize the understandings that our two Governments have reached.

Accept, Excellency, renewed assurances of my highest consideration.



A. STERLING

Enclosure: Memorandum of Understanding

*His Excellency*

*Frans Weekers*

*State Secretary for Finance of the Netherlands*

## Memorandum of Understanding

*Understanding regarding the Agreement between the United States of America and the Kingdom of the Netherlands to Improve International Tax Compliance and to Implement FATCA (hereafter referred to as 'the Agreement'), signed today.*

*In reference to the term 'resident'*

In the case of the Netherlands, the term 'resident' means a resident of the Netherlands within the meaning of Article 4 of the General Tax Act (*Algemene wet inzake rijksbelastingen*). For the purposes of the preceding sentence, a Financial Institution that is fiscally transparent under the laws of the Netherlands is regarded as a 'lichaam' (body corporate).

*In reference to Article 1 of the Agreement (Definitions)*

1. It is understood that a Fund for Mutual Account (*fonds voor gemene rekening*) is a legal arrangement as referred to in paragraph 1(hh) of Article 1 of the Agreement.
2. It is understood that a *Stichting Administratiekantoor* (STAK) established in the Netherlands is treated as an NFFE. In the case of a STAK the interests in which are regularly traded on an established securities market, the STAK is to be treated as an Active NFFE. In all other cases the STAK is to be treated as a Passive NFFE.
3. It is understood that the following entities are not regarded by a maintaining Financial Institution as an Account Holder or as a Financial Institution if the investment fund or investment firm as mentioned in a. or b. is treated by such maintaining Financial Institution as the Account Holder with respect to the assets held by such entities:
  - a. A depository (*bewaarder*) that holds the legal ownership of an investment portfolio of an investment fund (*beleggingsfonds*) (e.g., a mutual fund for joint account) for and on behalf of the investors within the meaning of Article 4:44 of the Financial Supervision Act (*Wet op het financieel toezicht*), or a depository within the meaning of Article 21 of the Alternative Investment Fund Managers Directive.

- b. A *bewaarinstelling* or *bewaarbedrijf* established by an investment firm as a depository to comply with asset segregation requirements of Articles 6:17 or 6:18 of the Further Regulation on Conduct of Business Supervision of Financial Undertakings (*Nadere regeling gedragstoezicht financiële ondernemingen*).
4. It is understood that an account held by a foundation (*Stichting Derdengelden*) is not a U.S. Reportable Account or as an account held by a Nonparticipating Financial Institution (as those terms are defined in the Agreement) if the assets of the foundation (*Stichting Derdengelden*) serve solely as an escrow for a debt or purchase obligation of the transferor of the assets to the foundation (*Stichting Derdengelden*).
  5. With reference to paragraph (s)(1) of Article 1 of the Agreement, it is understood that NYSE Euronext Amsterdam qualifies as an established securities market.
  6. It is understood that paragraph 7 of Article 4 of the Agreement applies to all the definitions in Article 1 of the Agreement, including, for example, the definitions of Preexisting Account and of Financial Account.

*In reference to paragraph 1 of Article 5 of the Agreement (direct inquiry by a Competent Authority)*

It is understood that no new obligations or responsibilities other than currently in practice under the Double Tax Convention and the Mutual Assistance Convention, are introduced when the Competent Authority of such other Party applies its domestic law (including applicable penalties) to obtain corrected and/or complete information or to resolve other infringements of this Agreement.

*In reference to paragraph B of Section III of Annex I of the Agreement*

It is understood that a Reporting Netherlands Financial Institution is not required to obtain a second self-certification with respect to a New Individual Account if it already possesses a self-certification with respect to the Account Holder, except where there has been a change of circumstances as described in paragraph D of Section III of Annex I.

*In reference to paragraph B of Section I of Annex II of the Agreement*

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It is understood that International Organizations are solely intergovernmental organizations, including supranational organizations.

*In reference to possible future optional direct reporting to the IRS*

It is understood that nothing in the Agreement would obligate the Netherlands to permit an entity resident in the Netherlands to report directly to the U.S. Internal Revenue Service if in the future U.S. Treasury regulations were to make that option possible where such reporting would be contrary to Netherlands law.

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STAATSSECRETARIS VAN FINANCIËN

The Hague, 18 December 2013

Mr. Chargé d'Affaires,

I have the honor to confirm receipt of your Note of today's date which reads as follows:

*"I have the honor to refer to the Agreement between the United States of America and the Kingdom of the Netherlands to Improve International Tax Compliance and to Implement FATCA (hereafter referred to as 'the Agreement') signed today and to propose on behalf of the Government of the United States the following:*

*In the course of the negotiations of the Agreement signed today, the negotiators developed the Memorandum of Understanding that is attached to this note. The Memorandum of Understanding reflects the shared understanding regarding the interpretation of certain provisions of the Agreement reached by the delegations of the United States and the Netherlands on behalf of their respective governments.*

*The United States understands that the Netherlands plans to present the Agreement to its parliament for its approval in 2014 and, to propose implementing legislation with the goal of having the Agreement enter into force by September 30, 2015. Based on this understanding, as of the date of signature of the Agreement, the United States Department of the Treasury intends to treat each Netherlands Financial Institution, as that term is defined in the Agreement, as complying with, and not subject to withholding under section 1471 of the U.S. Internal Revenue Code during such time as the Netherlands is pursuing the necessary internal procedures for entry into force of the Agreement. The United States further understands that the Netherlands Ministry of Finance intends to contact the United States Department of the Treasury as soon as it is aware that there might be a delay in the Netherlands internal approval process for entry into force of the Agreement such that the Netherlands would not be able to provide its notification under paragraph 1 of Article 10 of the Agreement prior to September 30, 2015. If upon consultation with the Netherlands, the United States Department of the Treasury receives credible assurances that such a delay is likely to be resolved in a reasonable period of time, the United States Department of the Treasury may decide to continue to apply FATCA to Netherlands Financial Institutions in the manner described above as long as the United States Department of the Treasury assesses that the Netherlands is likely to be able to send its notification under paragraph 1 of Article 10 by September 30, 2016. It is understood that should the Agreement enter into force after September 30, 2015, any information that would have been reportable under the Agreement thereafter (and prior to its entry into force) had the Agreement been in force by September 30, 2015, is owed on the September 30 next following the date of entry into force.*

*The United States notes that both the United States and the Netherlands provide high levels of data protection with information they receive in the exchange of information in tax matters, as confirmed in the Peer Reviews in the context of the Global Forum on Transparency and Exchange of Information for Tax Purposes. Pursuant to paragraph 7 of Article 3 of the*



STAATSSECRETARIS VAN FINANCIËN

*Agreement, the information exchanged under the Agreement is subject to the confidentiality and other protections provided for in the Convention between the United States of America and the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, done at Washington on 18 December 1992, as amended on 13 October 1993 and 8 March 2004 ("Double Tax Convention") and the Convention on Mutual Administrative Assistance in Tax Matters, done at Strasbourg on 25 January 1988 ("the Mutual Assistance Convention"). Those protections include those set out in paragraph 1 sentences 3 through 7 of Article 30 of the Double Tax Convention and Article 22 of the Mutual Assistance Convention. In the context of the implementation of the Agreement, the competent authorities are expected by mutual arrangement to establish procedures on data protection specific to the exchange of information under the Agreement.*

*If the above understandings, including those set forth in the attached Memorandum of Understanding are acceptable to the Government of the Netherlands, this note and your note reflecting such acceptance memorialize the understandings that our two Governments have reached."*

I have the honor to inform you, that the Netherlands shares the understandings referred to in your Note.

Accept, Mr. Chargé d'Affaires, the expression of my highest consideration.

FRANS WEEKERS  
State Secretary for Finance

ADAM STERLING  
Chargé d'Affaires ad interim