

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

20 januari 2011

Nr. IFZ/2011/35M, Staatscourant 7 februari 2011, nr. 2011

Directoraat-Generaal voor Fiscale Zaken, Directie Internationale Fiscale Zaken

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

De Staatssecretaris van Financiën

namens deze:

de Directeur-Generaal Fiscale Zaken,

A. Berg

COMPETENT AUTHORITY AGREEMENT

The competent authorities of Denmark and the Netherlands have reached the following mutual agreement regarding the application of the Convention between the Government of the Kingdom of the Netherlands and the Government of the Kingdom of Denmark for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains and the related Protocol signed on July 1st, 1996 to investors in closed funds for mutual account "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 Denmark agree that a closed FGR¹ 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 Denmark 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 Denmark is a party and which is applicable to those investors on behalf of those investors in the closed FGR.

¹ Various translations of 'Fonds voor Gemene Rekening' are possible, such as 'fund for mutual account' or 'fund for joint account'.

Such claims may be subject to enquiry and a fund manager or depository shall provide relevant information which include a schedule of investors (names, addresses, country 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.

A closed FGR may not make a claim for benefits on behalf of any investor in the closed FGR if the investor has itself made a claim 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.

Agreed by the undersigned competent authorities:

Philip Noes
Danish Competent Authority

Edwin Visser
Netherlands Competent Authority