



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

19 november 2013

Nr. IFZ2013/747M

Directoraat-Generaal voor Fiscale Zaken, Directie Internationale Fiscale Zaken

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

De Staatssecretaris van Financiën

namens deze:

de Directeur-Generaal Fiscale Zaken,

A. Berg



COMPETENT AUTHORITY AGREEMENT

The competent authorities of Canada and the Netherlands have reached the following mutual agreement regarding the application of the Convention between the Government of Canada and the Government of the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income (Canada-Netherlands Convention) to investors in a closed fund for mutual account / besloten fonds voor gemene rekening (hereinafter: 'closed FGR') established in the Netherlands.

This Agreement applies to a closed FGR¹ formed in conformity with Dutch civil and taxation laws that acts 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 Canada and the Netherlands agree that a closed FGR is not the beneficial owner of the income derived by the fund; the income derived by the fund belongs to its investors in proportion to their respective participations in the fund. As such, a closed FGR is not entitled to benefits under the Canada-Netherlands Convention in respect of income derived on behalf of its investors.

A closed FGR can also consist of several closed FGRs. Such an umbrella fund is also not entitled to benefits under the Canada-Netherlands Convention in respect of income derived on behalf of its investors.

Request for application of the benefits of a tax treaty on behalf of the investors

A closed FGR which is established in the Netherlands and which receives income arising in Canada may itself (on behalf of the investors in the closed FGR), represented by its fund manager or its depository, in lieu of and instead of, the investors in the closed FGR, claim the benefits of a convention for the avoidance of double taxation and the prevention of fiscal evasion ('tax treaty') to which Canada is a Contracting State and which is applicable to those investors. Canada's tax treaties are available at: http://www.fin.gc.ca/treaties-conventions/treatystatus_eng.asp

Such requests are subject to enquiry and a fund manager or depository shall provide relevant information which includes a schedule of investors (names, addresses and, where requested, statements by the investors confirming they are the beneficial owners of the income and residents in a country that has a tax treaty with Canada) and the allocated income relevant to the claim.

A closed FGR may not make a claim for benefits under a tax treaty on behalf of an 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 must clearly communicate this to the investor to avoid duplicate claims in respect of the same income.

Relief at Source

A closed FGR can only claim tax relief at source under a tax treaty on behalf of its investors if all direct investors of the closed FGR are 'qualifying investors'. A 'qualifying investor' in a closed FGR is any investor that, at the time of any payment in respect of which relief is requested, is an investor that is:

- **considered, under the terms of a tax treaty entered into between Canada and another jurisdiction, resident in that other jurisdiction and eligible to receive any of the benefits provided for in that tax treaty in respect of the payment in its own right (Note: entities or arrangements that are considered to be wholly or partly fiscally transparent in Canada or in that other jurisdiction, for example, partnerships, certain limited liability companies or equivalent entities, co ownership funds, are not qualifying investors);**
- **another closed FGR in which each investor is a resident of the Netherlands under the Canada-Netherlands Convention;**
- **a Canadian registered pension plan (Note: a Canadian resident that is not a Canadian registered pension plan is not a qualifying investor).**

Where all investors in the closed FGR are not qualified investors, benefits of a tax treaty can only be claimed on behalf of their investors through refund claims.

¹ Various translations of 'besloten fonds voor gemene rekening' are possible, such as 'closed fund for mutual account' or 'closed fund for joint account'.



In respect of relief at source, the Canada Revenue Agency (CRA) requires the closed FGR (fund manager or depository) to provide the payer with a certified statement containing:

- (i) the name, address, and country of residence for tax purposes of each investor, the applicable tax treaty rate, including the number of shares/units beneficially owned by each investor, the investor's foreign tax identification number, and the investor type (e.g. pension plan);
- (ii) a statement that the fund manager/depository has obtained from each investor certifying beneficial ownership, residency and eligibility for tax treaty benefits (CRA Form NR301, NR302 or NR303, as applicable, or equivalent written certification);
- (iii) a statement that the fund manager/depository will file a new certification on the earlier of three years from the date the last certification was sworn and the date any of the investors change; and
- (iv) a statement that the fund manager/depository will provide additional information to the CRA upon request.

Refund claims

In respect of refund claims, the CRA requires the closed FGR (fund manager or depository) to file an affidavit containing:

- (i) the name, address, and country of residence for tax purposes of each investor, the applicable tax treaty rate, the number of shares/units beneficially owned by each investor, the investor's foreign tax identification number, and the investor type (e.g. pension plan);
- (ii) a statement that the fund manager/depository has obtained from each investor certifying beneficial ownership, residency and eligibility for tax treaty benefits (CRA Form NR301, NR302 or NR303, as applicable, or equivalent written certification);
- (iii) a statement that the fund manager/depository will file a new affidavit on the earlier of three years from the date the last affidavit was sworn and the date any of the investors change; and
- (iv) a statement that the fund manager/depository will provide additional information to the CRA upon request.

In addition, a separate refund application (CRA Form NR7-R) must be submitted for each tax rate and payment date.

Each application submitted within the three-year period and relying on the affidavit discussed above, must reference that affidavit, confirm the affidavit is still valid and, if not still valid, include a new affidavit.

Application

This Agreement will replace the Competent Authority Agreement of 2010 and will be applicable to payments made on or after November 1, 2013.

This Agreement shall be subject to regular review, and the Competent Authority of Canada will advise the Competent Authority of the Netherlands of any changes to domestic procedures for claims made by closed FGRs.

Ottawa, 22 October 2013

*For the Competent Authority of Canada
C. Dimitrakopoulos,
Director General
Legislative Policy Directorate*

The Hague, 31 October 2013

*For the Competent Authority of the Netherlands
H. Roodbeen,
Director for International Tax
Policy and Legislation*