

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

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