

**No. 52757\***

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**Netherlands (for the European and the Caribbean part of the  
Netherlands)  
and  
United States of America**

**Agreement between the Kingdom of the Netherlands and the United States of America to  
improve international tax compliance and to implement FATCA (with annexes). The  
Hague, 18 December 2013**

**Entry into force:** *9 April 2015 by notification, in accordance with article 10*

**Authentic text:** *English*

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**Pays-Bas (Pour la partie européenne et la partie caribéenne des  
Pays-Bas)  
et  
États-Unis d'Amérique**

**Accord entre le Royaume des Pays-Bas et les États-Unis d'Amérique relatif au renforcement  
du respect des obligations fiscales internationales et à la mise en oeuvre du FATCA  
(avec annexes). La Haye, 18 décembre 2013**

**Entrée en vigueur :** *9 avril 2015 par notification, conformément à l'article 10*

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16 juin 2015*

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**Agreement between the Kingdom of the Netherlands and the  
United States of America to improve international tax compliance  
and to implement FATCA**

Whereas,

the Kingdom of the Netherlands

and

the United States of America,

(each, a “Party,” and together, the “Parties”) have a longstanding and close relationship with respect to mutual assistance in tax matters in respect of the United States and the Netherlands and desire to conclude an agreement to improve international tax compliance by further building on that relationship;

Whereas, Article 30 of 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, signed at Washington on 18 December 1992, as amended in 1993 and 2004 (“the Double Tax Convention”) and the Convention on Mutual Administrative Assistance in Tax Matters, done at Strasbourg on 25 January 1988 (the “Mutual Assistance Convention”) authorize exchange of information for tax purposes, including on an automatic basis

(hereinafter the “Conventions” refers to the Double Tax Convention and the Mutual Assistance Convention and any amendments to those conventions that are in force for both Parties);

Whereas, the United States of America enacted provisions commonly known as the Foreign Account Tax Compliance Act (“FATCA”), which introduce a reporting regime for financial institutions with respect to certain accounts;

Whereas, the Government of the Netherlands is supportive of the underlying policy goal of FATCA to improve tax compliance;

Whereas, FATCA has raised a number of issues, including that Netherlands financial institutions may not be able to comply with certain aspects of FATCA due to domestic legal impediments;

Whereas, the Government of the United States of America collects information regarding certain accounts maintained by U.S. financial institutions held by residents of the Netherlands and is committed to exchanging such information with the Government of the Netherlands and pursuing equivalent levels of exchange;

Whereas, the Governments of the United States and the Netherlands are committed to working together over the longer term towards achieving common reporting and due diligence standards for financial institutions;

Whereas, the Government of the United States of America acknowledges the need to coordinate the reporting obligations under FATCA with other U.S. tax reporting obligations of Netherlands financial institutions to avoid duplicative reporting;

Whereas, an intergovernmental approach to FATCA implementation would address legal impediments and reduce burdens for Netherlands financial institutions;

Whereas, the Governments of the Parties desire to conclude an agreement to improve international tax compliance and provide for the implementation of FATCA based on domestic reporting and reciprocal automatic exchange pursuant to the Conventions and subject to the confidentiality and other protections provided for therein, including the provisions limiting the use of the information exchanged under the Conventions;

Now, therefore, the Parties have agreed as follows:

## Article 1

### *Definitions*

1. For purposes of this agreement and any annexes thereto (“Agreement”), the following terms shall have the meanings set forth below:

a) The term “United States” means the United States of America, including the States thereof, but does not include the U.S. Territories. Any reference to a “State” of the United States includes the District of Columbia.

b) The term “U.S. Territory” means American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands.

c) The term “IRS” means the U.S. Internal Revenue Service.

d) The term “the Netherlands” means the Kingdom of the Netherlands, including the islands of Bonaire, Sint Eustatius and Saba, and excluding Aruba, Curaçao and Sint Maarten.

e) The term “Partner Jurisdiction” means a jurisdiction that has in effect an agreement with the United States to facilitate the implementation of FATCA. The IRS shall publish a list identifying all Partner Jurisdictions.

f) The term “Competent Authority” means:

1. in the case of the United States, the Secretary of the Treasury or his delegate; and
2. in the case of the Netherlands, the Minister of Finance or his authorized representative.

g) The term “Financial Institution” means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.

h) The term “Custodial Institution” means any Entity that holds, as a substantial portion of its business, financial assets for the account of others. An entity holds financial assets for the account of others as a substantial portion of its business if the entity’s gross income attributable to the holding of financial assets and related financial services equals or exceeds 20 percent of the entity’s gross income during the shorter of: (i) the three-year period that ends on December 31 (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the entity has been in existence.

i) The term “Depository Institution” means any Entity that accepts deposits in the ordinary course of a banking or similar business.

j) The term “Investment Entity” means any Entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer:

1. trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;

2. individual and collective portfolio management; or

3. otherwise investing, administering, or managing funds or money on behalf of other persons.

This subparagraph 1(j) shall be interpreted in a manner consistent with similar language set forth in the definition of “financial institution” in the Financial Action Task Force Recommendations.

k) The term “Specified Insurance Company” means any Entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.

l) The term “Netherlands Financial Institution” means (i) any Financial Institution resident in the Netherlands, but excluding any branch of such Financial Institution that is located outside the Netherlands, and (ii) any branch of a Financial Institution not resident in the Netherlands, if such branch is located in the Netherlands.

m) The term “Partner Jurisdiction Financial Institution” means (i) any Financial Institution resident in a Partner Jurisdiction, but excluding any branch of such Financial Institution that is located outside the Partner Jurisdiction, and (ii) any branch of a Financial Institution not resident in the Partner Jurisdiction, if such branch is located in the Partner Jurisdiction.

n) The term “Reporting Financial Institution” means a Reporting Netherlands Financial Institution or a Reporting U.S. Financial Institution, as the context requires.

o) The term “Reporting Netherlands Financial Institution” means any Netherlands Financial Institution that is not a Non-Reporting Netherlands Financial Institution.

p) The term “Reporting U.S. Financial Institution” means (i) any Financial Institution that is resident in the United States, but excluding any branch of such Financial Institution that is located outside the United States, and (ii) any branch of a Financial Institution not resident in the United States, if such branch is located in the United States, provided that the Financial Institution or branch has control, receipt, or custody of income with respect to which information is required to be exchanged under subparagraph (2)(b) of Article 2 of this Agreement.

q) The term “Non-Reporting Netherlands Financial Institution” means any Netherlands Financial Institution, or other Entity resident in the Netherlands that is described in Annex II as a Non-Reporting Netherlands Financial Institution or that otherwise qualifies as a deemed-compliant FFI or an exempt beneficial owner under relevant U.S. Treasury Regulations.

r) The term “Nonparticipating Financial Institution” means a non-participating FFI, as that term is defined in relevant U.S. Treasury Regu-