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**Poland
and
United States of America**

Agreement between the Government of the Republic of Poland and the Government of the United States of America to improve international tax compliance and to implement FATCA (with annexes and memorandum of understanding). Warsaw, 7 October 2014

Entry into force: *1 July 2015 by notification, in accordance with article 10*

Authentic texts: *English and Polish*

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**Pologne
et
États-Unis d'Amérique**

Accord entre le Gouvernement de la République de Pologne et le Gouvernement des États-Unis d'Amérique relatif au renforcement du respect des obligations fiscales internationales et à la mise en œuvre du "FATCA" (avec annexes et mémorandum d'entente). Varsovie, 7 octobre 2014

Entrée en vigueur : *1^{er} juillet 2015 par notification, conformément à l'article 10*

Textes authentiques : *anglais et polonais*

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[ENGLISH TEXT – TEXTE ANGLAIS]

Agreement between the Government of the Republic of Poland and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA

Whereas, the Government of the Republic of Poland and the Government of the United States of America (each, a “Party,” and together, the “Parties”) desire to conclude an agreement to improve international tax compliance through mutual assistance in tax matters based on an effective infrastructure for the automatic exchange of information;

Whereas, Article 23 of the Convention between the Government of the Polish People’s Republic and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Washington on 8 October 1974 (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, or agreements that supersede and replace 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 Republic of Poland is supportive of the underlying policy goal of FATCA to improve tax compliance;

Whereas, FATCA has raised a number of issues, including that Polish 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 Poland and is committed to exchanging such information with the Government of the Republic of Poland and pursuing equivalent levels of exchange, provided that the appropriate safeguards and infrastructure for an effective exchange relationship are in place;

Whereas, the Parties 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 Polish financial institutions to avoid duplicative reporting;

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

Whereas, 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 **"Poland"** means the Republic of Poland.
- 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 Poland, 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 **“Polish Financial Institution”** means (i) any Financial Institution resident in Poland, but excluding any branch of such Financial Institution that is located outside Poland, and (ii) any branch of a Financial Institution not resident in Poland, if such branch is located in Poland.
- m) The term **“Partner Jurisdiction Financial Institution”** means (i) any Financial Institution established 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 established in the Partner Jurisdiction, if such branch is located in the Partner Jurisdiction.
- n) The term **“Reporting Financial Institution”** means a Reporting Polish Financial Institution or a Reporting U.S. Financial Institution, as the context requires.
- o) The term **“Reporting Polish Financial Institution”** means any Polish Financial Institution that is not a Non-Reporting Polish 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 Polish Financial Institution”** means any Polish Financial Institution, or other Entity resident in Poland, that is described in Annex II as a Non-Reporting Polish Financial Institution or that otherwise qualifies as a deemed-compliant FFI (foreign financial institution) or an exempt beneficial owner under relevant U.S. Treasury Regulations.
- r) The term **“Nonparticipating Financial Institution”** means a nonparticipating FFI, as that term is defined in relevant U.S. Treasury Regulations, but does not include a Polish Financial Institution or other Partner Jurisdiction Financial Institution other than a Financial Institution treated as a Nonparticipating Financial Institution pursuant to subparagraph 2(b) of Article 5 of this Agreement or the corresponding provision in an agreement between the United States and a Partner Jurisdiction.
- s) The term **“Financial Account”** means an account maintained by a Financial Institution, and includes:
 - (1) in the case of an Entity that is a Financial Institution solely because it is an Investment Entity, any equity or debt interest (other than interests that are regularly traded on an established securities market) in the Financial Institution;
 - (2) in the case of a Financial Institution not described in subparagraph 1(s)(1) of this Article, any equity or debt interest in the Financial Institution (other than interests that are regularly traded on an established securities market), if (i) the value of the debt or equity interest is determined, directly or indirectly, primarily by reference to assets that give rise to U.S. Source Withholdable Payments, and (ii) the class of interests was established with a purpose of avoiding reporting in accordance with this Agreement; and
 - (3) any Cash Value Insurance Contract and any Annuity Contract issued or maintained by a Financial Institution, other than a noninvestment-linked, nontransferable immediate life annuity that is issued to an individual and monetizes a pension or disability benefit provided under an account that is excluded from the definition of Financial Account in Annex II.

Notwithstanding the foregoing, the term “Financial Account” does not include any account that is excluded from the definition of Financial Account in Annex II. For purposes of this Agreement, interests are “regularly traded” if there is a meaningful volume of trading with respect to the interests on an ongoing basis, and an “established securities market” means an exchange that is officially recognized and supervised by a governmental authority in which the market is located and that has a meaningful annual value of shares traded on the exchange. For purposes