



Overeenkomst tussen de bevoegde autoriteiten van het Verenigd Koninkrijk en Nederland inzake de fiscale behandeling van pensioenregelingen in het Verenigd Koninkrijk uitgevoerd door verzekeringsmaatschappijen

*Besluit van 22 december 2016,
nr. 2016-0000232006*

De directeur Internationale Zaken en Verbruiksbelastingen heeft namens de staatssecretaris van Financiën het volgende besloten.

COMPETENT AUTHORITY AGREEMENT

Pursuant to Article 25(3) of the Convention between the Government of the Kingdom of the Netherlands and the Government of the United Kingdom of Great Britain and Northern Ireland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains and the related Protocol, signed on 26 September 2008, (hereinafter “the Convention”), the competent authorities of the United Kingdom and the Netherlands have reached the following mutual agreement regarding the application of Article 10(2)(b)(ii) of the Convention to “pension funds or pension schemes arranged through insurance companies”, within the meaning of paragraph III(b) of the Protocol to the Convention,

whereas it is understood that for the purposes of this Agreement the term “Article” refers to an Article of the Convention and the term “Protocol” means the Protocol to the Convention:

Article 4(2)(a) provides that a pension scheme is a “resident of a Contracting State” and so entitled to the benefits of the Convention pursuant to Article 1. Article 3(1)(l), as supplemented by paragraph III of the Protocol, defines what is meant by a pension scheme for these purposes and for the purposes of Article 10(2)(b)(ii). Paragraph III(b) of the Protocol provides that the term “pension scheme” includes, in the case of the United Kingdom, “pension funds or pension schemes arranged through insurance companies”. Such pension funds or pension schemes must be pension schemes registered under Part 4 of the Finance Act 2004 for United Kingdom tax purposes. Paragraph 2(b)(ii) of Article 10 provides that dividends paid by a company which is a resident of a Contracting State shall be exempt from tax in that State if the beneficial owner of the dividends, being a resident of the other Contracting State, is a pension scheme. Accordingly, dividends paid by a company which is a resident of the Netherlands shall be exempt from tax in the Netherlands where the beneficial owner of the dividends is a United Kingdom pension scheme meeting the description above and subject to the other conditions set by Article 10, including a pension fund or scheme arranged through an insurance company.

In the United Kingdom, pension schemes may be established through separate trust deeds or in contractual form with authorised pension providers. Many United Kingdom pension schemes, particularly those which are either small or medium-sized, pool their investments in various ways including through pension funds maintained by United Kingdom insurance companies. Under these arrangements, the occupational or individual pension scheme makes contributions in the form of premiums to an insurance company. The insurance company acquires pools of assets, which are segregated on the company’s balance sheet and form a separate part of the company’s business (called its “pension business”, as defined in section 58 of the Finance Act 2012 (previously section 431B of the Income and Corporation Taxes Act 1988)). The return paid by the insurance company to the contributing pension scheme is directly linked to the value of the pension scheme’s share of the investment return on the pooled assets and all of the return on those pension business assets inures only to the benefit of the contributing pension scheme (and not to the insurance company or its shareholders).

In order for United Kingdom pension schemes to pool their assets in the “pension business” maintained by an insurance company, the contributing pension schemes must be schemes which are registered with Her Majesty’s Revenue & Customs under Part 4 of the Finance Act 2004. It is to these arrangements that the term “pension funds or pension schemes arranged through insurance companies” in paragraph III(b) of the Protocol refers.

In the case of such pension schemes arranged through insurance companies, questions have been raised as to whether claims for the benefits afforded by Article 10(2)(b)(ii) should be made by the contributing pension schemes in their own right, or by the insurance company, which is not itself a pension fund or a pension scheme. In this regard, the competent authorities consider that only the insurance company or its custodian(s) (and not the contributing pension schemes) will possess or be able to obtain the information and tax certificates necessary to compile and support a claim for benefits under Article 10(2)(b)(ii).

Therefore the competent authorities agree that an insurance company with “pension business” as described above is entitled to claim benefits under Article 10(2)(b)(ii) in respect of the dividends



relating to the investments held in the insurance company's segregated pension funds and beneficially owned by the pension schemes, provided that those dividends are included in the insurance company's "pension business" for United Kingdom tax purposes and provided that the following documentation and confirmations are provided:

- i) Confirmation that the insurance company is claiming benefits under Article 10(2)(b)(ii) only in respect of "pension business" as defined in section 58 of the Finance Act 2012;
- ii) A schedule of all of the pension schemes to which the claim relates and confirmation that these are United Kingdom pension schemes (other than social security schemes) registered with Her Majesty's Revenue & Customs under Part 4 of the Finance Act 2004;
- iii) Notwithstanding ii) above, in respect of pension business reinsured from other insurance companies, a schedule of the names and addresses of those insurance companies, together with copies of the corresponding reinsurance treaties and associated certificates of qualification under section 58 of the Finance Act 2012 and confirmation that the pension schemes arranged through those insurance companies are United Kingdom pension schemes (other than social security schemes) registered with Her Majesty's Revenue & Customs under Part 4 of the Finance Act 2004;
- iv) Confirmation that none of the pension schemes included in the confirmations at i) and ii) above, and, in the case of reinsured pension business, none of the insurance companies from which that business is reinsured or the pension schemes arranged through those insurance companies included in the confirmation at iii) above, have made, are able to, or will in the future make a claim for the benefits claimed by the insurance company or its custodians;
- v) In respect of the first such claim following the date of signature of this Agreement, a letter from Her Majesty's Revenue & Customs in the following terms: "This letter is to confirm that [*name of insurance company*] carries out section 58 Finance Act 2012 pension business for the purposes of pension schemes registered under Part 4 Finance Act 2004"; and
- vi) Annually in arrears, a letter from Her Majesty's Revenue & Customs in the following terms: "This letter is to confirm that for the tax year [*specify year*] [*name of insurance company*] carried out section 58 Finance Act 2012 pension business for the purposes of pension schemes registered under Part 4 Finance Act 2004, including the schemes in the attached schedule [*schedule identifying the pension schemes for which claims have been made*]"

All such claims may be subject to enquiry and, where requested, the insurance company or its custodians, and, in the case of reinsured pension business to which the requirements at iii) above apply, the insurance company from which the pension business has been reinsured, shall provide such relevant information as may be required to validate the claim.

This Agreement applies from the later of the dates of the signing of the Agreement by the competent authorities of United Kingdom and the Netherlands and to claims generated after the date of the entry into force of the Convention.

Agreed to by the undersigned competent authorities:

Date: 22 December 2016

*For the UK Authority
A. Dawson
Her Majesty's Revenue & Customs*

*For the Netherlands Competent Authority
H. Roodbeen
Ministry of Finance*