

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE MINISTRY OF FINANCE OF THE CZECH REPUBLIC  
AND  
THE MINISTRY OF FINANCE OF THE REPUBLIC OF ESTONIA  
FOR THE CONDUCT OF SIMULTANEOUS TAX EXAMINATION**

**Preamble**

The Ministry of Finance of the Czech Republic and the Ministry of Finance of the Republic of Estonia, hereinafter called the Parties or separately the Party, desiring to increase the efficiency of the efforts to prevent the avoidance and evasion of taxation,

In virtue of the provisions of the Convention between the Czech Republic and the Republic of Estonia for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and capital, signed in Tallinn on 24<sup>th</sup> of October 1994, hereinafter called the Tax Treaty,

With respect to the Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, certain excise duties taxation of insurance premiums, with subsequent amendments, hereafter called the Directive,

Have decided to conclude the following Memorandum of Understanding, hereinafter called the Memorandum:

**Article 1  
Definitions and legal basis**

1. The Parties decide that for the purpose of this Memorandum the expression «simultaneous tax examination» means an examination by virtue of arrangement between the Parties to examine simultaneously and independently, each on its own territory, the tax affairs of (a) taxpayer(s),

in which they have a common interest, with a view to exchanging any relevant information, which they so obtain.

2. The Parties agree that disclosure of information obtained by means of simultaneous tax examination falls within the provisions of the Tax Treaty and the Directive.
3. The Parties agree that any exchange of information - spontaneously or on request - which follows from such examination, shall be made through the competent authorities.  
For the application of the Memorandum the competent authorities are:

In the Czech Republic:  
Ministry of Finance  
Central Financial and Tax Directorate  
Direct Taxes International Cooperation Unit  
Letenská 15  
118 10 PRAGUE

In the Republic of Estonia:  
Estonian Tax and Customs Board  
Narva Road 9J  
15176 TALLINN

4. The competent authorities inform each other about the name(s) of the person(s) authorized to perform the functions mentioned in this Memorandum, as well as subsequent changes of the person(s).
5. Simultaneous tax examinations are incorporated as a normal part of the countries' tax control activities. Each country itself defrays the costs of this work.

## **Article 2** **Objectives**

The Parties decide that the main purpose of a simultaneous tax examination is inter alia:

1. To determine a taxpayer's correct liability in cases where:
  - 1.1 Costs are shared or charged and profits are allocated between taxpayers in different tax jurisdictions or more generally transfer pricing issues are involved,
  - 1.2 Apparent tax avoidance techniques or patterns involving substance versus form transactions, controlled financing schemes, price manipulations, cost allocations or other similar activities are identified,

- 1.3 Unreported income and illegal payments are identified,
  - 1.4 Transactions with tax havens and tax avoidance or evasion schemes involving tax havens are identified.
2. To facilitate an exchange of information on:
- 2.1 Multinational business practices, transactions between associated entities, examination issues and non-compliance trends that may be particular to an industry or group of industries,
  - 2.2 Cost sharing arrangements,
  - 2.3 Profit allocation methods in special fields such as global trading (including e-commerce) and new financial instruments.

Simultaneous tax examinations are not intended to be a substitute for the mutual agreement procedure provided for under Article 25 on Mutual Agreement Procedure of the Tax Treaty.

### **Article 3**

#### **Case selection and examination procedure**

1. The competent authority of each State will identify independently taxpayers it intends to propose for a simultaneous tax examination.
2. The competent authority of each State will inform its counterpart in the other State on its respective choice of potential cases for simultaneous tax examinations using the selection criteria described below. It will explain, as far as possible, why it has chosen these cases and provide the information leading to its proposals, together with any other relevant information, as well as its statute of limitation applicable to the cases proposed for simultaneous tax examinations.
3. The competent authority of each State will determine whether it wishes to participate in a simultaneous tax examination.
4. The competent authority of each State requested to participate in a simultaneous tax examination will consider provided information in conjunction with information from its own sources and will submit in writing to its counterpart its confirmation or refusal to undertake a specific simultaneous tax examination (mentioning the taxpayers, taxes and tax years involved) within three month.
5. Before making such confirmation or refusal, the competent authority will seek to obtain any information that it requires in order to reach a decision, either under its domestic laws or under

the provisions of the Article 26 on Exchange of Information of the Tax Treaty or under the provisions of the Directive.

6. Both the requesting and requested competent authority will appoint a designated representative who will have functional responsibility for directing and co-ordinating the examination. The competent authorities will also decide which State is responsible for co-ordinating the simultaneous tax examination.
7. The competent authorities may then present to each other requests for exchange of information or provide each other with information spontaneously under and in conformity with the provisions of the Tax Treaty or the Directive.
8. The designated representatives of the competent authorities shall take care of the practical aspects of the simultaneous tax examination, and in particular the timetable and periods to examine.

#### **Article 4** **Criteria for case selection**

The Parties decide the following:

1. Any case selected for a simultaneous tax examination will generally involve a taxpayer(s) having operations either directly or through associated enterprises or through permanent establishments or representation in the territory of both States.
2. The criteria taken into consideration in determining whether a case is selected for simultaneous tax examination may include inter alia:
  - 2.1 The scale of its worldwide operations,
  - 2.2 The extent of transactions in both States,
  - 2.3 Available indications of:
    - 2.3.1 tax avoidance and evasion,
    - 2.3.2 substantial non-compliance of tax law in one State,
    - 2.3.3 manipulation of transfer prices to the potential detriment of one State,
    - 2.3.4 other forms of international tax planning which, if countered successfully, may generate additional tax yield in one State,
    - 2.3.5 economic performance of a taxpayer or related taxpayers, over a period of time, which is significantly worse than it might be expected, for instance:

- the economic performance does not reflect appropriate profits when measured against sales, total assets, etc.,
  - cases where the taxpayer consistently shows losses, especially long-term losses,
  - cases where the taxpayer, regardless of profitability, paid little or no tax over the relevant period,
- 2.3.6 transactions involving tax havens,
- 2.3.7 situations where the competent authorities consider it is in the interest of the tax administrations concerned in order to promote international tax compliance.

## **Article 5 Personnel**

The Parties agree the following:

1. Examinations shall be conducted separately within the framework of national law and practice solely by tax administration officials of each State using the available exchange of information provisions.
2. The designated representatives shall contact each other through the competent authorities.
3. The competent authorities can decide that their representatives shall be able to contact each other directly.

## **Article 6 Planning the simultaneous tax examination**

The Parties agree that before the start of the simultaneous tax examination the designated representative in the State co-ordinating the simultaneous tax examination, will consider with their counterpart in the other State the examination plans of each State, possible issues to be developed and target dates. Prior to this, a preliminary tax control should have been conducted in both States. The designated representatives decide whether it is appropriate to hold co-ordination meetings to plan and follow closely the performance of the simultaneous tax examination.

**Article 7**  
**Conducting the simultaneous tax examination**

The Parties indicate that simultaneous tax examinations require the co-operation of tax administration officials in each State who will simultaneously but independently examine the taxpayer(s) within their jurisdiction. They will try as far as possible to synchronize their work schedules.

**Article 8**  
**Discontinuing the simultaneous tax examination**

If either competent authority concludes that it is no longer beneficial to continue the simultaneous tax examination of a case, it may withdraw by notifying the other competent authority.

**Article 9**  
**Concluding the simultaneous tax examination**

The Parties agree that the simultaneous tax examination will be concluded after co-ordination and consultation between the competent authorities of each State. Issues pertaining to double taxation raised by the examination are reserved to the Mutual Agreement Procedure.

**Article 10**  
**Entry into Force. Modifications. Termination**

1. This Memorandum shall enter into force on the date of its signing by both Parties and may be modified at any time by a written agreement between the Parties.
2. This Memorandum is concluded for an indefinite period of time. It may be terminated by written notification by either Party and shall cease to be operative six months after such notice has been given.
3. This Memorandum will be reviewed three years after its signature.

Signed in duplicate in the English language.

Tallinn,

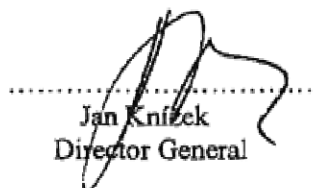
For the Minister of Finance of the Republic of Estonia,  
Estonian Tax and Customs Board:



.....  
Enriko Aav  
Director General

Prague,

For the Minister of Finance of the Czech Republic,  
Central Financial and Tax Directorate:



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Jan Knížek  
Director General