

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE ESTONIAN TAX AND CUSTOMS BOARD AND  
THE DIRECTORATE-GENERAL OF THE TAX AND CUSTOMS  
ADMINISTRATION OF THE NETHERLANDS FOR THE CONDUCT OF  
SIMULTANEOUS TAX EXAMINATIONS**

The Estonian Tax and Customs Board and the Directorate-General of the Tax and Customs Administration of the Netherlands,

Further to Article 28 and 30 of the Convention between the Kingdom of the Netherlands and the Republic of Estonia for the avoidance of double taxation and the prevention of fiscal evasion in respect of taxes on income and on capital of 14 March 1997 (hereinafter referred to as "the Convention"), including paragraph XIII of the protocol being an integral part of the Convention,

And Article 8b of Council Directive No. 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 and taxation of insurance premiums (hereinafter referred to as "the Directive"),

In order to provide a model for the undertaking of simultaneous tax examinations,

Have come to the following understanding:

**A. Definition and legal basis**

For the purpose of this Memorandum of Understanding the expression "simultaneous tax examination" means an arrangement between the competent authorities to examine simultaneously and independently, each on its own territory, the tax affairs of a taxpayer or taxpayers in which they have a common or related interest, with a view to exchanging any relevant information which they so obtain.

For the application of this Memorandum of Understanding the competent authorities are:

In the Republic of Estonia:  
Estonian Tax and Customs Board  
Narva mnt 9j  
15176 Tallinn  
Estonia

In the Kingdom of the Netherlands:  
The Fiscal Information and Investigation Service/Economic Investigation Service,  
Belastingdienst/FIOD-ECD/Haarlem/Internationaal,  
Postbus 1603,  
2003 BR Haarlem  
The Netherlands

The disclosure of information exchanged under this Memorandum of Understanding is subject to the provisions of the Directive and the Convention referred to here above. Any exchange of information which follows from such examinations either on request or spontaneous will be made through the competent authorities.

## **B. Taxes Covered**

This Memorandum of Understanding shall apply to taxes listed in Article 1 of the Directive, excluding insurance premiums, and Article 2, paragraph 3, of the Convention.

## **C. Financial provisions**

Simultaneous examinations are carried out as a regular part of the States tax control activities. Each State itself covers the costs of this work.

## **D. Objectives**

The main purpose of simultaneous tax examination is to determine a taxpayer's correct liability in cases where "inter alia":

- costs are shared or charged and profits are allocated between taxpayers in different taxing jurisdictions or more generally transfer pricing issues are involved;
- apparent tax avoidance or evasion techniques or patterns involving substance versus form transactions, controlled financing schemes, price manipulations, cost allocations or tax shelters are identified;
- unreported income, money laundering, kickbacks, bribes, illegal payments, etc. are suspected;
- transactions with tax havens and tax avoidance or evasion schemes involving tax havens are identified.
- multinational business practices, complex transactions, fiscal examination issues and fiscal non-compliance trends are identified that may be particular to an industry or group of industries;
- profit allocation methods in special fields such as global trading and new financial instruments are used.

A simultaneous tax examination is not intended to be a substitute for the mutual agreement procedure provided for under Article 27 of the Convention.

## **E. Case selection and examination procedure**

The selection procedures will be the following:

1. Each competent authority shall identify independently taxpayers it intends to propose for a simultaneous examination.
2. The competent authority of each State shall inform its counterpart in the other State of its respective choice of potential cases for simultaneous examinations using the selection criteria described below. It shall 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. Each competent authority shall determine if it wishes to participate in a simultaneous tax examination.
4. The competent authority requested to participate in a simultaneous examination shall consider the information in conjunction with information from its own sources and shall confirm in writing to its counterpart its agreement or refusal to undertake a specific simultaneous tax examination, mentioning the taxpayer(s), taxes and tax years involved. Before making its confirmation, the competent authority shall 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 Directive and Article 28 and 30 of the Convention. Each competent authority will indicate in writing a representative who will have functional responsibility for directing and co-ordinating the examination. 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 Directive and the Convention.
5. The designated representatives of the competent authorities shall take care of the practical aspects of the simultaneous tax examination (timetable, mode and periods to examine).
6. The prerequisite and therefore essential condition of selection is that the tax years be open for tax examination in both States interested in having a simultaneous tax examination for a specific taxpayer or specific taxpayers.
7. The competent authority of each State may, by a declaration addressed to its counterpart in the other State, indicate that, according to their internal legislation, it will inform its residents or nationals before transmitting information concerned in conformity with Article 28 and 30 of the Convention.

## **F. Criteria for case selection**

Any case selected for a simultaneous tax examination will generally involve a taxpayer or taxpayers having a common interest in both States. The criteria taken into consideration in determining whether a case is selected for simultaneous tax examination may include, inter alia:

- indication of tax avoidance and evasion;
- indication of substantial non-compliance of tax law in the participating States;
- indication of a manipulation of transfer prices to the potential detriment of the participating States;

- indication of other forms of international tax planning which, if countered successfully, may generate additional tax yield in the participating States;
- indication that the economic performance of a taxpayer or related taxpayers, over a period of time, 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;
- existence of transactions involving tax havens;
- situations where the competent authorities consider it is in the interest of the tax administrations concerned in order to promote international tax compliance.

#### **G. Personnel**

Examinations shall be conducted separately within the framework of domestic law and practice solely by tax administration officials of each State using the available exchange of information provisions. The presence of representatives of the competent authority of the foreign State may be allowed for the efficiency of the examination in accordance with the provisions of Chapter III of the Memorandum of Understanding between the Republic of Estonia and the Kingdom of the Netherlands for the streamlining and intensification of mutual assistance in tax matters.

#### **H. Planning the simultaneous tax examination**

Before the start of the simultaneous tax examination the tax officials in charge of the case will consider with their counterparts from the other State, the examination plans of each State, possible issues to be developed and target dates. It may be appropriate to hold co-ordination meetings to plan and follow closely the performance of the simultaneous tax examination.

#### **I. Conducting the simultaneous tax examination**

A simultaneous tax examination requires co-operation of tax administration officials located 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.

#### **J. 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.

#### **K. Concluding the simultaneous tax examination**

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 of Article 27 of the Convention.

#### **L. Application and title**

This Memorandum of Understanding will come into effect on the date of its signature by the signatories of the Estonian Tax and Customs Board and the Directorate-General of the Tax and Customs Administration of the Netherlands, whichever is later. The States will make any required announcement of this Memorandum of Understanding.

This Memorandum of Understanding may be modified at any time by agreement between the competent authorities.

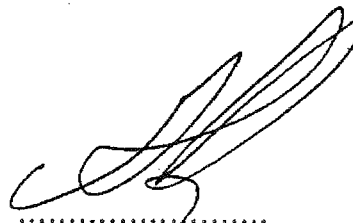
This Memorandum of Understanding may be terminated at any time by written notification by either signatory and will cease to be operative six months after such notice has been received. In no case this Memorandum of Understanding will remain in force any longer than the Convention.

This Memorandum of Understanding may be cited as the "Memorandum of Understanding between Estonia and the Netherlands for the conduct of simultaneous tax examinations.

Signed in duplicate in the English language:

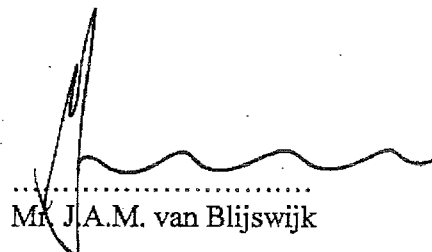
The Hague, 13 October 2004,

For the Estonian Tax and Customs Board:



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Mr. M. Helm

For the Directorate-General of the  
Tax and Customs Administration of the Netherlands:



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Mr. J.A.M. van Blijswijk

