

**AGREEMENT BETWEEN THE COMPETENT AUTHORITIES OF LATVIA AND
BELGIUM CONCERNING MUTUAL ADMINISTRATIVE ASSISTANCE
WITH RESPECT TO TAXES ON INCOME**

On the basis of

- the 77/799/EEC Council Directive of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation and taxation of insurance premiums as amended (hereinafter referred to as "the Directive"), and
- article 26 of the Convention between the Republic of Latvia and the Kingdom of Belgium for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed on 21 April 1999, (hereinafter referred to as "the Convention"),

and having regard to the desire of both authorities to increase mutual assistance, the competent authorities of Latvia and Belgium agree on the following provisions concerning:

- exchange of information,
- simultaneous tax examinations,
- the presence of tax officials of one State in the territory of the other State.

I. EXCHANGE UPON REQUEST

The competent authorities commit themselves to apply their powers and authorities in the most liberal fashion possible in implementing the Directive and Article 26 of the Convention. They shall provide information upon request as soon as possible.

II. AUTOMATIC EXCHANGE OF INFORMATION

The competent authorities shall regularly exchange without prior request information concerning:

1. business profits referred to in Article 7 of the Convention ;
2. income from professional services and other independent activities referred to in Article 14 of the Convention ;
3. salaries, wages and other similar remuneration referred to, as the case may be, in Articles 15 and 19 of the Convention ;
4. directors' fees, attendance fees and other similar payments referred to in Article 16 of the Convention;
5. income of artistes and sportsmen referred to in Article 17 of the Convention ;
6. pensions, other similar remuneration, life annuities, alimony, capital, surrender values and "replacement income" (i.e. indemnities, various annuities or allowances, which compensate a loss of professional income due to unemployment, illness, an accident or another analogous circumstance) referred to, as the case may be, in Articles 18, 19 or 22 of the Convention ;
7. fees, commissions, brokerage, returns, pay and other remuneration paid to individuals or legal persons ;
8. information (assessment notice or calculation note) with respect to the personal income tax levied by one State on the residents of the other State.

Information referred to in this section shall, as possible, be delivered according to the OECD *Standard Magnetic Format* for automatic exchange, or any further updated format recommended by the OECD Council. This information includes, if possible, the Taxpayer Identification Number (TIN) of non-resident taxpayers that is attributed to them by their State of residence.

Information with respect to a certain calendar year or period shall be transmitted as soon as possible after the end of that year or period.

III. SPONTANEOUS EXCHANGE OF INFORMATION

The competent authority of one State shall, without prior request, forward the information referred to in Article 1, § 1 of the Directive and Article 26 of the Convention that its tax administration has identified to the competent authority of the other State.

This spontaneous exchange concerns in particular, but is not limited to:

1. situations referred to in article 4, §1 of the Directive;
2. transfers of the residence of a person from one State to the other State;
3. the assessment notices or calculation notes with respect to income tax levied by one State on individuals who are residents of that State and who derive in the other State income which is taxable in that other State;
4. information concerning immovable property referred to in Article 6 of the Convention and income from such property;
5. information concerning capital gains referred to in Article 13 of the Convention.

IV. SIMULTANEOUS TAX EXAMINATIONS

A. Definition

For the purpose of this Agreement the term "simultaneous tax examination" means an examination carried out according to an agreement of both participating States to examine simultaneously and independently, each on its own territory, the tax affairs of one or more taxpayer(s) in which they have a common or related interest, with a view to exchanging any relevant information which they so obtain.

Any exchange of information resulting from such simultaneous examination, either on request or spontaneous, shall be made through the competent authorities.

B. Objectives

The purposes of simultaneous tax examination are inter alia:

1. to determine a taxpayer's correct liability in cases where:
 - a) costs are shared or charged and profits are allocated between taxpayers in different taxing jurisdictions or more generally in cases where transfer pricing issues are involved ;

- b) apparent tax avoidance or tax evasion techniques or patterns involving substance versus form transactions, controlled financing schemes, price manipulations, cost allocations or tax shelters are identified ;
- c) unreported income, money laundering and corruption practices, kickbacks, bribes, or other illegal payments, etc. are identified ;
- d) transactions with tax havens or tax avoidance or evasion schemes involving tax havens are identified ;

2. to facilitate the exchange of information on :

- a) multinational business practices, complex transactions, tax examination issues and non-compliance trends that may be particular to an industry or a group of industries ;
- b) cost sharing arrangements ;
- c) profit allocation methods in special fields such as global trading and new financial instruments.

In no case shall a simultaneous tax examination be a substitute for the mutual agreement procedure provided for in Article 25 of the Convention.

C. Case selection and examination procedure

The selection procedures shall be the following :

1. The competent authority of each State shall identify independently the taxpayers it intends to propose for a simultaneous examination.
2. The competent authority of each State shall inform its counterpart of the other State of its choice of potential cases for simultaneous tax examinations, for which it used 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 examinations.
3. Each competent authority shall determine if it wishes to participate in a particular simultaneous 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 this examination (mentioning the taxpayers, the taxes and the 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 or of Article 26 of the Convention.

It shall indicate a designated representative who will have functional responsibility for directing and coordinating the examination.

The proposing competent authority shall also indicate in writing a designated representative.

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 Convention or the Directive.

5. The designated representatives of the competent authorities shall take care of the practical aspects of the simultaneous examination (starting date, calendar, periods to examine, State having the functional responsibility for coordinating the examination). If needed, tax officials of one State may be allowed to be present in the other State.
6. The prerequisite and therefore essential condition of selection is that the tax years be open for examination in the two States.

D. Criteria for case selection

Any case selected for a simultaneous tax examination shall generally involve a taxpayer or taxpayers carrying out activities, either through associated enterprises or through permanent establishments, in both participating States. The factors which have to be taken into account in determining whether a case is selected for simultaneous examination may include, inter alia:

1. the importance of the activities on a worldwide scale ;
2. the extent of the transactions within the group ;
3. indication of tax avoidance or evasion ;
4. indication of substantial non-compliance of tax legislation in one or both States ;
5. indication of a manipulation of transfer prices to the potential detriment of one or both States ;
6. indication of other forms of international tax planning which, if countered successfully, may generate additional tax revenue in one or both States;
7. 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 example:

- a) the economic performance does not reflect appropriate profits when measured against sales, total assets, etc.;
 - b) cases where the taxpayer consistently shows losses, especially long-term losses;
8. cases where the taxpayer, in spite of making profits, paid little or no tax over the relevant period;
9. existence of transactions involving tax havens;
10. situations where the competent authorities consider that such examination is in the interest of the tax administrations in order to promote international tax compliance.

E. Personnel

The examinations shall be conducted separately within the framework of national law and practice by tax administration officials of each State applying the available exchange of information provisions. There shall be no interchange of personnel but the presence in one State of tax officials who are representatives of the competent authorities of the other State may be justified for the efficiency of the examination.

The representatives designated by both administrations shall only communicate through the competent authorities.

The competent authorities can decide that the representatives are authorized to act as authorized agents of the competent authority of their country. This mandate will enable these representatives to communicate among them directly, as well by telephone, fax or electronic mail as by consulting directly with each other. Any given information has to be confirmed by letter through the competent authorities.

F. Planning the simultaneous tax examination

Before starting the tax examination the tax officials in charge of the case shall consider with their counterparts of the other State the examination plans of each State, possible issues to be developed and target dates. It may be appropriate to hold coordination meetings to plan and follow closely the progress of the simultaneous tax examination. However, in no case shall any exchange of official plans of tax examinations be allowed between the two States.

G. Conducting the simultaneous tax examination

A simultaneous tax examination requires the cooperation of tax administration officials located in each State who shall simultaneously but independently examine the situation of the taxpayer(s) within their jurisdiction. They shall try as far as possible to synchronize their work schedule.

H. Discontinuing the simultaneous examination

If one of the two States concludes that it is no longer beneficial to continue the simultaneous examination of a case, it may withdraw by notifying its decision to the other State.

I. Concluding the simultaneous tax examination

A simultaneous tax examination shall be concluded after coordination and consultation between the competent authorities of both States. Issues pertaining to double taxation raised by the examination shall be treated the case being in the framework of the mutual agreement procedure referred to in Article 25 of the Convention or in the framework of the Convention of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC).

V. THE PRESENCE OF TAX OFFICIALS OF ONE STATE IN THE TERRITORY OF THE OTHER STATE

Subject to the following provisions tax administration officials of one State may be present in the territory of the other State in order to obtain any information, which is useful for determining the tax on income and on capital of one or both States.

- A. A request to allow tax officials of one State to be present during an examination on the territory of the other State should be submitted in special cases. This includes in particular:
1. cases in which there are indications of significant cross-border irregularities or fraud in one or both States;
 2. complex cases which make the presence of the tax officials desirable;
 3. cases where there is a risk of the time limit being exceeded, and where the presence of the tax officials can accelerate the examination;
 4. common examinations in the framework of bilateral or multilateral examinations;
- B. The competent authorities may allow the presence of tax officials of one State in the territory of the other State in cases other than those referred to in A above.
- C. On the basis of reciprocity a State shall allow in similar cases the presence of tax officials of the other State in its territory.
- D. The request for the presence of tax officials of a State in the territory of the other State shall be well-reasoned, shall be submitted in writing and shall relate to a

particular examination. It shall indicate the steps that the requesting State has taken to obtain the required information.

The competent authority of the requested State shall make a decision at the latest within three months as from the date the request is received. In urgent cases which have to be well reasoned, a decision shall be made within one month.

If the request is granted, the competent authority of the requested State shall, as soon as possible, notify the competent authority of the requesting State of the time and place of the examination and of the identity of the authority or tax official designated to carry out the examination.

- E. The examination shall be carried out by tax officials from the requested State. The visiting officials shall be authorised to be present during those parts of the examination which may be interesting for the examination of the requesting State. The visiting officials shall comply with the legislation of the requested State.
- F. The visiting officials may inspect, upon request, accounts, documents and other data and information carriers which may be interesting in the framework of the examination. Subject to the provisions of the legislation of the State in the territory of which the examination takes place, the visiting officials shall obtain, upon request, a copy and/or photocopy of the above-mentioned data and information.

The requesting State may not use the data and information obtained on the occasion of the examination which is carried out in the other State before it has been provided through the competent authorities.

- G. Tax officials of a State who are to be present in the territory of the other State shall be explicitly designated for that purpose in writing and shall carry an official authorisation showing that they are acting on behalf of their State. In any case the officials have to be able to prove that they are State officials by means of a commission or any other attest delivered by the office to which they belong.

VI. MISCELLANEOUS PROVISIONS

- A. The competent authorities agree that reciprocity is a fundamental aspect of mutual assistance and commit themselves to keep a spirit of collaboration in the exchange of information which is the object of the Directive and of Article 26 of the Convention, in order to ensure an application which is in accordance with the principle of reciprocity.
- B. The provisions of the Convention and of the Directive concerning secrecy and the limits to the exchange of information shall apply.
- C. If information provided by a contracting State is found to be incorrect or incomplete, the competent authorities of that State have to contact the competent authorities of the other State on this subject as soon as possible.

- D. Feedback should be given by the State that received the information each time:
- this seems relevant for the State that sent the information, and
 - the information was useful for the State that received the information.
- E. Unless otherwise agreed by the competent authorities, ordinary costs incurred in providing assistance shall be borne by the requested State. Extraordinary costs shall be borne by the applicant State, according to prior agreement by the competent authorities of both States.
- F. Requests of information and answers thereto shall be drawn up in English or in any other language agreed bilaterally between the competent authorities of the Contracting States.
- G. The competent authorities of both States authorize, in accordance with Article 7, § 3 of the Directive, the information provided by one State to be used by the other State for purposes other than those mentioned in Article 7, § 1 of the Directive, if, under the legislation of the informing State, the information could, in similar circumstances, be used in this State for similar purposes. The competent authorities shall inform each other of their respective legislation in this matter.
- H. For the application of this Agreement, the competent authorities are those referred to in article 1, § 5 of the Directive and in article 3, § 1, h) of the Convention. Those competent authorities shall inform each other of the services to which the information must be provided.
- I. This Agreement shall enter into force on the date of its signature. It shall apply for the first time on exchanges of information relating to the year 2007.

This Agreement shall be published in the Official Gazette ("Moniteur Belge") and in the newspaper "Latvijas Vēstnesis"


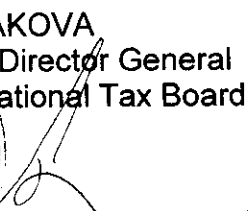
Done in duplicate in the English language.

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