

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE COMPETENT AUTHORITIES
OF CANADA
AND THE REPUBLIC OF LATVIA
ON MUTUAL ADMINISTRATIVE ASSISTANCE**

In order to carry out the provisions of the Convention between Canada and The Republic of Latvia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital signed on April 26, 1995 (hereinafter referred to as the "Convention"), and having regard to the desire of both tax administrations to increase mutual administrative assistance, the competent authorities of Canada and Latvia have agreed as follows:

Object of the Memorandum of Understanding

1. Pursuant to Article 26 (Exchange of Information) of the Convention the domestic laws of Canada and Latvia the competent authorities shall provide administrative assistance to each other in tax matters. Such administrative assistance shall be comprised of exchange of information, including simultaneous tax examinations and participation in tax examinations abroad.

Taxes covered

2. This Memorandum of Understanding (MOU) shall apply to taxes as provided for under Article 2 of the Convention.

Definitions

3. For the purposes of this MOU:
- a. the definitions in the Convention are applicable to this MOU;
 - b. the representatives authorized to act as competent authorities under the Convention for purposes of this MOU are:
 - (i) in the case of Canada, the Director, Competent Authority Services Division;
 - (ii) in the case of Latvia, the Director General, the Director of Tax Board, the Director of Tax Control Department, the Head of Central Information Exchange Division, State Revenue Service;

- c. the competent authorities will communicate, without delay, any changes to their status as authorized representative in accordance with the Convention.

General

4. As provided under Article 26 of the Convention, the competent authorities shall exchange information as is relevant for the carrying out the provisions of this Convention or of the domestic laws in the Contracting States concerning taxation.

5. The competent authorities shall endeavor to provide feedback on the usefulness of the information received.

Exchange of Information on Request

6. At the request of the competent authority of one State (the applicant competent authority), the competent authority of the other State (requested competent authority) shall provide information referred to in paragraph 4.

7. The applicant competent authority, before sending a request, shall pursue all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

8. If the information available in the tax files of the requested competent authority is not sufficient to enable it to comply with the request for information, the requested competent authority shall take all reasonable measures in accordance with its domestic law, to obtain the information for the applicant competent authority.

9. A request for assistance under this Paragraph shall include, to the extent possible:

- a. the identity of the person under examination or investigation;
- b. a description of the information sought, including its nature and the form in which the competent authority of the applicant State wishes to receive the information;
- c. the tax purpose for which the information is sought and foreseeable relevance of the information;
- d. grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State;
- e. the name and address of any person believed to be in possession of the requested information.

- f. details of the domestic taxpayer concerned: name or given name and surname, taxpayer identification number, legal address or declared place of residence (if available);
- g. the period for which the information is requested;
- h. type of tax concerned;
- i. information which is being requested; and
- j. declaration that the applicant competent authority, before sending a request, has pursued all means available in its own territory to obtain the information.

10. The request shall be dealt with as soon as possible. The requested competent authority shall send an acknowledgment of the receipt of the information requested and if there are any deficiencies in the request, notify the applicant competent authority of those deficiencies within 60 days of receipt of the request. If the requested competent authority is unable to provide the information within 90 days, it should inform the applicant competent authority and explain the reasons for the delay.

Automatic Exchange of Information

11. As soon as possible after the end of each calendar year, the competent authority of each State shall, to the extent possible, on the basis of the information available, supply automatically to the competent authority of the other State information concerning persons, in respect of the following types of income as referred to in the Convention, but not limited to:

- a. income from immovable property, as referred to in Article 6 of the Convention;
- b. business profits, as referred to in Article 7 of the Convention;
- c. dividends, as referred to in Article 10 of the Convention;
- d. interest, as referred to in Article 11 of the Convention;
- e. royalties, as referred to in Article 12 of the Convention;
- f. capital gains, as referred to in Article 13 of the Convention;
- g. salaries, wages, fees, pensions, annuities and other income as referred to in Article 14 - 21 of the Convention;

12. The information referred to in Paragraph 11 shall be provided in standardised form using the Standard Transmission Format of the Organisation for the Economic Co-operation and Development (OECD).

13. Information that cannot be supplied automatically, should be communicated on a spontaneous basis.

14. The information shall be provided electronically using AES 256 bit encryption.

15. The information to be exchanged shall include the Date of Birth, TINs (Tax Identification Numbers), and/or personal identity numbers, if available.

Spontaneous Exchange of Information

16. Each competent authority may, without prior request, forward information which is assumed to be of interest to the other competent authority, for the purposes referred to in Article 26 of the Convention.

Simultaneous Tax Examinations

17. To achieve more efficiency in the exchange of information and deal more effectively with cases of non-compliance with taxation laws, the competent authorities have established working procedures under which to conduct simultaneous tax examinations of selected persons, or groups of persons, carrying on activities in both States. The procedures are set out in Annex A.

18. A simultaneous tax examination is an arrangement between the competent authorities of both States to examine simultaneously and independently, each in its own territory, the tax affairs of a person or persons in which they have a common or related interest with a view to exchanging any relevant information which they so obtain.

Tax Examinations Abroad

19. At the request of the applicant competent authority, the requested competent authority may allow representatives of the applicant competent authority to be present at the appropriate part of a tax examination in the requested State to the extent permitted under its law.

20. If the request is acceded to, the requested competent authority will, as soon as possible, notify the applicant competent authority about the time and place of the examination the authority or official designated to carry out the examination and the procedures and conditions required by the requested State for the conduct of the examination. All decisions with respect to the conduct of the tax examination will be made by the requested State. Guidelines for tax examinations abroad are outlined in Appendix B.

21. The competent authorities of the Contracting States may by mutual agreement establish procedures governing the presence of foreign tax officials.

Electronic Transmissions

22. Each competent authority may provide the actual transmission of information (specific, spontaneous and automatic) electronically using AES256 bit encryption. Should this not be available to the competent authority the information shall be provided in paper format.

23. Acknowledgment and follow up communication will generally be exchanged through electronic mail, using encryption as appropriate.

Costs

24. Unless otherwise agreed by the competent authorities, ordinary costs incurred in providing assistance shall be borne by the requested competent authority, and extraordinary costs incurred shall be borne by the applicant competent authority.

25. Extraordinary costs will not be incurred without the prior consent of the applicant competent authority.

Consultations

26. The competent authorities shall consult each other whenever necessary to facilitate the carrying out of this MOU.

Secrecy and Limits

27. The provisions of the Convention shall apply with respect to secrecy and the limits to the exchange of information.

Application and Modifications

28. This MOU shall be applicable on the later of the two signature dates.

29. This MOU may be modified at any time by agreement between the competent authorities.

30. This MOU may be terminated by written notification by either competent authority.

31. The competent authorities may communicate directly for the implementation of this MOU.

SIMULTANEOUS TAX EXAMINATIONS

Subject to the provisions of Article 26 (Exchange of Information) of the Convention the competent authorities may agree to undertake simultaneous tax examinations.

Criteria for case selection

Any case selected for a simultaneous tax examination will involve a taxpayer or taxpayers with activities in both States. The factors considered in determining whether a case is selected for simultaneous tax examination will primarily be, but will not be limited to:

- indications of tax avoidance and/or evasion;
- indications of substantial noncompliance with the tax laws in both States;
- indications of a manipulation of transfer prices to the potential detriment of the participating States;
- indications of other forms of aggressive international tax planning which, if countered successfully, may generate additional tax yield in the participating States;
- indications that the economic performance of a taxpayer or related taxpayers, over a period of time, is significantly different than might be expected, for instance cases where:
 - economic performance does not reflect appropriate profits when measured against sales, total assets, etc.;
 - taxpayer consistently shows losses, especially long-term losses; and
 - taxpayer, regardless of profitability, paid little or no tax over the relevant period.
- the existence of transactions involving jurisdictions with harmful tax practices; and
- situations where the competent authorities consider it is in the interest of the tax administrations concerned in order to promote international tax compliance.

Case selection and examination procedures

The case selection and examination procedures are as follows:

1. Taxpayers will be independently identified for simultaneous examinations by the competent authority of each State.
2. Each competent authority will inform the other on its choice of potential cases, using the selection criteria described above.
3. A proposal for conducting a simultaneous tax examination will be made in writing by the competent authority of a Contracting State. It will contain the name of taxpayer (first name, surname (in case of individual)), their registration numbers and legal addresses, the period and the tax to be examined, and the motivation for selection. A proposal can be accompanied by copies of the relevant documents.
4. Each competent authority will determine whether it wishes to participate in a particular simultaneous tax examination. Neither State, however, is obliged to cooperate in an examination proposed by the other State.
5. If the competent authority of one State receives a proposal from the competent authority of the other State for conducting a simultaneous tax examination, that competent authority will confirm in writing its agreement or refusal to undertake a specific tax examination within four months.
6. If the proposal is accepted, the requested competent authority will indicate a designated representative, who will have functional responsibility for directing and coordinating the examination. After receiving the confirmation, the proposing competent authority will also indicate in writing its designated representative. In those cases, when there is an agreement to conduct a simultaneous tax examination, the competent authority of each State will formally request the competent authority of other State to exchange specific information according the provisions of Article 26 of the Convention.
7. The designated representatives of the competent authorities of both States will decide areas and periods to be examined in the particular case selected, the timetable for the examination, and approaches to be taken. They will initiate the exchange of specific information in accordance with formal written requests.
8. The information, which may be requested under this arrangement, must be obtainable under the Convention and the respective taxation laws of both States.
9. The competent authority of each State may indicate, by a declaration addressed to the competent authority of the other State, that according to its

internal legislation, it is obliged to inform its taxpayer before transmitting information concerned in conformity with Article 26 of the Convention.

10. Examinations will be conducted separately, within the framework of national law and practice by tax administration personnel of each State, in a way which maximizes the advantages obtainable from Article 26 of the Convention.

Planning the simultaneous tax examination

1. Before the start of the examination, the tax administration personnel 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.

2. 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.

Conducting the simultaneous tax examination

Simultaneous tax examination requires the cooperation of personnel located in each State who will simultaneously but independently examine the taxpayer or taxpayers within its jurisdiction. The primary responsibility for coordinating the examination and exchange of information in respect of a selected taxpayer will rest with the State agreed upon by the competent authorities. All exchanges of information must be made within the terms of the Convention and the MOU.

Discontinuing the simultaneous tax examination

If either competent authority concludes at any time that a simultaneous tax examination is no longer beneficial, it may withdraw by notifying in writing the other competent authority.

Concluding the simultaneous tax examination

A simultaneous tax examination will be concluded after coordination and consultation between the competent authorities of each State, in accordance with the administrative procedures of each State. Issues pertaining to double taxation raised by the examination are subject to Article 25 (Mutual Agreement Procedure) of the Convention.

**GUIDELINES FOR THE PRESENCE OF TAX OFFICIALS OF ONE STATE IN
THE TERRITORY OF THE OTHER STATE**

General

1. A request to allow tax officials of one State to be present during an examination in the territory of the other State should be submitted only in special cases. These include in particular:

- a. cases in which there are indications of cross-border irregularities or fraud on a significant scale in one or both states;
- b. complex cases which make the presence of the tax officials desirable;
- c. cases where there is a risk of the time limit being exceeded, and where the presence of the tax officials can accelerate the examination; and
- d. cases where the books and records of a taxpayer, resident of one State, are maintained in the other State and the taxpayer has requested that the examination be conducted in the requested State because it would be difficult and expensive for the taxpayer to send the records and personnel to the applicant State for the examination.

2. The competent authorities may agree to allow the presence of tax officials of one State in the territory of the other State in cases other than those described in paragraph 1.

Conditions for submitting a request

3. A request for the presence of tax officials in the territory of the other State shall be submitted in writing by the applicant competent authority and shall form part of a request for an examination. The requested competent authority shall make a decision with respect to the request as soon as possible and, in any event, within three months of receiving the request. Where a request is granted, it is on the understanding that the applicant state would admit tax officials from the requested state in similar circumstances.

4. The requested State may reject the request only after consultation with the applicant State and must indicate the reasons for such a decision.

5. A request shall explain why the presence of tax officials is necessary and shall indicate the steps that the applicant State has taken to obtain the required information.

6. If a taxpayer that is resident in one of the States has requested that the examination of the applicant State taxpayer's books and records be conducted in the requested State a copy of the taxpayer's submission shall be included. The officials of the applicant State will not use any information that may relate to any other resident taxpayers of the requested State that emerges from the files. The officials of the applicant State are in this case guests of the requesting taxpayer and as such do not carry any special status during their visit and their visit is dependent entirely on the good will of the taxpayer.

The examination and the provisions of information

7. The examination shall be carried out by tax officials of the requested State, unless it is agreed that the visiting tax officials may carry out the examination (for example, an examination under paragraph 1(d)). The visiting tax officials shall be authorized to be present at an examination carried out in response to a request for information. The visiting tax officials shall comply with the legislation of the requested State.

8. The visiting tax officials may be present only during those parts of the examination in the requested State, which are relevant to the examination in the applicant State.

9. The visiting tax officials may examine, upon request, documents of relevance to the examination in the applicant State. Upon request, the requested competent authority may provide the applicant competent authority with copies of documents identified by the visiting tax officials.

10. The applicant State may not use the information obtained by its tax officials during the examination before it has been provided by the requested State, in accordance with the national legislation of the State providing the information.

Identification

11. Tax officials who are to be present in the territory of the requested State shall be explicitly designated for that purpose and shall carry a copy of official authorization showing that they are acting on behalf of the applicant State.

12. The tax officials must be able to demonstrate their official status by means of an instrument of appointment or some other form of identification issued to them by the service by which they are employed.

