

**MUTUAL AGREEMENT BETWEEN THE MINISTRY OF FINANCE OF THE
REPUBLIC OF FINLAND AND THE MINISTRY OF FINANCE OF THE REPUBLIC
OF ESTONIA UNDER THE PROVISIONS OF ARTICLE 25 PARAGRAPH 3 OF
THE CONVENTION BETWEEN THE REPUBLIC OF FINLAND AND THE
REPUBLIC OF ESTONIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND
THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON
INCOME AND ON CAPITAL, SIGNED AT HELSINKI ON 23RD MARCH 1993 FOR
THE CONDUCT OF SIMULTANEOUS TAX EXAMINATIONS**

The Ministry of Finance of the Republic of Finland and the Ministry of Finance of the Republic of Estonia, in their capacity as competent authorities for the purposes of the Convention between the Republic of Finland and the Republic of Estonia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital (hereinafter referred to as "the Convention"), signed at Helsinki on 23rd March 1993,

Desiring to achieve more efficiency in the exchange of information provided for in Article 26 of the Convention and to reach the objective of the prevention of fiscal evasion referred to in that Article,

Considering that simultaneous tax examinations intensify the exchange of information in accordance with the Convention,

Having regard to the provision of paragraph 3 of Article 25 of the Convention,

Have agreed on the following provisions:

I Definitions and legal basis

For the purposes of the Agreement the expression "simultaneous tax examination" means an examination undertaken by virtue of an arrangement between the competent authorities to examine simultaneously and independently, each on its own territory, the tax affairs of (a) taxpayer(s) in which they have a common or related interest, with a view to exchanging any relevant information which they so obtain.

For the purposes of this Agreement the competent authority is:

- a) in Finland the "Ministry of Finance", however, for the purposes of implementing the provisions of this Agreement the competent authority is the "Verohallitus (the National Board of Taxes)".
- b) in Estonia the "Ministry of Finance"; however, for the purposes of implementing the provisions of this Agreement the competent authority is "Maksamet (Estonian Tax Board)".

The simultaneous tax examination shall be conducted under Article 26 (exchange of information) of the Convention.

The exchange of information effected by virtue of the Agreement must be performed within the scope and under the provisions of the Article 26.

Any exchange of information which follows from such examinations either on request or spontaneous shall be made through the competent authorities.

II Objectives

The main purpose of simultaneous tax examination is "inter alia":

1. To determine a taxpayer's correct liability in cases where:
 - 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 identified;
 - transactions with tax havens and tax avoidance or evasion schemes involving tax havens are identified.
2. To facilitate an exchange of information on:
 - multinational business practices, complex transactions, fiscal examination issues and fiscal non-compliance trends that may be particular to an industry or group of industries;
 - cost sharing arrangements;
 - profit allocation methods in special fields such as global trading and new financial instruments.

A simultaneous tax examination is not intended to be a substitute for the mutual agreement procedure provided for under Article 25 of the Convention.

III Case selection and examination procedure

1. Each competent authority shall identify independently taxpayers it intends to propose for a simultaneous examination.
2. Each competent authority shall inform its counterpart 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 examinations.
3. Each competent authority shall determine if it wishes to participate in a 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 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 Article 26 of the Convention.
5. The designated representatives of the competent authorities shall take care of the practical aspects of the simultaneous examination (timetable, mode and periods to examine).

6. The prerequisite and therefore essential condition of selection is that the tax years be open for examination in the two States interested in having a simultaneous examination.

IV Criteria for case selection

Any case selected for a simultaneous examination will generally involve a taxpayer or taxpayers having operations either through associated enterprises or through permanent establishments in the two Contracting States. The criteria taken into consideration in determining whether a case is selected for simultaneous tax examination may include, inter alia:

1. the scale of its worldwide operations;
2. the extent of intra-group transactions;
3. available indications of:
 - tax avoidance and evasion;
 - substantial non-compliance of tax law in the Contracting States;
 - manipulation of transfer prices to the potential detriment of the Contracting States;
 - other forms of international tax planning which, if countered successfully, would generate additional tax yield in the Contracting States;
 - 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;
 - transactions involving tax havens;
 - situations where the competent authorities consider that it is in the interest of the tax administrations concerned in order to promote international tax compliance.

V Personnel

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. The presence of representatives of the competent authority of the foreign State may be allowed for the efficiency of the examination, but no interference or other direct participation in the conduct of the examination shall be permitted.
2. The designated representatives of the competent authorities communicate with each other only through those competent authorities.
3. Each competent authority may allow its representatives to act as delegates. The delegation will allow them to communicate informally with each other directly either by telephone or by direct consultation. However, any formal communication shall be carried out through the intermediary of each competent authority.

VI Planning the simultaneous tax examination

Before the start of the 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 coordination meetings to plan and follow closely the performance of the simultaneous examination. However, no exchange of formal examination plans will be made between the competent authorities.

VII Conducting the simultaneous tax examination

A simultaneous tax examination requires the 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 synchronise their work schedules.

VIII Discontinuing the simultaneous tax examination

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

IX Concluding the simultaneous tax examination

1. 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.
2. The outcome of the examinations gained by the audit services in the two States shall be jointly coordinated by the representatives of the two administrations. The representatives shall report to their competent authorities every question that cannot be settled at representatives level and could involve a double taxation, either juridical or economic, or could produce the effects of a double non-taxation. The competent authorities shall endeavour to solve these problems by means of a mutual agreement procedure under Article 25 of the Tax Convention.

X Miscellaneous provisions

1. This Agreement shall be operative as from 1 January, 2004.
2. This Agreement may be modified at any time by agreement between the competent authorities.

Done, at Tallinn, in duplicate, on 26 November 2003, in the English language.


For the Ministry of Finance
of the Republic of Finland


For the Ministry of Finance
of the Republic of Estonia
by proxy

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