

**MEMORANDUM OF UNDERSTANDING BETWEEN THE GENERAL
FINANCIAL DIRECTORATE IN THE CZECH REPUBLIC AND THE
DEPARTMENT OF FINANCE OF THE MINISTRY OF ECONOMY AND
FINANCE OF THE ITALIAN REPUBLIC ON MUTUAL ADMINISTRATIVE
ASSISTANCE IN THE FIELD OF DIRECT TAXES**

The General Financial Directorate of the Czech Republic and the Department of Finance of the Italian Republic (hereinafter referred to as “the Parties”)

Having regard to

The provisions of Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, with subsequent amendments (hereinafter referred to as the “Directive”), and

Article 26 of the Convention between Italy and the Czech Republic for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion of 5 May 1981 (hereinafter referred to as the “Convention”), and

The definitions of exchange of information provided by the Commentary to paragraph 1 of Article 26 of the Organization for Economic Co-operation and Development (hereinafter referred to as "OECD") Model Tax Convention,

and both Parties desiring to strengthen the bilateral cooperation in tax matters,

Have decided to conclude the following Memorandum of Understanding (hereinafter referred to as the “Memorandum”):

Article 1

Competent Authorities

For the application of this Memorandum the competent Authorities are:

In the Czech Republic:

The Director General of General Financial Directorate
Lazarská 15/7
117 22 Prague 1
Czech Republic
podatelna@fs.mfcr.cz

In Italy:

The Director General of the Department of Finance
Ministry of Economy and Finance
Via dei Normanni, 5
00184 Rome
Italy
df.dirgen.segreteria.finanze.it

Requests for information and information provided upon request, spontaneously or automatically shall be addressed to:

In the Czech Republic:

General Financial Directorate
Lazarská 15/7
117 22 Prague 1
Czech Republic

In Italy:

For information exchanged upon request, spontaneously and automatically: Revenue Agency Directorate for Tax Assessment International Division Exchange of Information Office Via Cristoforo Colombo 426 C/D 00145 Rome (Italy) <u>dc.acc.coopint@agenziaentrate.it</u>	For information exchanged upon request and spontaneously: Guardia di Finanza Headquarters II Department – Analysis and International Relations Viale XXI Aprile, 51 00162 Rome (Italy) <u>Iireparto.teletrattamento@gdf.it</u>
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Article 2

Exchange upon Request

Information shall be supplied upon request pursuant to Article 26 of the Convention and to Article 5 of the Directive. The competent Authorities shall provide information upon request as soon as possible.

The information exchanged may include information held by banks, other financial institutions, nominees or persons acting in an agency or a fiduciary capacity or relating to ownership interests in a person.

Article 3

Automatic Exchange of Information

1. On the basis of Article 8 of the Directive and Article 26 of the Convention the Parties will automatically provide each other with the information available concerning individuals and legal entities, in respect of:
 - 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) interests, 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) income from independent personal services or other activities of any character, as defined in Article 14 of the Convention;
 - h) income consisting of salaries, wages and other similar remunerations, as referred to in Articles 15 and 19 of the Convention;
 - i) director's fees and similar payments, as referred to in Article 16 of the Convention;
 - j) income of artists and sportsmen, as referred to in Article 17 of the Convention;

- k) pensions and other similar remunerations, as referred to in Articles 18 and 19 of the Convention; and
 - l) other income, as referred to in Article 22 of the Convention.
2. As soon as possible and preferably by the end of the second calendar year following the year when the income arose, the Parties will provide the information referred to in paragraph 1 of this Article. The information will be provided electronically, in the OECD Standard Magnetic Format (latest version) or in the OECD Standard Transmission Format (latest version).
 3. If the information cannot be supplied automatically, it may be communicated on a spontaneous basis.
 4. If the information provided is found to be incorrect or incomplete, the recipient Authority shall make this known to the other State as soon as possible. The same will apply to technical problems or difficulties in converting the data provided.
 5. The following data shall be transferred:
 - As regards natural persons:
 - a) Name;
 - b) Date of birth;
 - c) Address in the State of residence, if available;
 - d) Tax Identification Number (TIN) issued in the State of residence, if available, or VAT registration number or personal identification code.
 - As regards legal entities:
 - a) Name;
 - b) Seat in the State of residence, if available;

- c) Tax Identification Number (TIN) issued in the State of residence, if available, or VAT registration number.

As regards income:

- a) Amount of the income earned;
- b) Tax year concerned;
- c) Amount of the advance payment withheld by the paying agent (if applicable).

Upon condition of reciprocity, the competent Authorities will exchange information starting from data referring to calendar year 2013.

Article 4

Spontaneous Exchange of Information

The competent Authorities may provide each other, without any prior request being necessary, with information concerning individuals, legal entities and any other body of persons, which is obtained in the ordinary course of administration.

Article 5

Presence of tax officials of one State in the territory of the other State

1. On the basis of Article 11 of the Directive and Article 26 of the Convention, a request to allow tax officials of one State to be present during an examination on the territory of the other State shall be submitted in special cases. This includes in particular:
 - a) cases in which there are indications of cross-border irregularities or tax evasion;
 - 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;

- d) examinations in the framework of an agreed bilateral or multilateral examination, including simultaneous tax examinations.
2. The Authorities may 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 of this Article.
 3. Where a request is granted, it is on the understanding that the requesting State will admit tax officials from the requested State in similar circumstances.
 4. A request for the presence of tax officials will be submitted in writing by the Authority of the requesting State and will form part of a request for information. The Authority of the requested State will make a decision with respect to the request as soon as possible.
 5. If the request is granted, the authority of the requested State will, as soon as possible, notify the authority of the requesting State of the time and place of the examination and the officials designated to carry out the examination.
 6. The visiting tax officials of the requesting authority, who are present during administrative enquiries in the requested State, may interview individuals and examine records. The visiting officials will comply with the legislation and administrative practice of the requested State.
 7. The visiting tax officials may be present only during those parts of the examination in the requested State, which are or may be relevant to the examination in the requesting State.
 8. The visiting tax officials may put forward suggestions or questions regarding the examination to the officials designated to carry out the examination in the requested

State. Any decision regarding such suggestions or questions will be made by the Authority or officials of the requested State.

9. The information gathered during the examination has to be exchanged, for Italy by the Italian “Agenzia delle Entrate” and “Guardia di Finanza” and, for the Czech Republic by the General Financial Directorate with the exchange of information provisions of Chapter II of the Directive and Article 26 of the Convention.

Article 6

Simultaneous tax examinations

To achieve more efficiency in the exchange of information and to deal more effectively with cases of tax avoidance or tax evasion, the Parties have decided to establish a working procedure as referred to in the Annex of this Memorandum to conduct simultaneous tax examinations of selected taxpayers, or groups of taxpayers, carrying on activities in both the Czech Republic and Italy.

Article 7

Reciprocity

Principle of reciprocity is an important aspect of the mutual cooperation and requires that an atmosphere of freely exchanged information subject to the provisions of this Memorandum should be continually maintained, in order to ensure that said exchange occurs appropriately.

Article 8

Language of the Exchange of Information

Any exchange of information shall be either in English or accompanied by an English translation of the relevant information.

Article 9

Miscellaneous provisions

1. The information received by the Parties shall be used and disclosed only as it is provided for by the Directive and the Convention with respect to secrecy and the limits to the exchange of information. If the information provided is incorrect or should have not been transmitted, the competent Authority concerned shall be informed without delay.
2. Any exchange of information under this Memorandum shall be made through the Authorities or authorized officials of both States.
3. The Authorities shall consult each other, whenever necessary, to facilitate the carrying out of the obligations under this Memorandum.


Article 10

Entry into force. Modifications. Termination

1. This Memorandum will come into effect on the day following the date of its signature by the Director General of the Department of Finance in Italy and the Director General of General Financial Directorate in the Czech Republic, whichever is later.
2. This Memorandum may be modified at any time by a written agreement between the Parties.
3. 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.

Done in duplicate in the English, Italian and Czech languages, all texts being equally authentic. In case of any disagreement of interpretation, the English text shall be applicable.

For the Competent Authority
of the Czech Republic



For the Competent Authority
of Italy



SIMULTANEOUS TAX EXAMINATIONS

1. Definitions and legal basis

The Parties decide that for the purpose of this Memorandum the expression “simultaneous tax examination” means an examination by virtue of an arrangement between the Parties to examine, simultaneously and independently, each on its own territory, the tax affairs of (a) taxpayer(s), or groups of taxpayers in which they have a common or related interest with a view to exchanging any relevant information which they may so obtain.

The Parties agree that disclosure of information obtained by means of simultaneous tax examinations falls within the provisions of the Convention and the Directive.

The Parties agree that any exchange of information – spontaneous or upon request – which follows from such examination, shall be made through the Authorities and authorized officials.

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

2. Objectives

The main purpose of a 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 in cases where transfer pricing issues are involved;
- 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;
- 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, tax examination issues and non-compliance trends that may be particular to an industry or a group of industries;
- cost sharing arrangements;
- profit allocation methods in special fields such as global trading and new financial instruments are used.

3. Case selection and examination procedure

The selection procedures will be the following:

1. Each Authority, in accordance with their respective internal practices and procedures, will independently identify cases that may be suitable for simultaneous tax examinations.
2. The 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 Authority shall determine if it wishes to participate in a simultaneous tax examination.
4. The Authority requested to participate in a simultaneous examination shall consider the information in conjunction with information from its own sources and shall confirm within three months 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 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 26 of the Convention. Each Authority will indicate in writing a representative who will have the functional responsibility for directing and co-ordinating the examination. The 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 Italy and the Czech Republic 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 a tax examination in both States interested in having a simultaneous tax examination for a specific taxpayer or specific taxpayers.

4. Criteria for case selection

The Parties decided the following:

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 a representative office in the territory of both 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 transactions in both States;

3. Available indications of:

- a) Tax avoidance or evasion;
- b) Substantial non-compliance of the tax law in the participating States;
- c) Manipulation of transfer prices to the potential detriment of the participating States;
- d) Other forms of international tax planning which, if countered successfully, may generate additional tax yield in the participating States;
- e) 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;
- f) Transactions involving tax havens;
- g) Situations where the Authorities consider it is in the interest of the tax Administrations concerned in order to promote international tax compliance.

5. Personnel

The Parties agree the following:

1. Examinations shall be concluded separately within the framework of domestic law and practice solely by tax administration officials of each State applying the available exchange of information provisions. The presence of representatives of the Authority of the foreign State may be allowed for the efficiency of the examination in accordance with the provisions of Article 6 of the Memorandum of Understanding.
2. It is understood that the term “tax administration officials” shall also include, in the case of Italy, the members of the Italian “Corpo della Guardia di Finanza”.

The authorized officials can contact each other directly.

6. Planning the simultaneous tax examination

The Parties agree that 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 meetings to plan and follow closely the performance of the simultaneous tax examination.

7. Conducting the simultaneous tax examination

The Parties indicate that simultaneous tax examinations require the cooperation 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.

8. Discontinuing the simultaneous tax examination

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

9. Concluding the simultaneous tax examination

The Parties agree that the simultaneous tax examination will be concluded after coordination and consultation between the Authorities of both States. Issues pertaining to double taxation raised by the examination are reserved to the mutual agreement procedure of Article 25 of the Convention.