

## **MEMORANDUM OF UNDERSTANDING ON MUTUAL ADMINISTRATIVE ASSISTANCE BETWEEN THE COMPETENT AUTHORITIES OF CANADA AND ITALY**

In order to enhance and facilitate carrying out the provisions of the Convention between Canada and Italy for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion (“the Convention”), and having regard to the desire of both Contracting States to increase mutual administrative assistance, the competent authorities of Canada and Italy have agreed as follows:

### **OBJECT AND SCOPE OF THE MEMORANDUM OF UNDERSTANDING**

1. Pursuant to Article 25 (Exchange of Information) of the Convention and subject to the national laws of the Contracting States the competent authorities will provide administrative assistance to each other in tax matters. Such administrative assistance shall be comprised of exchange of information, simultaneous tax examinations and participation in tax examination abroad.

### **AUTOMATIC EXCHANGE OF INFORMATION**

2. On the basis of Article 25 of the Convention, the competent authorities shall automatically transmit information to each other, if available, regarding:
- a. dividends, as referred to in Article 10 of the Convention;
  - b. interests, as referred to in Article 11 of the Convention;
  - c. royalties, as referred to in Article 12 of the Convention;
  - d. income from independent personal services or other activities of an independent character, as defined in Article 14 of the Convention;
  - e. income consisting of salaries, wages and other similar remunerations, as referred to in Articles 15 and Article 19 and Article 20 of the Convention;
  - f. Director’s fees and similar payments, as referred to in Article 16 of the Convention;
  - g. Income of artistes and sportspersons, as referred to in Article 17 of the Convention;
  - h. pensions and annuities, as referred to in Articles 18 of the Convention; and
  - i. other income, as referred to in Article 21 of the Convention.

### **SPONTANEOUS EXCHANGE OF INFORMATION**

3. On the basis of Article 25 of the Convention, each competent authority may without prior request forward information to each other which is assumed to be of interest to the other competent authority when during the course of their own activities information is obtained which may be relevant to the accurate determination, assessment and collection of taxes covered in Article II of the Convention; This applies especially in the case of:
- a. The competent authority of one State has grounds for supposing that there may be a loss of tax in the other State;

- b. A person liable to tax obtains a reduction in or an exemption from tax in one State which would give rise to an increase in tax or to liability to tax in the other State;
- c. Business dealings between a person liable to tax in one State and a person liable to tax in the other State are conducted through one or more countries in such a way that an in appropriate tax saving may result in one of the States or in both;
- d. The competent authority of one State has grounds for supposing that a loss of tax may result from artificial transfers of profits within groups of enterprises.
- e. A particular tax avoidance or evasion scheme is likely to be used by persons liable to tax in the other State.

And any other case on which the competent authorities of both States may agree.

#### **CONDITIONS FOR AUTOMATIC EXCHANGE OF INFORMATION**

4. If the information provided is found to be incorrect or incomplete, the competent 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 automatic exchange of information will be provided periodically as soon as possible and preferably by the end of the second calendar year following the year when the income arose.
6. The automatic exchange of information will be provided electronically, in the OECD Standard Magnetic Format (latest version) where possible. Paper format will be used only for spontaneous information, or when electronic means of exchange are not available.
7. In the case of individuals, the information exchanged will include name, address, and, where possible, Tax Identification Number (TIN) in the residence country. This information will also include date and place of birth, if available. Analogous information regarding legal persons will also be provided.

#### **SPECIFIC REQUEST FOR INFORMATION**

8. On the basis of Article 25 (Exchange of Information) of the Convention, the competent authority of the requested State shall provide information upon specific request by the competent authority of the applicant State for the purposes referred to in Paragraph 1. If the information available in the tax files of the requested State is not sufficient to enable compliance with the request, that State shall take measures allowed by its legislation, to provide the applicant State with the information requested.
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 applicant competent authority wishes to receive the information from the requested competent authority;
- c. The tax purposes for which the information is sought;
- 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; and

The name and address of any person believed to be in possession of the requested 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 competent authority of the applicant Party of those deficiencies within 60 days of the 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.

#### **LIMITATIONS ON EXCHANGE OF INFORMATION**

11. According to Article 25 of the Convention, the exchange of information referred to in this Memorandum of Understanding (MOU) does not compel the Contracting States:

- a. to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or the disclosure of which would be contrary to the public policy;
- b. to carry out administrative measures at variance with their respective laws or regulations; or
- c. to supply particular items of information which are not obtainable under their respective laws or regulations.

12. It is understood that in no case the provisions of paragraph 11 shall be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

#### **CONFIDENTIALITY**

13. As provided in Article 25 in the Convention, any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities, (including courts and administrative bodies) involved in the assessment or collection of, the enforcement in respect of, or the determination of appeals in relation to, the taxes covered

by the Convention. Such persons or authorities shall use such information only for such purposes. These persons or authorities may disclose the information in public court proceedings or in judicial decisions.

### **SIMULTANEOUS EXAMINATION**

14. 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.

15. A simultaneous tax examination means an arrangement between the competent authorities 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**

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

17. If the request is acceded to, the competent authority of the requested State will, as soon as possible, notify the competent authority of the applicant State 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.

18. The competent authorities may by mutual agreement determine the procedures governing the presence of foreign tax officials.

### **ELECTRONIC TRANSMISSION**

19. Each competent authority may provide the actual transmission of information (specific, spontaneous and automatic) electronically using AES 256bit encryption. Should this not be available to the competent authority the information shall be provided in paper format.

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

## INTERPRETATION AND APPLICATION OF THE MOU

20. The competent authorities shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this MOU. In particular, the competent authorities may agree to a common meaning of a term.
21. The competent authorities may communicate with each other directly in order to carry out the provisions of this MOU.
22. For the application of this MOU the representatives of the competent authorities are:

In the case of Canada:  
Director, Competent Authority Services Division  
Canada Revenue Agency  
5<sup>th</sup> floor, Canada Building  
344 Slater Street  
Ottawa, Ontario  
K1A 0L5  
Phone: 1-613-941-7831  
Fax: 1-613-990-7370

In the case of Italy:  
Ministry of Economy and Finance  
Department of Finance  
International Relations Directorate  
Via dei Normanni, 5  
00184 Rome (Italy)  
[df.dri.segreteria@finanze.it](mailto:df.dri.segreteria@finanze.it)  
Phone: + 39 06 93836414  
Fax: + 39 06 93836218

## COSTS

23. Unless the competent authorities otherwise agree, ordinary costs incurred for the execution of this MOU shall be borne by the requested State and extraordinary costs shall be borne by the applicant State.
24. Extraordinary costs will not be incurred without the prior consent of the applicant competent authority.

## CONSULTATIONS

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

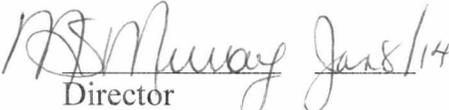
## EFFECTIVE DATE AND MODIFICATIONS

26. This MOU shall be applicable on the later of the two signature dates.
27. This MOU may be modified at any time by agreement between the competent authorities.

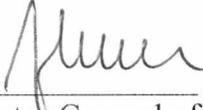
## TERMINATION

28. This MOU is concluded for an indefinite period of time. It may be terminated by written notification by either competent authority and shall cease to be operative after such notice has been received.
29. This MOU is signed in duplicate in the English and Italian languages. In case of any disagreement of interpretation, the English text shall be applicable.

On behalf of Canada  
The Competent Authority  
For Canada

  
Director  
Competent Authority  
Services Division  
Canada Revenue Agency

On behalf of Italy  
The Competent Authority  
For Italy

  
Director General of Finance  
Ministry of Economy and Finance

## SIMULTANEOUS TAX EXAMINATIONS

To achieve more efficiency in exchange of information and to more effectively deal with cases of non-compliance, the competent authorities of Canada and Italy have agreed to establish a working arrangement to conduct simultaneous examinations of selected persons, or group of persons, carrying on activities in both Countries.

### Legal Basis

Article 25 of the Tax Convention between Canada and Italy authorizes the exchange of information under these programs. The use or disclosure of information provided under the *Exchange of Information* article shall be governed in accordance with the provisions contained therein.

### Objectives

The objectives of these programs are to examine tax liabilities, and to facilitate exchanges of information with respect to such examinations.

### Criteria for Case Selection

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

- indication of tax avoidance and/or evasion;
- indication of substantial non-compliance of the tax laws in both 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;

- 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 selection procedures will be the following:

1. Taxpayers will be independently identified for simultaneous examinations by the competent authorities of each State.
2. Each competent authority will propose to the other competent authority those cases it considers to be appropriate, based on the criteria set forth in this arrangement. It will 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 examination.
3. Each competent authority determines whether it wishes to participate in a particular simultaneous examination. Neither competent authority, however, is obliged to cooperate in an examination proposed by the other competent authority.
4. If a competent authority accepts a counterpart's proposal to conduct a simultaneous examination, that competent authority will confirm, in writing, the selection of the case, mentioning the taxpayer(s), taxes and tax years involved. It will indicate a designated representative who will have functional responsibility for directing the examination. After receiving the confirmation, the proposing competent authority will also indicate, in writing, a designated representative. In those cases where there is an agreement to conduct a simultaneous examination, the competent authority of each State will formally request the other competent authority to exchange specific information pursuant to the Convention.
5. The designated representative of the competent authorities will decide the areas and periods to be examined in the particular case selected, the timetable for the examination, and approaches to be taken. They will initiate exchange of specific information in accordance with formal written requests.
6. Upon acceptance of a proposed simultaneous examination, the competent authorities may present to each other additional requests for exchange of information or provide each other with information spontaneously under and in conformity with the Convention governing the Agreement.
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 taxpayers before transmitting information concerned in conformity with Article 25 of the Convention (exchange of information).

## Personnel

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 treaty exchanges of information.

## Conducting an Examination

Simultaneous tax examination requires cooperation of personnel located in each State who will simultaneously but independently examine the taxpayer(s) within its jurisdiction. The primary responsibility for coordinating the examination and exchanges of information on 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 Memorandum of Understanding on Mutual Administrative Assistance.

## Discontinuing an Examination

If either competent authority concludes that a simultaneous examination has ceased to be beneficial, it may withdraw by notifying the other competent authority.

## Concluding an Examination

An examination will be concluded after coordination and consultation between the competent authorities of each State, in accordance with the administrative procedures of each country. Issues pertaining to double taxation raised by the examination are reserved to Article 24 of the Convention (Mutual Agreement Procedure).