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Convention

on the Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the Convention on the Elimination of Double Taxation in connection with the Adjustment of Profits of Associated Enterprises

Brussels, 8 December 2004

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
October 2006*

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**CONVENTION ON THE ACCESSION OF THE CZECH REPUBLIC,
THE REPUBLIC OF ESTONIA, THE REPUBLIC OF CYPRUS,
THE REPUBLIC OF LATVIA, THE REPUBLIC OF LITHUANIA,
THE REPUBLIC OF HUNGARY, THE REPUBLIC OF MALTA,
THE REPUBLIC OF POLAND, THE REPUBLIC OF SLOVENIA
AND THE SLOVAK REPUBLIC TO THE CONVENTION
ON THE ELIMINATION OF DOUBLE TAXATION
IN CONNECTION WITH THE ADJUSTMENT OF PROFITS OF
ASSOCIATED ENTERPRISES**

THE HIGH CONTRACTING PARTIES TO THE TREATY ESTABLISHING
THE EUROPEAN COMMUNITY,

CONSIDERING that the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic in becoming members of the Union, undertook to accede to the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (Arbitration Convention), signed in Brussels on 23 July 1990¹ and to the Protocol hereto, signed in Brussels on 25 May 1999,

HAVE DECIDED to conclude this Convention and to this end have designated as their Plenipotentiaries:

HIS MAJESTY THE KING OF THE BELGIANS,

THE PRESIDENT OF THE CZECH REPUBLIC,

HER MAJESTY THE QUEEN OF DENMARK,

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY,

THE PRESIDENT OF THE REPUBLIC OF ESTONIA,

THE PRESIDENT OF THE HELLENIC REPUBLIC,

HIS MAJESTY THE KING OF SPAIN,

THE PRESIDENT OF THE FRENCH REPUBLIC,

THE PRESIDENT OF IRELAND,

THE PRESIDENT OF THE ITALIAN REPUBLIC,

THE PRESIDENT OF THE REPUBLIC OF CYPRUS,

¹ Treaty Series No. 16 (1997) Cm 3560

THE CABINET OF MINISTERS OF THE REPUBLIC OF LATVIA,
THE PRESIDENT OF THE REPUBLIC OF LITHUANIA,
HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG,
THE PRESIDENT OF THE REPUBLIC OF HUNGARY,
THE PRESIDENT OF MALTA,
HER MAJESTY THE QUEEN OF THE NETHERLANDS,
THE FEDERAL PRESIDENT OF THE REPUBLIC OF AUSTRIA,
THE PRESIDENT OF THE REPUBLIC OF POLAND,
THE PRESIDENT OF THE PORTUGUESE REPUBLIC,
THE PRESIDENT OF THE REPUBLIC OF SLOVENIA,
THE PRESIDENT OF THE SLOVAK REPUBLIC,
THE PRESIDENT OF THE REPUBLIC OF FINLAND,
THE GOVERNMENT OF THE KINGDOM OF SWEDEN,
HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND,

WHO, meeting within the Committee of Permanent Representatives of the Member States to the European Union and having exchanged their full powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

The Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic hereby accede to the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, signed in Brussels on 23 July 1990, with all the adjustments and amendments made to it by the Convention on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the Convention on the elimination of double taxation in connection with the adjustment of profits of associated

enterprises, signed in Brussels on 21 December 1995¹, and by the Protocol amending the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, signed in Brussels on 25 May 1999.

ARTICLE 2

The Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises is hereby amended as follows:

- 1) in Article 2(2):
 - (a) the following subparagraph shall be inserted after subparagraph (a):

"(b) in the Czech Republic:

 - daň z příjmů fyzických osob;
 - daň z příjmů právnických osob";
 - (b) subparagraph (b) shall become subparagraph (c) and shall be replaced by the following text:

"(c) in Denmark:

 - indkomstskat til staten;
 - den kommunale indkomstskat;
 - den amtskommunale indkomstskat";
 - (c) subparagraph (c) shall become subparagraph (d);
 - (d) the following subparagraph shall be inserted after subparagraph (d):

"(e) in the Republic of Estonia:

 - tulumaks";
 - (e) subparagraph (d) shall become subparagraph (f);
 - (f) subparagraph (e) shall become subparagraph (g) and shall be replaced by the following text:

"(g) in Spain:

 - Impuesto sobre la Renta de las Personas Físicas;
 - Impuesto sobre Sociedades;
 - Impuesto sobre la Renta de no Residentes."

¹ Treaty Series No. 16 (2005) Cm 6551

- (g) subparagraph (f) shall become subparagraph (h);
- (h) subparagraph (g) shall become subparagraph (i);
- (i) subparagraph (h) shall become subparagraph (j) and shall be replaced by the following text:
- "(j) in Italy:
- imposta sul reddito delle persone fisiche;
 - imposta sul reddito delle società;
 - imposta regionale sulle attività produttive."
- (j) the following subparagraphs shall be inserted after subparagraph (j):
- "(k) in the Republic of Cyprus:
- Φόρος Εισοδήματος;
 - Έκτακτη Εισφορά για την Άμυνα της Δημοκρατίας;
- (l) in the Republic of Latvia:
- uzņēmumu ienākuma nodoklis;
 - iedzīvotāju ienākuma nodoklis;
- (m) in the Republic of Lithuania:
- Gyventojų pajamų mokestis;
 - Pelno mokestis";
- (k) subparagraph (i) shall become subparagraph (n);
- (l) the following subparagraphs shall be inserted after subparagraph (n):
- "(o) in the Republic of Hungary:
- személyi jövedelemadó;
 - társasági adó;
 - osztalékadó";
- (p) in the Republic of Malta:
- taxxa fuq l – income";
- (m) subparagraph (j) shall become subparagraph (q);
- (n) subparagraph (k) shall become subparagraph (r);
- (o) the following subparagraph shall be inserted after subparagraph (r):

"(s) in the Republic of Poland:

- podatek dochodowy od osób fizycznych;
- podatek dochodowy od osób prawnych";

(p) subparagraph (l) shall become subparagraph (t);

(q) the following subparagraphs shall be inserted after subparagraph (t):

"(u) in the Republic of Slovenia:

- dohodnina;
- davek od dobička pravnih oseb;

(v) in the Slovak Republic:

- Daň z príjmov právnických osôb;
- Daň z príjmov fyzických osôb";

(r) subparagraph (m) shall become subparagraph (w);

(s) subparagraph (n) shall become subparagraph (x) and shall be replaced by the following text:

"(x) in Sweden:

- statlig inkomstskatt;
- kupongskatt;
- kommunal inkomstskatt";

(t) subparagraph (o) shall become subparagraph (y);

2) the following indents shall be added to Article 3(1):

"– in the Czech Republic:

- Ministr financí or an authorised representative;

– in the Republic of Estonia:

- Rahandusminister or an authorised representative;

– in the Republic of Cyprus:

- Ο Υπουργός Οικονομικών or an authorised representative;

– in the Republic of Latvia:

- Valsts ieņēmumu dienests;

– in the Republic of Lithuania:

- Finansu ministras or an authorised representative;

- in the Republic of Hungary:
 - a pénzügyminiszter or an authorised representative;
- in the Republic of Malta:
 - il-Ministru responsabbli għall-finanzi or an authorised representative;
- in the Republic of Poland:
 - Minister Finansów or an authorised representative;
- in the Republic of Slovenia
 - Ministrstvo za finance or an authorised representative;
- in the Slovak Republic:
 - Minister financií or an authorised representative";

3) in Article 3 (1), the indent:

"– in Italy:

il Ministro delle Finanze or an authorised representative"

shall be replaced by the following:

"– in Italy:

Il Capo del Dipartimento per le Politiche Fiscali or an authorised representative".

ARTICLE 3

The Secretary-General of the Council of the European Union shall transmit to the Governments of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic a certified copy of:

- the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises,
- the Convention on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, and
- the Protocol amending the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises,

in the Danish, Dutch, English, French, Finnish, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages.

The text of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, of the Convention on the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, and of the Protocol amending the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises in the Czech, Estonian, Latvian, Lithuanian, Hungarian, Maltese, Polish, Slovenian and Slovakian languages is set out in Annexes I to IX to this Convention. The texts drawn up in the Czech, Estonian, Latvian, Lithuanian, Hungarian, Maltese, Polish, Slovenian and Slovakian languages shall be authentic under the same conditions as the other texts of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises.

ARTICLE 4

This Convention shall be subject to ratification, acceptance or approval by the Signatory States. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the Council of the European Union.

ARTICLE 5

This Convention shall enter into force, as between the Contracting States which have ratified, accepted or approved it, on the first day of the third month following the deposit of the last instrument of ratification, acceptance or approval by these States.

ARTICLE 6

The Secretary-General of the Council of the European Union shall notify all Signatory States of:

- (a) the deposit of each instrument of ratification, acceptance or approval;
- (b) the dates of entry into force of this Convention between the States that have ratified, accepted or approved it.

ARTICLE 7

This Convention, drawn up in a single original in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovenian, Slovakian, Spanish

and Swedish languages, all twenty-one texts being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Union. The Secretary-General shall transmit a certified copy to the Governments of each Signatory State.

Done at Brussels on the eighth day of December in the year two thousand and four.

**MINUTES OF THE SIGNING OF THE CONVENTION ON THE
ACCESSION OF THE CZECH REPUBLIC, THE REPUBLIC OF
ESTONIA, THE REPUBLIC OF CYPRUS, THE REPUBLIC OF LATVIA,
THE REPUBLIC OF LITHUANIA, THE REPUBLIC OF HUNGARY, THE
REPUBLIC OF MALTA, THE REPUBLIC OF POLAND, THE REPUBLIC
OF SLOVENIA AND THE SLOVAK REPUBLIC TO THE CONVENTION
ON THE ELIMINATION OF DOUBLE TAXATION IN CONNECTION
WITH THE ADJUSTMENT OF PROFITS OF ASSOCIATED
ENTERPRISES**

The Plenipotentiaries of the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Republic of Estonia, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland have, on 08/12/2004 in Brussels, signed the Convention on the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises.

On this occasion they have taken note of the following unilateral Declarations:

- I. Declaration on Article 7 of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises

Declaration by Belgium, the Czech Republic, Latvia, Hungary, Poland, Portugal, Slovakia and Slovenia on Article 7 of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises

Belgium, the Czech Republic, Latvia, Hungary, Poland, Portugal, Slovakia and Slovenia declare that they will apply Article 7(3).

- II. Declarations on Article 8 of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises:

1. Declaration by the Republic of Cyprus:

The term "serious penalty" includes penalties for:

- (a) fraudulently or wilfully making or submitting a false statement, return, document or declaration in respect of income or claims to any allowances or deductions;
- (b) fraudulently or wilfully submitting false accounts;
- (c) refusing, failing or neglecting to submit a tax return;
- (d) refusing, failing or neglecting to keep proper records or to make documents and records available for inspection;
- (e) aiding, assisting, counselling, inciting or inducing a person to make, deliver or furnish any return, statement, claim, accounts or document, or to keep or prepare any accounts or documents, which is or are materially false.

The legislative provisions governing the above mentioned penalties are included in the Assessment and Collection of Taxes Laws.

2. Declaration by the Czech Republic:

An infringement of the tax laws punishable by "serious penalty" is constituted by any infringement of the tax laws penalised by detention, criminal or administrative fines. For these purposes, by "infringement of the tax law" is meant:

- (a) Failing to pay the charged taxes, social insurance taxes, health insurance taxes and fees paid for state policy of employment;
- (b) Tax or similar payment evasion;
- (c) Failing in fulfilling notification duty.

3. Declaration by the Republic of Estonia:

The term "serious penalty" will be interpreted as signifying criminal penalties for tax fraud pursuant to Estonian domestic law (Penal Code).

4. Declaration by the Hellenic Republic:

The definition of serious penalty, provided by the Hellenic Republic in 1990, is hereby replaced by the following:

"The term "serious penalties" includes administrative penalties for serious tax infringements, as well as criminal penalties for offences committed with respect to the tax laws in accordance with the relevant provisions of the Code of Books and Records, of the Income Tax Code, as well as all specific provisions which define the administrative and criminal penalties in tax law."

5. Declaration by the Republic of Hungary:

The term "serious penalty" means criminal penalties established in relation to criminal tax offences, or tax penalties in relation to tax defaults in excess of HUF 50 million.

6. Declaration by the Republic of Latvia:

The term "serious penalties" means administrative penalties for serious tax infringements, as well as criminal penalties.

7. Declaration by the Republic of Lithuania:

The term "serious penalties" includes criminal penalties and administrative penalties such as penalties for lack of good faith and for opposition to tax inspection.

8. Declaration by the Republic of Malta:

The term "serious penalty" means a penalty, whether administrative or criminal, imposed on a person who wilfully with intent to evade tax or to assist any other person to evade tax:

- (a) omits from a return or any other document or statement made, prepared or submitted for the purposes of or under the Income Tax Acts, any income which should be included therein; or
- (b) makes any false statement or entry in any return or other document or statement prepared or submitted for the purposes of or under the Income Tax Acts; or
- (c) gives any false answer, whether verbally or in writing, to any question or request for information asked or made in accordance with the provisions of the Income Tax Acts; or
- (d) prepares or maintains or authorises the preparation or maintenance of any false books of account or other records or falsifies or authorises the falsification of any books of account or records; or
- (e) makes use of any fraud, art or contrivance whatever or authorises the use of any such fraud, art or contrivance.

9. Declaration by the Kingdom of the Netherlands:

The definition of serious penalty, provided by the Kingdom of the Netherlands in 1990, is hereby replaced by the following:

"The term "a serious penalty" means a penalty imposed by a court due to intentionally committing an offence as listed in Article 68(2), or Article 69(1) or (2), of the General Tax Act."

10. Declaration by the Portuguese Republic:

The definition of serious penalty, provided by the Portuguese Republic in 1990, is hereby replaced by the following:

"The term "serious penalties" includes criminal penalties as well as administrative penalties applicable to tax infringements defined by law as serious or committed with intent to defraud."

11. Declaration by the Republic of Poland:

The term "serious penalty" means penalty of fine, penalty of imprisonment or both of them imposed jointly, or penalty of deprivation of liberty for culpable infringement of tax law provisions by a taxpayer.

12. Declaration by the Republic of Slovenia:

The concept of "serious penalty" means a penalty for any infringement of tax law.

13. Declaration by the Slovak Republic:

The term "serious penalty" means the term "fine" for breach of tax liability understood as a charge imposed according to the Tax Administration Act No 511/1992 of Coll. as amended, pertinent tax laws or the Act on Accounting and the term "penalty" means a penalty imposed according to the Criminal Code for the criminal charges committed in relation to breach of the abovementioned laws.



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