



Directe belastingen, Internationale inlichtingenuitwisseling; Zuid-Korea

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Directoraat-generaal Belastingdienst, Cluster Fiscaliteit

De Staatssecretaris van Financiën maakt het volgende bekend.

Dit besluit bevat een bekendmaking van het in mei 2014 tussen de directeuren-generaal van de belastingdiensten van Zuid-Korea en Nederland gesloten Memorandum van Overeenstemming over inlichtingenuitwisseling in belastingaangelegenheden. Het Memorandum geeft categorieën weer voor de automatische uitwisseling van fiscale inlichtingen, zoals over salarissen, lonen en andere soortgelijke beloningen, directeursbeloningen, inkomsten verkregen door artiesten en sportbeoefenaars, inkomsten uit zelfstandige arbeid, pensioenen, lijfrenten en sociale zekerheidsuitkeringen, onroerende zaken, dividend, interest, royalty's (indien beschikbaar), vermogenswinsten (indien beschikbaar) en overige inkomsten. De eerste uitwisseling heeft betrekking op het jaar 2014. Daarnaast bevat het memorandum bepalingen over de intensivering van spontane inlichtingenuitwisseling, de aanwezigheid van belastingambtenaren op elkaars grondgebied en gelijktijdige boekenonderzoeken. Voor dit laatste is een bijlage met procedureregels aan het MoU toegevoegd.

MEMORANDUM OF UNDERSTANDING BETWEEN THE REPUBLIC OF KOREA AND THE NETHERLANDS ON THE EXCHANGE OF INFORMATION IN TAX MATTERS

The Commissioner of the National Tax Service of the Republic of Korea and the Commissioner of the Tax and Customs Administration of the Netherlands (hereinafter, the 'Sides'),

Considering their desire to intensify mutual cooperation in tax matters,

Have reached the following understanding:

General

Paragraph 1 Legal basis

Pursuant to Article 26 of the Convention between the Republic of Korea and the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed at Seoul on 25 October 1978, and the provisions with regard to the exchange of information in the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, done at Strasbourg on 25 January 1988 as amended the competent authorities referred to in Paragraph 2 of this Memorandum of Understanding (the 'MOU') will exchange information automatically or spontaneously and intensify mutual cooperation within the scope of both simultaneous tax examinations and tax examinations abroad.

Paragraph 2 Competent authorities

1. For the application of this MOU the competent authorities are:
for the Republic of Korea, the Commissioner of the National Tax Service or the Assistant Commissioner for Investigation;
For the Netherlands, the Minister of Finance or his/her duly authorized representative.
2. The Sides will inform each other by exchange of letters about the names and addresses of the authorized representatives concerned and about any subsequent changes in these representatives.

Exchange of information

Paragraph 3 Automatic exchange of information

1. The competent authorities of the two States will automatically provide each other with information about:
 - a) income, consisting of salaries, wages and other similar remuneration (OECD code 15);
 - b) directors' fees (OECD code 16);
 - c) premiums, attendance fees, foreign residence allowances, annual fees and similar fees (OECD code 14);



- d) income of artists and athletes (OECD code 17);
 - e) income from self-employment (OECD code 14);
 - f) income from pensions, annuities, social security benefits and other similar remuneration (OECD codes 18 and 19);
 - g) immovable property (OECD code 6),
as far as the Netherlands is concerned: ownership and value of immovable property,
as far as Korea is concerned: income from immovable property;
 - h) dividends (OECD code 10);
 - i) interest (OECD code 11);
 - j) royalties (if available, OECD code 12);
 - k) capital gains (if available, OECD code 13);
 - l) commissions and other similar payments (OECD code 14);
 - m) other income (OECD code 21).
2. The information referred to in Paragraph 3.1 will be provided periodically, at least once per calendar year. The information with regard to a certain calendar year will be provided as soon as possible after the end of the calendar year it relates to.
 3. If it should appear that the information provided within the scope of the automatic exchange of information is incorrect or incomplete, the competent authorities will contact each other to correct the information as soon as possible.
 4. This paragraph will be applicable for the first time to information regarding the calendar year 2014.

Paragraph 4 Intensification of the spontaneous exchange of information

1. The spontaneous exchange of information between the Sides will be intensified with regard to commissions, fees, brokers' fees and other remuneration paid to individuals or bodies of the other State, including any other cases where it is suspected that there may be a significant loss of tax revenue in the other State.
2. If the provided information results in a change of taxation in the recipient State, the competent authority of the other State will be informed about this.

Paragraph 5 Incidental target group campaigns

The competent authorities may jointly decide by exchange of letters to exchange categories of information, other than the above-mentioned categories, automatically or spontaneously for a certain period to intensify mutual cooperation.

Paragraph 6 The presence of tax officials of one State in the territory of the other State

1. At the request of the competent authority of the applicant State, the competent authority of the requested State may allow tax officials of the first State to be present at the appropriate part of a tax examination in the requested State.
2. Requests to allow the presence of tax officials of the applicant State at an examination in the territory of the requested State may be made in special cases, in particular:
 - a) cases in which there are indications of cross-border irregularities or the avoidance of taxes;
 - b) complex cases that make the presence of the tax officials desirable;
 - c) examinations within the scope of an agreed bilateral or multilateral examination, including simultaneous tax examinations.
3. In cases where the applicant State requests the presence of tax officials of the applicant State at an examination of the requested State's taxpayers, the range of taxpayers will be restricted to the branches, wholly-owned subsidiaries or wholly-owned parent companies of the applicant States taxpayers.
The presence at the examination will only be made with the prior consent of the taxpayers situated in the requested State.
4. A request for the presence of tax officials will be submitted in writing by the competent authority of the applicant State. The request will substantiate the desirability of the presence of the tax officials and provide a short description of the case, the period of examination, the names of the tax officials dispatched, the location(s) to be visited, the names of the taxpayers subject to the examination, and the tax years being examined. The competent authority of the requested State will decide upon the request as soon as possible, at the latest within one month after receipt of the request.
5. All decisions regarding the execution of the tax examination will be taken by the competent authority of the requested State. The requested State will coordinate the execution of the tax examination, reflecting the needs of the applicant State. The competent authority of the requested State will inform the competent authority of the applicant State about the details of the examination.



6. The competent authority of the requested State may refuse the request, giving the grounds for this decision.

Paragraph 7 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 competent authorities of both States may conduct simultaneous tax examinations of selected taxpayers, or groups of taxpayers, carrying on activities in both States. The procedures are set out in the Annex to this MOU.

Procedures

Paragraph 8 Procedures

1. If necessary, the competent authorities will confer on the way in which the provisions of this MOU are implemented.
2. The information referred to in Paragraph 3 of this MOU will be provided, if possible, electronically in the standard OECD format (most recent version), or on paper or Excel format.
3. The information to be exchanged will include, if available, the fiscal identification numbers and/or information for personal identification. This relates to the information from both States.

Effectiveness

Paragraph 9 Entry into effect, amendment and termination.

1. This MOU will come into effect on the date of signature by both competent authorities and may be amended at any time with the mutual consent of the Sides.
2. This MOU will remain in effect for an indefinite period. It may be terminated by means of a written notification by one of the Sides. Such termination will take effect six months after receipt by the other Side of such notification.

Evaluation

Paragraph 10 Evaluation

This MOU will be evaluated five years after the date of its entry into effect. However, questions with regard to this MOU can be taken up by the Sides at any time at the request of one of the competent authorities.

Signed in duplicate in the English language.

Seoul, 12 May 2014

K. Duk-joong

The Commissioner of the National Tax Service of the Republic of Korea

The Hague, 24 April 2014

P. Veld,

The Commissioner of the Tax and Customs Administration of the Netherlands



Annex: Simultaneous tax examinations

Subject to the provisions of Article 26 (Exchange of Information) of the Convention between the Republic of Korea and the Kingdom of the Netherlands with respect to Taxes on Income and Capital (hereinafter the 'Convention'), the competent authorities may jointly decide to undertake simultaneous tax examinations.

A. Definition

1. For the purpose of this Annex the expression 'simultaneous tax examination' means an arrangement between the two States to examine simultaneously and independently, each in its own territory, the tax affairs of a taxpayer or taxpayers in which they have a common or related interest, with a view to exchanging any relevant information which they so obtain.
2. The disclosure of information exchanged under the simultaneous examination arrangement is subject to the provisions of the Convention and will be used only for tax purposes. Any exchange of information which follows from such examinations either on request or spontaneously will be made through the competent authorities.

B. Objectives

1. The main purpose of a simultaneous tax examination is, inter alia:
 - (a) to determine a taxpayer's correct liability in cases where:
 - (i) costs are shared or charged and profits are allocated between taxpayers in different taxing jurisdictions or, more generally, transfer pricing issues are involved;
 - (ii) apparent tax avoidance techniques or patterns involving substance versus form transactions, controlled financing schemes, price manipulations, cost allocations or tax shelters are identified;
 - (iii) unreported income, money laundering, kickbacks, bribes, illegal payments, etc. are identified;
 - (iv) transactions with tax havens and tax avoidance or evasion schemes involving tax havens are identified.
 - (b) to facilitate an exchange information on:
 - (i) multinational business practices, complex transactions, examination issues and non-compliance trends that may be particular to an industry or group of industries;
 - (ii) cost sharing arrangements;
 - (iii) profit allocation methods in special fields such as global trading and new financial instruments.
2. A simultaneous tax examination is not intended to be a substitute for the mutual agreement procedure provided for under Article 25 (mutual agreement procedure) of the Convention.

C. Case selection and examination procedures

1. The competent authority of each State will identify independently taxpayers it intends to propose for a simultaneous examination.
2. The competent authority of each State will inform its counterpart in the other State of its respective choice of potential cases for simultaneous examinations using the selection criteria described below. 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 examinations.
3. Each State will determine if it wishes to participate in a particular simultaneous examination.
4. The competent authority requested to participate in a simultaneous examination will consider the information in conjunction with information from its own sources and will 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 will 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 (Exchange of Information) of the Convention.
5. The requested competent authority will indicate a designated representative who will have functional responsibility for directing and coordinating the examination. The applicant competent authority will also indicate in writing a designated representative.
6. The competent authorities may then present to each other requests for the exchange of information or provide each other with information spontaneously under and in conformity with the Convention.
7. The designated representatives of the competent authorities will take care of the practical aspects of the simultaneous examination (timetable, periods to examine, State having the functional responsibility for coordinating the examination). If needed and if legally possible, representatives



- of the competent authorities of the foreign State may be allowed in the other State.
8. The prerequisite and therefore essential condition of selection is that the tax years will be open for examination in the two States.
 9. The competent authority of each State may, by a declaration addressed to its counterpart in the other State, indicate that, according to its internal legislation, it will inform its residents or nationals before transmitting information concerned in conformity with the Article 26 (Exchange of Information) of the Convention.

D. Criteria for case selection

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

- (a) indication of tax avoidance and evasion;
- (b) indication of substantial non-compliance with tax law in the two States;
- (c) indication of a manipulation of transfer prices to the potential detriment of the two States;
- (d) indication of other forms of international tax planning which, if countered successfully, may generate additional tax yield in the two States;
- (e) 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:
 - (i) the economic performance does not reflect appropriate profits when measured against sales, total assets, etc;
 - (ii) in cases where the taxpayer consistently shows losses, especially long-term losses;
 - (iii) in cases where the taxpayer, regardless of profitability, paid little or no tax over the relevant period;
- (f) existence of transactions involving tax havens;
- (g) situations where the competent authorities consider it is in the interest of the tax administrations concerned, in order to promote international tax compliance.

E. Personnel

Examinations will be conducted separately within the framework of national law and practice by tax administration officials of each State using the available exchange of information provisions. The responsibility lines will be clearly defined. There will be no interchange of personnel, but the presence of representatives of the competent authorities of the foreign State (if legally possible) may be justified for the efficiency of the examination.

F. Planning the simultaneous tax examinations

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.

G. Conducting the simultaneous tax examination

A simultaneous tax examination requires the cooperation of tax administration officials located in the two States who will simultaneously but independently examine the taxpayer(s) within their jurisdiction. They will try as far as possible to synchronize their work schedules, since potential double taxation issues may arise in the course of simultaneous tax examinations:

- (a) the taxpayers will be able to present a request for the opening of the mutual agreement procedure at an earlier stage than they would have if there was no simultaneous examination;
- (b) the representatives of the competent authorities will be able to build up more complete factual evidence for those tax adjustments for which the mutual agreement procedure may be requested.

H. Discontinuing the simultaneous tax examination

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

I. Concluding the simultaneous tax examination

The simultaneous tax examination will be concluded after coordination 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.