

P R O T O C O L

BETWEEN

THE REPUBLIC OF AUSTRIA

AND

THE CZECH REPUBLIC

**AMENDING THE CONVENTION BETWEEN THE REPUBLIC OF
AUSTRIA AND THE CZECH REPUBLIC
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE
PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON
INCOME AND ON CAPITAL AND THE PROTOCOL TO IT SIGNED
AT PRAGUE ON 8 JUNE 2006**

The Republic of Austria and the Czech Republic,

desiring to conclude a Protocol amending the Convention between the Republic of Austria and the Czech Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital and the Protocol to it signed at Prague on 8 June 2006 (hereinafter referred to as „the Convention”),

have agreed as follows:

ARTICLE I

The introductory part of paragraph 2 of Article 22 of the Convention shall be modified as follows:

„(2) Subject to the provisions of the laws of the Czech Republic regarding the elimination of double taxation, in the case of a resident of the Czech Republic, double taxation shall be eliminated as follows:”

ARTICLE II

Article 25 of the Convention shall be replaced by the following:

„Article 25

EXCHANGE OF INFORMATION

(1) The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

(2) Any information received under paragraph 1 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) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Even in such cases the confidentiality of person-related data may be waived only insofar as this is necessary to safeguard predominant and legitimate interests of another person or predominant public interests. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

(3) In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public) or to the basic rights granted by a State in the area of data protection.

(4) If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

(5) In no case shall the provisions of paragraph 3 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.”

ARTICLE III

The following paragraph 4 shall be added to the existing Protocol:

„(4) With reference to Article 25

(1) The competent authority of the applicant State shall provide the following information to the competent authority of the requested State when making a request for information under the Convention to demonstrate the foreseeable relevance of the information to the request:

- a) the identity of the person under examination or investigation;
- b) a statement of the information sought including its nature and the form in which the applicant State wishes to receive the information from the requested State;
- c) the tax purpose 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;
- e) to the extent known, the name and address of any person believed to be in possession of or able to obtain the requested information;
- f) a statement that the applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

(2) It is understood that the scope of the exchange of information provided in Article 25 does not include speculative requests that have no apparent nexus to an open examination or investigation.

(3) It is understood that paragraph 5 of Article 25 does not require the Contracting States to exchange information on a spontaneous or automatic basis.”

ARTICLE IV

Each of the Contracting States shall notify to the other, through diplomatic channels, the completion of the procedures required by its domestic law for the bringing into force of this Protocol. The Protocol, which shall form an integral part of the Convention, shall enter into force on the date of the latter of these notifications and shall have effect in both States for taxable periods beginning on or after 1 January in the calendar year next following that in which the Protocol enters into force.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Protocol.

Done in duplicate at Vienna, this 9th day of March 2012 in the English language.

For the Republic of Austria

Andreas Schieder m.p.

For the Czech Republic

Jan Koukal m.p.