

PROTOKOL

MED

REPUBLIKO SLOVENIJO

IN

REPUBLIKO AVSTRIJO

IN DODATNI PROTOKOL

O SPREMEMBAH KONVENCIJE O IZOGIBANJU DVOJNEGA
OBDAVČEVANJA V ZVEZI Z DAVKI NA DOHODEK IN PREMOŽENJE,
PODPISANE V LJUBLJANI 1. OKTOBRA 1997, SPREMENJENE S
PROTOKOLOM, PODPISANIM V LJUBLJANI 26. SEPTEMBRA 2006

Republika Slovenija in Republika Avstrija sta se v želji, da skleneta Protokol in Dodatni protokol o spremembah Konvencije o izogibanju dvojnega obdavčevanja v zvezi z davki na dohodek in premoženje, podpisane v Ljubljani 1. oktobra 1997, spremenjene s protokolom, podpisanim v Ljubljani 26. septembra 2006 (v nadaljevanju: "konvencija"),

sporazumeli:

1. člen

27. člen konvencije se nadomesti s tem besedilom:

"27. ČLEN

Izmenjava informacij

1. Pristojna organa držav pogodbenic si izmenjavata informacije, ki so predvidoma pomembne za izvajanje določb te konvencije ali za izvajanje ali uveljavljanje domače zakonodaje glede davkov vseh vrst in opisov, ki se uvedejo v imenu držav pogodbenic ali njunih političnih enot ali lokalnih oblasti, če obdavčevanje na njeni podlagi ni v nasprotju s konvencijo. Izmenjava informacij ni omejena s 1. in 2. členom.

2. Vsaka informacija, ki jo država pogodbenica prejme po prvem odstavku, se obravnava kot tajnost enako kakor informacije, pridobljene po domači zakonodaji te države, in se razkrije samo osebam ali organom (vključno s sodišči in upravnimi organi), udeleženi pri odmeri ali pobiranju davkov, izterjavi ali pregonu ali pri odločanju o pritožbah glede davkov iz prvega odstavka ali pri nadzoru nad omenjenim. Te osebe ali organi uporabljajo informacije samo v te namene. Informacije lahko razkrijejo v javnih sodnih postopkih ali sodnih odločbah. Ne glede na to se lahko informacija, ki jo pridobi država pogodbenica, uporablja za druge namene, kadar se v take druge namene lahko uporablja po zakonodaji obeh držav in če pristojni organ države, ki informacijo daje, tako uporabo dovoli.

3. Določbe prvega in drugega odstavka se v nobenem primeru ne razlagajo, kakor da nalagajo državi pogodbenici obveznost:

- a) da izvaja upravne ukrepe, ki niso v skladu z zakonodajo in upravno prakso te ali druge države pogodbenice,
- b) da predloži informacije, ki jih ni mogoče dobiti po zakonodaji ali običajni upravni poti te ali druge države pogodbenice,
- c) da predloži informacije, ki bi razkrile kakršno koli trgovinsko, poslovno, industrijsko, komercialno ali poklicno skrivnost ali trgovinski postopek, ali informacije, katerih razkritje bi bilo v nasprotju z javnim redom.

4. Če država pogodbenica zaprosi za informacije v skladu s tem členom, druga država pogodbenica sprejme ukrepe za pridobitev zahtevanih informacij, tudi če jih ta druga država morda ne potrebuje za davčne namene. Za obveznost iz prejšnjega stavka veljajo omejitve iz tretjega odstavka, toda te se v nobenem primeru ne razlagajo tako, kakor da država pogodbenica lahko zavrne predložitev informacij samo zato, ker sama zanje nima interesa.

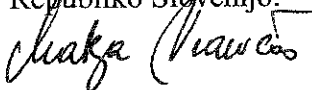
5. V nobenem primeru se določbe tretjega odstavka ne razlagajo tako, da lahko država pogodbenica zavrne predložitev informacij samo zato, ker jih hrani banka, druga finančna ustanova, pooblaščenec ali oseba, ki deluje kot zastopnik ali fiduciar, ali zato, ker so povezane z lastniškimi deleži v neki osebi."

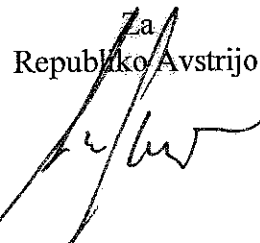
2. člen

Državi pogodbenici se po diplomatski poti pisno obvestita, da so končani vsi pravni postopki za začetek veljavnosti tega protokola. Protokol začne veljati prvi dan tretjega meseca od dneva prejema poznejšega navedenega uradnega obvestila. Določbe tega protokola se uporabljajo za davčna obdobja, ki se začnejo 1. januarja ali pozneje v koledarskem letu, ki sledi letu, v katerem začne veljati ta protokol.

V POTRDATEV NAVEDENEGA sta pooblaščenca držav pogodbenic, ki sta bila za to pravilno pooblaščenca, podpisala ta protokol.

SESTAVLJENO v dveh izvornikih v Ljubljani 28. septembra 2011
v slovenskem, nemškem in angleškem jeziku, pri čemer so vsa besedila enako verodostojna. Pri razlikah med besedili prevlada angleško besedilo.

Za
Republiko Slovenijo:


Za
Republiko Avstrijo


DODATNI PROTOKOL

Ob podpisu Protokola o spremembah Konvencije o izogibanju dvojnega obdavčevanja v zvezi z davki na dohodek in premoženje, podpisane v Ljubljani 1. oktobra 1997, spremenjene s protokolom, podpisanim v Ljubljani 26. septembra 2006, ki je bil danes sklenjen med Republiko Slovenijo in Republiko Avstrijo, sta se podpisnika sporazumela o teh določbah, ki so sestavni del protokola:

K 27. členu

1. Kadar pristojni organ države prosilke zaprosi za informacije po tej konvenciji, priskrbi pristojnemu organu zaprosene države informacije, s katerimi dokaže njihovo predvideno pomembnost glede na zaprosilo:

(a) identiteto osebe, ki se zasliši ali preiskuje,

(b) izjavo o zaprosenih informacijah, vključno z njihovo naravo in obliko, v kateri želi država prosilka prejeti informacije zaprosene države,

(c) davčni namen, za katerega se zaprosijo informacije,

(d) razloge za prepričanje, da zaprosene informacije hrani zaprosena država oziroma jih ima ali so pod nadzorom osebe pod jurisdikcijo zaprosene države,

(e) ime in naslov katere koli osebe, za katero verjame, da bi lahko imela zaprosene informacije, če jo pozna,

(f) izjavo, da je država prosilka na svojem ozemlju izkoristila vse načine za pridobitev informacij, razen tistih, ki bi povzročili nesorazmerne težave.

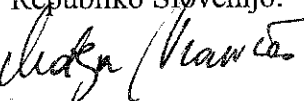
2. Razume se, da izmenjava informacij, določena v 27. členu, ne vključuje ukrepov, ki pomenijo naključne poizvedbe.

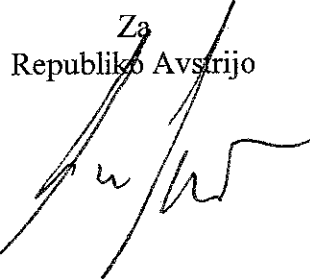
3. Razume se, da peti odstavek 27. člena ne zahteva, da države pogodbenice izmenjavajo informacije spontano ali avtomatično.

4. Razume se, da je poleg že omenjenih načel pri razlagi 27. člena treba upoštevati tudi načela iz komentarjev OECD, vključno s strokovno opombo, ki jo je pripravil Sekretariat OECD in je priložena temu dodatnemu protokolu.

V POTRDITEV NAVEDENEGA sta pooblaščenca držav pogodbenic, ki sta bila za to pravilno pooblaščenca, podpisala ta dodatni protokol.

SESTAVLJENO v dveh izvornikih v Ljubljani 28. septembra 2011
v slovenskem, nemškem in angleškem jeziku, pri čemer so vsa besedila enako verodostojna. Pri razlikah med besedili prevlada angleško besedilo.

Za
Republiko Slovenijo:


Za
Republiko Avstrijo


Priloga

Strokovna opomba o petem odstavku 26. člena vzorčne davčne konvencije OECD

V petem odstavku 26. člena vzorčne davčne konvencije OECD je določeno, da bančna tajnost ne more biti ovira za izmenjavo informacij za davčne namene. V 26. členu so določene tudi pomembne varovalke za varstvo zaupnosti informacij o davčnih zavezancih.

Standard zahteva izmenjavo informacij le na zaprosilo. Kadar se zaprosi za informacijo, jo je treba izmenjati le takrat, ko je "predvidoma pomembna" za izvajanje ali uveljavljanje domače zakonodaje pogodbenice. Državi se ne smeta ukvarjati z naključnimi poizvedbami ali zaprositi za informacije, za katere je malo verjetno, da bi bile pomembne pri davčnih zadevah določenega davčnega zavezanca. Pri sestavljanju zaprosil morajo pristojni organi izkazati predvideno pomembnost zaprosene informacije. Država ne more na primer naključno zaprositi za informacije o bančnih računih, ki jih imajo njeni rezidenti pri bankah v drugi državi. Celo ko gre za nadzor nad davčnim zavezancem, davčna uprava ne zahteva informacije o posameznem davčnem zavezancu, če ni bilo nobene transakcije ali niso bili prepoznani znaki morebitnih transakcij, ki bi bile povezane z drugo državo. Kadar pa davčna uprava odmeri davčno obveznost posameznega davčnega zavezanca in sumi, da ima ta davčni zavezanec v drugi državi bančni račun, lahko pristojni organ zahteva informacijo o tem davčnem zavezancu. To je mogoče tudi, ko je bilo identificiranih več davčnih zavezancev, na primer tistih, ki imajo offshore kreditne kartice bank v drugi državi. Zaprošena država pa mora prej uporabiti vsa domača sredstva za dostop do zaprosenih informacij. Za nadaljnje podrobnosti sta na voljo komentarja k 26. členu vzorčne davčne konvencije OECD in 5. členu vzorčnega sporazuma o izmenjavi informacij.

Pri izmenjavi informacij veljajo pravila o strogi zaupnosti. V 26. členu je izrecno določeno, da se vsaka sporočena informacija obravnava kot tajnost. Uporablja se lahko le za namene, določene v konvenciji. Sankcije za kršitev take tajnosti v vseh državah urejata upravna in kazenska zakonodaja. Praviloma je nepooblaščen razkritje davčnih informacij, ki jih je poslala druga država, kaznivo dejanje, ki se kaznuje z zaporno kaznijo.

Kakor je razvidno iz obrazložitev v komentarju k vzorčni davčni konvenciji OECD in v priložniku o izmenjavi informacij OECD, bančna tajnost ni nezdržljiva z učinkovito izmenjavo informacij za davčne namene. Vse države poznajo bančno tajnost ali pravila o zaupnosti. Izpolnjevanje mednarodno sprejetega standarda o izmenjavi informacij dovoljuje le omejene izjeme pri pravilih o bančni tajnosti in ne bi smelo ogroziti zaupanja državljanov v varstvo njihove zasebnosti.

PROTOCOL

BETWEEN

THE REPUBLIC OF SLOVENIA

AND

THE REPUBLIC OF AUSTRIA

AND ADDITIONAL PROTOCOL
AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE
TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL
SIGNED IN LJUBLJANA ON 1 OCTOBER 1997 AS AMENDED BY THE
PROTOCOL SIGNED IN LJUBLJANA ON 26 SEPTEMBER 2006

The Republic of Slovenia and the Republic of Austria desiring to conclude a Protocol and Additional Protocol amending the Convention for the avoidance of double taxation with respect to taxes on income and on capital, signed in Ljubljana on 1 October 1997 as amended by the Protocol signed in Ljubljana on 26 September 2006 (hereinafter referred to as "the Convention"),

Have agreed as follows:

Article 1

Article 27 of the Convention shall be replaced by the following:

“ARTICLE 27

Exchange of Information

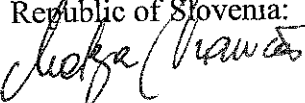
1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting 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. 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).
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 2

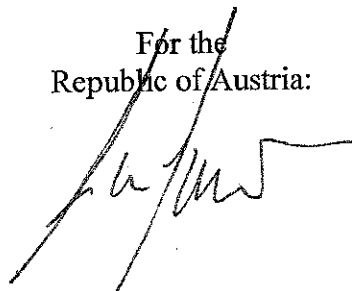
The Contracting States shall notify each other through diplomatic channels that all legal procedures for the entry into force of this Protocol have been completed. The Protocol shall enter into force on the first day of the third month next following the date of the receipt of the later of the notifications referred to above. The provisions of this Protocol shall have effect with regard to taxable periods beginning on or after 1 January of the calendar year next following the year of the entry into force of this Protocol.

IN WITNESS WHEREOF the plenipotentiaries of the two Contracting States, duly authorized thereto, have signed this Protocol.

DONE in duplicate at Ljubljana on 28 September 2011
in the Slovenian, German and English languages, all the texts being equally authentic. In case of divergence between any of the texts, the English text shall prevail.

For the
Republic of Slovenia:


For the
Republic of Austria:



ADDITIONAL PROTOCOL

At the moment of signing the Protocol amending the Convention for the avoidance of double taxation with respect to taxes on income and on capital signed in Ljubljana on 1 October 1997 as amended by the Protocol signed in Ljubljana on 26 September 2006, this day concluded between the Republic of Slovenia and the Republic of Austria, the undersigned have agreed that the following provisions shall form an integral part of the Protocol:

Ad Article 27:

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 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.

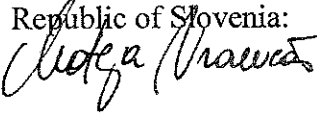
2. It is understood that the exchange of information provided in Article 27 does not include measures which constitute "fishing expeditions".

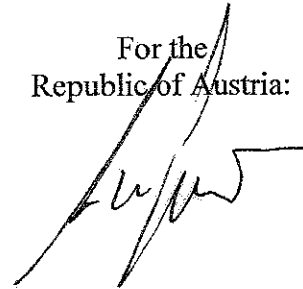
3. It is understood that paragraph 5 of Article 27 does not require the Contracting States to exchange information on a spontaneous or automatic basis.

4. It is understood that – in addition to the above mentioned principles – for the interpretation of Article 27 the principles established in the OECD Commentaries including the technical note prepared by the OECD Secretariat, which is added as an Annex to this Additional Protocol, shall be considered as well.

IN WITNESS WHEREOF the plenipotentiaries of the two Contracting States, duly authorised thereto, have signed this Additional Protocol.

DONE in duplicate at Ljubljana on 28 September 2011
in the Slovenian, German and English languages, all the texts being equally
authentic. In case of divergence between any of the texts, the English text shall
prevail.

For the
Republic of Slovenia:


For the
Republic of Austria:


Annex

Technical note on paragraph 5 of Article 26 of the OECD Model Tax Convention

Paragraph 5 of Article 26 of the OECD Model Tax Convention provides that bank secrecy cannot be an obstacle to exchange of information for tax purposes. Article 26 also provides for important safeguards in order to protect the confidentiality of taxpayers' information.

The standard requires information exchange on request only. Where information is requested, it must be exchanged only where it is "foreseeably relevant" to the administration or enforcement of the domestic laws of the treaty partner. Countries are not at liberty to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. In formulating their requests, competent authorities should demonstrate the foreseeable relevance of the requested information. It would, for instance, not be possible for a State to request information randomly on bank accounts held by its residents in banks located in the other State. Also, even when auditing a taxpayer, a tax administration would not request information on a specific taxpayer when no transaction or indication of possible transactions has been identified as involving an nexus with the other state. On the other hand, for example, when a tax administration assesses the tax liability of a specific taxpayer and suspects that this taxpayer has a bank account in the other State, then the competent authority may request information on this specific taxpayer. This could also be the case where a number of taxpayers have been identified, for example, as holding offshore credit cards from banks located in the other state. The requesting State should, however, have pursued all domestic means to access the requested information. For further details, you may wish to consult the commentaries to the Article 26 of the OECD Model Tax Convention and Article 5 of the Model Agreement on Exchange of Information.

Where information is exchanged it is subject to strict confidentiality rules. It is expressly provided in Article 26 that information communicated shall be treated as secret. It can only be used for the purposes provided for in the convention. Sanctions for the violation of such secrecy are governed by administrative and penal laws in all states. Typically, unauthorised disclosure of tax related information received from another country is a criminal offence punishable by a jail sentence.

As you can see from these explanations, which you can find in the OECD Model Tax Convention commentary, as well as in the OECD Manual on Information exchange, bank secrecy is not incompatible with effective exchange of information for tax purposes. All countries have bank secrecy or confidentiality rules. Meeting the internationally agreed standard on exchange of information requires only limited exceptions to bank secrecy rules and would not undermine the confidence of citizens in the protection of their privacy.