

Exchange of tax information between the Czech Republic and Bermuda

The Czech Republic has concluded another agreement on exchange of information on tax matters (TIEA). Following the signing of similar agreements with the British Virgin Islands on 13 June 2011 and the Isle of Man on 18 July 2011, the Czech Republic concluded and signed a TIEA with Bermuda on 15 August 2011. The TIEA with Bermuda will enter into force after both parties have completed all required ratification procedures and exchanged corresponding notifications. For criminal tax matters the treaty provisions will take effect immediately on that date.

The TIEA meets the OECD international standard on tax cooperation and transparency. A protocol concerning the interpretation and application is an integral part of the agreement.

Information Exchange

The taxes which are the subject of the TIEA are:

- the tax on income of individuals and legal persons, the tax on immovable property, the VAT and the excise tax imposed by the Czech Republic; and
- direct taxes of every kind and description imposed by Bermuda.

The competent authorities of the two parties are obliged to provide each other with tax information upon request. The party demanding information must demonstrate the foreseeable relevance of the information to the request and provide the other party with certain identification details and confirmations specified in Article 5 of the TIEA.

Information can be exchanged only for the purpose of the administration and enforcement of the domestic laws concerning the taxes covered by the TIEA. This (according to Article 1 of the TIEA) includes information relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters. The state making the request must declare that the request is in compliance with its law and normal administrative practices. The other state is then obliged to provide the information, irrespective of whether the conduct under investigation would constitute a crime under its domestic laws, and irrespective of whether the tax claim giving rise to the request is disputed.

The scope of information exchange under the TIEA with Bermuda is widely drawn, as is also the case with the agreements with the BVI and the Isle of Man mentioned above. It covers information held by banks and other financial institutions, persons acting as agents or fiduciaries including nominees and trustees, and information regarding the ownership of companies, trusts, partnerships, foundations and other persons and their ownership chain. With regard to trusts, information on settlors, trustees and beneficiaries can be required, and in the case of foundations information on founders, members of council and foundation beneficiaries.

Information received under the TIEA must be treated as confidential and may be disclosed only to relevant tax bodies of the requesting state. They in turn may disclose the information in public court proceedings or in judicial decisions. However, disclosure to any other person or any other jurisdiction can proceed only with the express written consent of the competent authority of the requested party (Article 8 TIEA).

Limitations

There is no obligation under the TIEA to comply with a request for information if:

- it concerns ownership information regarding publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties (Article 5(4)(b) TIEA); or
- the requested information would disclose any trade, business, industrial, commercial or professional secret or trade process (Article 7(2) TIEA); or
- the party requesting the information would not be able to obtain the relevant information under its own laws for the purposes of the administration and enforcement of its own tax laws (Article 7(1) TIEA); or
- the request is not made in accordance with the TIEA (Article 7(1)) or the disclosure of the information would be contrary to public policy or fundamental social principles (Article 7(4) TIEA); or
- the requested information would reveal confidential communications between a client and an attorney where such communications are produced for the purposes of seeking or providing legal advice, or for use in legal proceedings, whether existing or contemplated (Article 7(3) TIEA); or
- the information is requested in connection with enforcement of tax law discriminatory against a national of the requested party as compared with a national of the requesting party in the same circumstances (Article 7(6) TIEA).

Examinations abroad

The treaty also provides for the possibility of examinations and interviews being carried out by officials of one state in the territory of the other. Thus, one state may allow representatives of the competent authority of the other to enter its territory in order to interview individuals and examine records with the prior written consent of the persons concerned.

Similarly, a party can request permission to attend a tax examination taking place in the territory of the other.

The parties are obliged to notify each other of the time and place of the tax examination or the interview, as applicable.

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