PROTOCOL

BETWEEN

THE SWISS CONFEDERATION

AND

THE REPUBLIC OF FINLAND

amending the Agreement for the avoidance of double taxation with respect to taxes on income and on capital and the Protocol, signed at Helsinki on December 16, 1991, as amended by the Protocol signed at Helsinki on April 19, 2006

The Swiss Federal Council
and
The Government of the Republic of Finland

desiring to amend the Agreement for the avoidance of double taxation with respect to taxes on income and on capital and the Protocol signed at Helsinki on December 16, 1991 as amended by the Protocol signed at Helsinki on April 19, 2006 (hereinafter referred to as “the Agreement” and “the Protocol to the Agreement”, respectively),

have agreed as follows:
ARTICLE I

Sub-paragraph a) of paragraph 3 of Article 2 (Taxes covered) of the Agreement shall be replaced by the following:

“a) in Finland:

(i) the state income taxes;
(ii) the corporate income tax;
(iii) the communal tax;
(iv) the church tax;
(v) the tax withheld at source from interest; and
(vi) the tax withheld at source from non residents' income;

(hereinafter referred to as "Finnish tax");”

ARTICLE II

Paragraph 2 of Article 10 (Dividends) of the Agreement shall be replaced by the following:

“2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends. Such dividends shall, however, be exempt from tax in the first-mentioned State if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.”

ARTICLE III

Article 26 (Exchange of Information) of the Agreement shall be deleted and replaced by the following Article:

“Article 26

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 Agreement or to the administration or enforcement of the domestic laws concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1."
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, or the determination of appeals in relation to the taxes referred to in paragraph 1. 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. In order to obtain such information, the tax authorities of the requested Contracting State shall have the power to enforce the disclosure of information covered by this paragraph, notwithstanding paragraph 3 or any contrary provisions in its domestic laws.”

**ARTICLE IV**

1. The following paragraph 2 shall be added to the Protocol to the Agreement:

   “2. Regarding Articles 18 and 19

   It is understood that the term „pensions“ as used in Articles 18 and 19, respectively, do not only cover periodic payments, but also include lump sum payments.”

2. Paragraph 2 of the Protocol to the Agreement shall be renumbered paragraph 3.
3. Paragraph 3 of the Protocol to the Agreement shall be deleted and replaced by the following paragraph:

“4. Regarding Article 26

a) It is understood that an exchange of information will only be requested once the requesting Contracting State has exhausted all regular sources of information available under the internal taxation procedure.

b) It is understood that the administrative assistance provided for in Article 26 does not include measures aimed only at the simple collection of pieces of evidence (“fishing expeditions”).

c) It is understood that the tax authorities of the requesting State shall provide the following information to the tax authorities of the requested State when making a request for information under Article 26 of the Agreement:

(i) the name and address of the person(s) under examination or investigation and, if available, other particulars facilitating that person’s identification, such as date of birth, marital status, tax identification number;

(ii) the period of time for which the information is requested;

(iii) a statement of the information sought including its nature and the form in which the requesting State wishes to receive the information from the requested State;

(iv) the tax purpose for which the information is sought;

(v) the name and address of any person believed to be in possession of the requested information.

d) It is further understood that Article 26 of the Agreement shall not commit the Contracting States to exchange information on an automatic or a spontaneous basis.

e) It is understood that in case of an exchange of information, the administrative procedural rules regarding taxpayers’ rights provided for in the requested Contracting State remain applicable before the information is transmitted to the requesting Contracting State. It is further understood that this provision aims at guaranteeing the taxpayer a fair procedure and not at preventing or unduly delaying the exchange of information process.”

ARTICLE V

1. The Governments of the Contracting States shall notify each other through diplomatic channels that the constitutional requirements for the entry into force of this Protocol have been complied with.

2. This Protocol, which shall form an integral part of the Agreement and the Protocol, shall enter into force thirty days after the date of the latter of the notifications referred to in paragraph 1 and its provisions shall have effect in both States:

a) with respect to paragraph 2 of Article 10 of the Agreement to dividends due on or after the first day of January of the year next following the entry into force of this Protocol;
b) with respect to Article 26 of the Agreement, to requests of exchange of information for taxable years beginning on or after the first day of January of the year next following the entry into force of this Protocol.

In witness whereof the undersigned, duly authorized thereto by their respective Governments, have signed this Protocol.

Done in duplicate at Helsinki this 22nd of September 2009 in the German, Finnish and English languages. In case of any divergence of interpretation, the English text shall prevail.

For the
Swiss Federal Council
Josef Bucher
Ambassador of Switzerland

For the Government of
the Republic of Finland:
Jyrki Katainen
Minister of Finance