

Mutual Agreement regarding the interpretation of subparagraph b) of paragraph 2 of the Protocol to the Convention between Switzerland and the Republic of Korea for the Avoidance of Double Taxation with Respect to Taxes on Income, signed at Berne on 12 February 1980, as amended by the Protocol, signed at Seoul on 28 December 2010

The competent authorities of Switzerland and of the Republic of Korea have entered into the following Mutual Agreement regarding the interpretation of subparagraph b) of paragraph 2 of the Protocol (hereinafter “Protocol”) to the Convention between Switzerland and the Republic of Korea for the Avoidance of Double Taxation with Respect to Taxes on Income (hereinafter “the Convention”), signed at Berne on 12 February 1980, as amended by the Protocol (hereinafter “the Amending Protocol”), signed at Seoul on 28 December 2010.

Subparagraph b) of paragraph 2 of the Protocol sets forth the information that the competent authority of the requesting State shall provide to the competent authority of the requested State when making a request for information under Article 25 of the Convention. According to this provision, it is required that the requesting State provide among other information (i) information sufficient to identify the person(s) under examination or investigation, in particular name, and, if available, other particulars facilitating the identification of that person(s), such as address, date of birth, marital status, tax identification number as well as (v) the name and, to the extent known, address of any person believed to be in possession of the requested information. Subparagraph c) clarifies that whilst these are important procedural requirements that are intended to ensure that fishing expeditions do not occur, these requirements nevertheless need to be interpreted in order not to frustrate effective exchange of information.

Therefore, such requirements are to be interpreted in a manner that an administrative assistance request is to be complied with if the requesting State, further to the information as required by (ii) to (iv) of subparagraph b) of paragraph 2 of the Protocol,

- a) identifies the person(s) under examination or investigation; such identification may be provided by other means than by indicating the name and address of the person(s) concerned; and
- b) indicates to the extent known, the name and address of any person believed to be in possession of the requested information,

provided the request is not a fishing expedition.

Upon signature by both competent authorities, this Mutual Agreement is effective as from the date of the entry into force of the Amending Protocol.

Done at Bern on 11 June 2012

Done at Seoul on 3 July 2012

For the Swiss Competent Authority:

For the Korean Competent Authority:

Jürg Giraudi
State Secretariat for
International Financial Matters SIF

Young Rok Choi
Director General for
Tax Analysis and International Tax Affairs
of the Ministry of Strategy and Finance