# P R O T O C O L

## BETWEEN THE SWISS FEDERAL COUNCIL AND THE GOVERNMENT OF THE REPUBLIC OF SLOVENIA AMENDING THE CONVENTION BETWEEN THE SWISS FEDERAL COUNCIL AND THE GOVERNMENT OF THE REPUBLIC OF SLOVENIA FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL, SIGNED AT LJUBLJANA ON JUNE 12, 1996

The Swiss Federal Council

and

The Government of the Republic of Slovenia

Desiring to conclude a Protocol to amend the Convention between the Swiss Federal Council and the Government of the Republic of Slovenia for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital, signed at Ljubljana on June 12, 1996 (hereinafter referred to as "the Convention"),

Have agreed as follows:

## ARTICLE I

Article 4 (Resident) of the Convention shall be replaced by the following Article:

"Article 4
Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature**,** and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);

b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;

c) if he has a habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;

d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

4. A partnership is deemed to be a resident of the Contracting State in which its place of effective management is situated. However, Articles 6 to 22 of this Convention apply only to the income or to the capital of the partnership that is subject to tax in the Contracting State of which it is deemed to be a resident.”.

ARTICLE II

Article 7 (Business profits) of the Convention shall be replaced by the following Article:

“Article 7
Business profits

1. Profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits that are attributable to the permanent establishment in accordance with the provisions of paragraph 2 may be taxed in that other State.

2. For the purposes of this Article and Article 23, the profits that are attributable in each Contracting State to the permanent establishment referred to in paragraph 1 are the profits it

might be expected to make, in particular in its dealings with other parts of the enterprise, if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the enterprise.

3. Where, in accordance with paragraph 2, a Contracting State adjusts the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States and taxes accordingly profits of the enterprise that have been charged to tax in the other State, the other State shall, to the extent necessary to eliminate double taxation on these profits, make an appropriate adjustment to the amount of the tax charged on those profits. In determining such adjustment, the competent authorities of the Contracting States shall if necessary consult each other.

4. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.".

ARTICLE III

Paragraphs 2 and 3 of Article 9 (Associated Enterprises) of the Convention shall be replaced by the following paragraph:

"2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.".

ARTICLE IV

Article 10 (Dividends) of the Convention shall be replaced by the following Article:

"Article 10
Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

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 15 per cent of the gross amount of the dividends.

3. Notwithstanding the provisions of paragraph 2, the Contracting State of which the company is a resident shall exempt from tax dividends paid by that company, if the beneficial owner of the dividends is:

a) a company (other than a partnership) which is a resident of the other Contracting State and holds directly at least 25 per cent of the capital in the company paying the dividends; or

b) a pension scheme.

4. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of the limitations mentioned in paragraphs 2 and 3. Paragraphs 2 and 3 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

5. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

6. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services

from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.".

ARTICLE V

Article 11 (Interest) of the Convention shall be replaced by the following Article:

"Article 11
Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner thereof shall be taxable only in that other State to the extent that such interest is paid

a) by the Government of a Contracting State or a political subdivision or a local authority or Central Bank thereof;

b) to the Government of a Contracting State or a political subdivision or a local authority or Central Bank thereof;

c) in respect of a loan made, approved, guaranteed or insured by an institution which is authorised in accordance with internal law on insurance and financing of international business transactions thereof;
d) in respect of indebtedness arising as a consequence of the sale on credit of any equipment, merchandise or services;

e) by a bank to a bank of the other Contracting State; or

f) by a company to a company of the other Contracting State where such company is affiliated with the company paying the interest by a direct minimum holding of 25 per cent in the capital or where both companies are held by a third company (being a resident of any Member State of European Union or of Switzerland) which has directly a minimum holding of 25 per cent, both in the capital of the first company and in the capital of the second company.

4. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of the limitations of paragraphs 2 and 3.

5. The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

6. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

8. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.".

ARTICLE VI

Article 12 (Royalties) of the Convention shall be replaced by the following Article:

"Article 12
Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

3. Notwithstanding paragraph 2, royalties paid by a company which is a resident of a Contracting State to a resident of the other Contracting State shall be taxable only in that other State if the beneficial owner is a company where such company is affiliated with the company paying the royalties by a direct minimum holding of 25 per cent in the capital or where both companies are held by a third company (being a resident of any Member State of European Union or of Switzerland) which has directly a minimum holding of 25 per cent, both in the capital of the first company and in the capital of the second company.

4. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of the limitations of paragraphs 2 and 3.

5. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

6. The provisions of paragraph 1, 2 and 3 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

8. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.".

ARTICLE VII

Paragraph 4 of Article 13 (Capital gains) of the Convention shall be replaced by the following paragraphs:

"4. Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State. The provisions of the preceding sentence shall not apply to gains:

a) from the alienation of shares quoted on a stock exchange established in either Contracting State or on a stock exchange as may be agreed by the competent authorities of the Contracting States;

b) from the alienation of shares in a company the assets of which consist directly of more than 50 per cent of immovable property, in which the company carries on its business.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting State of which the alienator is a resident.".

ARTICLE VIII

Subparagraph a) of paragraph 2 of Article 23 (Elimination of double taxation) shall be replaced by the following subparagraph:

"a) Where a resident of Switzerland derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Slovenia, Switzerland shall, subject to the provisions of subparagraph b), exempt such income or capital from tax but may, in calculating tax on the remaining income or capital of that resident, apply the rate of tax which would have been applicable if the exempted income or capital had not been so exempted. However, such exemption shall apply to gains referred to in paragraph 4 of Article 13 only if actual taxation of such gains in Slovenia is demonstrated.".

ARTICLE IX

The references to paragraph 6 of Article 11 and to paragraph 6 of Article 12 mentioned in paragraph 3 of Article 24 (Non discrimination) of the Convention are deleted and replaced by the references to paragraph 8 of Article 11 and to paragraph 8 of Article 12.

ARTICLE X

The following paragraph shall be added to Article 25 (Mutual Agreement Procedure) of the Convention:

"5. Where,

a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and

b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within three years from the presentation of the case to the competent authority of the other Contracting State,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision or the competent authorities and the persons directly affected by the case agree on a different solution within six months after the decision has been communicated to them, the arbitration decision shall be binding on both States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

The Contracting States may release to the arbitration board, established under the provisions of this paragraph, such information as is necessary for carrying out the arbitration procedure. The members of the arbitration board shall be subject to the limitations of disclosure described in paragraph 2 of Article 26 with respect to the information so released.".

ARTICLE XI

Article 26 (Exchange of information) of the Convention shall be 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 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,

or 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. In order to obtain such information, the tax authorities of the requested Contracting State, if necessary to comply with its obligations under this paragraph, 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 XII

The following Additional Protocol shall be added to the Convention:

"Additional Protocol

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

Have agreed at the signing of the Protocol between the Swiss Federal Council and the Government of the Republic of Slovenia amending the Convention for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital, signed at Ljubljana on June 12, 1996, upon the following provisions which shall form an integral part of the Convention.

1. Pension scheme

It is understood that the term "pension scheme" as used in the Convention means any plan, scheme, fund, foundation, trust or other arrangement established in a Contracting State which is regulated by and generally exempt from income taxation in that State and operated principally to administer or provide pension or retirement benefits or to earn income for the benefit of one or more such schemes, and includes the following:

a) in Slovenia, any pension scheme covered by:
   (i) the Pension and Invalidity Insurance Act, of 23 December 1999;
   (ii) the First Pension Fund of the Republic of Slovenia and Transformation of Authorized Investment Corporations Act, of 28 June 1999; and
   (iii) the Collective Supplementary Pension Insurance for Public Servants Act, of 18 December 2003;

b) in Switzerland, any pension schemes covered by:
   (i) the Federal Act on old age and survivors' insurance, of 20 December 1946;
   (ii) the Federal Act on disabled persons' insurance, of 19 June 1959;
   (iii) the Federal Act on supplementary pensions in respect of old age, survivors' and disabled persons' insurance, of 6 October 2006;
   (iv) the Federal Act on old age, survivors' and disabled persons' insurance payable in respect of employment or self-employment of 25 June 1982, including the non-registered pension schemes which offer occupational pension plans; and
   (v) the forms of individual recognised pension schemes comparable with the occupational pension plans, in accordance with article 82 of the Federal Act on old age, survivors' and disabled persons' insurance payable in respect of employment or self-employment of 25 June 1982;

and any identical or substantially similar schemes which are established pursuant to legislation introduced after the date of signature of this Protocol as agreed between the competent authorities of the Contracting States.

2. Ad Article 4

In respect of paragraph 1 of Article 4, it is understood and confirmed that the term “resident of a Contracting State” also includes:

a) an organization that is established and is operated exclusively for religious, charitable, scientific, cultural, sporting, or educational purposes (or for more than one of those purposes) and that is a resident of that State according to its laws, notwithstanding that all or part of its income or gains may be exempt from tax under the domestic law of that State; and

b) a pension scheme established in that State.

3. Ad Articles 7 and 9

It is understood that a potential adjustment will be made under the paragraph 3 of Article 7 and paragraph 2 of Article 9 if it is considered justified.

4. Ad Articles 10, 11 and 12

The provisions of Articles 10, 11 and 12 shall not apply in respect to any dividend, interest or royalty paid under, or as part of a conduit arrangement. The term “conduit arrangement” means a transaction or series of transactions which is structured in such a way that a resident of a Contracting State entitled to the benefits of the Convention receives an item of income arising in the other Contracting State but that resident pays, directly or indirectly, all or substantially all of that income (at any time or in any form) to another person who is not a resident of either Contracting State and who, if it received that item of income directly from the other Contracting State, would not be entitled under a Convention for the avoidance of double taxation between the State in which that other person is resident and the Contracting State in which the income arises, or otherwise, to benefits with respect to that item of income which are equivalent to, or more favorable than, those available under this Convention to a resident of a Contracting State; and the main purpose of such structuring is obtaining benefits under this Convention.

5. Ad Articles 18 and 19

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

6. Ad Articles 18 and 24

As regards Article 18 and Article 24 contributions to a pension scheme of a Contracting State that are made by or on behalf of an individual who renders services in the other Contracting State shall, for the purposes of determining the individual's tax payable and the profits of an enterprise which may be taxed in that other State, be treated in that other State in the same way and subject to the same conditions and limitations as contributions made to a pension scheme in that other State, provided that the individual was not a resident of that other State, and was participating in the pension scheme, immediately before beginning to provide services in that other State.

7. Ad 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 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:
   (i) the identity of the person under examination or investigation;
   (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) to the extent known, the name and address of any person believed to be in possession of the requested information.

c) It is understood that the standard of “foreseeable relevance” is intended to provide for exchange of information in tax matters to the widest possible extent and, at the same time, to clarify that the Contracting States 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. While subparagraph b) contains important procedural requirements that are intended to ensure that fishing expeditions do not occur, clauses (i) through (v) of

subparagraph b) nevertheless are not to be interpreted in order to frustrate effective exchange of information.

d) It is understood that Article 26 of the Convention does not require 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. 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 XIII

1. The Contracting States shall notify each other, through diplomatic channels, on the completion of the procedures required by the domestic law for the bringing into force of this Protocol.

2. This Protocol shall form an integral part of the Convention and shall enter into force on the date of receipt of the last notification. This Protocol shall have effect:

a) in respect of taxes withheld at source, on amounts paid or credited either on or after the first day of January of the calendar year next following the entry into force of this Protocol;

b) in respect of other taxes, to taxes chargeable for any taxable year beginning on or after the first day of January of the calendar year next following the entry into force of this Protocol;

c) in respect of paragraph 5 of Article 25 to mutual agreement procedures that are
   (i) pending between the competent authorities of the Contracting States at the entry into force of this Protocol (in such cases the three year period under subparagraph b) begins with the entry into force of this Protocol); or
   (ii) initiated after that date;

d) in respect of Article 26 of the Convention, the exchange of information provided for in this Protocol shall be applicable to requests made on or after the date of entry into force to information that relates to taxable years beginning on or after the first day of January of the calendar year next following the entry into force of this Protocol.

In witness whereof the undersigned, duly authorized thereto, have signed this Protocol.

Done in duplicate at Ljubljana this 7th day of September 2012 in the German, Slovenian and English languages, all texts being equally authentic. In case of divergence between any of the texts, the English text shall prevail.

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| For the Swiss Federal Council: | For the Government of the Republic of Slovenia: |
| Robert Reich | Janeza Šušteršiča |
| Ambassador of Switzerland in Slovenia | Minister of Finance in Slovenia |