

PROTOCOL

BETWEEN

THE SWISS FEDERAL COUNCIL

AND

THE GOVERNMENT OF THE CZECH REPUBLIC

**AMENDING THE CONVENTION BETWEEN THE SWISS FEDERAL COUNCIL
AND THE GOVERNMENT OF THE CZECH REPUBLIC FOR THE AVOIDANCE
OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON
CAPITAL AND THE PROTOCOL THERETO, SIGNED AT PRAGUE ON
DECEMBER 4, 1995**

THE SWISS FEDERAL COUNCIL,

AND

THE GOVERNMENT OF THE CZECH REPUBLIC

Desiring to conclude a Protocol amending the Convention between the Swiss Federal Council and the Government of the Czech Republic for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital, signed at Prague on December 4, 1995 (hereinafter referred to as “the Convention”), and the Protocol thereto, signed at Prague on December 4, 1995 (hereinafter referred to as “the Protocol to 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 effective 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 an 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.”

ARTICLE II

1. Paragraph 3 of Article 5 (Permanent establishment) of the Convention shall be modified as follows:

“3. A building site, a construction, assembly or installation project or supervisory activities in connection therewith constitute a permanent establishment, but only where such site, project or activities continue for a period of more than twelve months.”

2. Subparagraph e) of paragraph 4 of Article 5 (Permanent establishment) of the Convention shall be modified as follows:

“e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;”

ARTICLE III

Paragraph 3 of Article 9 (Associated enterprises) of the Convention shall be deleted.

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 paying the dividends 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 which holds directly at least 10 per cent of the capital of the company paying the dividends where such holding is being possessed for an uninterrupted period of no less than one year; or
- b) a pension fund or other similar institution providing pension schemes in which individuals may participate in order to secure retirement, disability and survivors' benefits, where such pension fund or other similar institution is a resident of the other Contracting State, established and supervised in accordance with the laws of that other State and the pension scheme is recognized for tax purposes in accordance with the laws of that other State; or
- c) the central bank of the other State.

4. 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 or other rights, not being debt-claims, participating in profits, as well as other income which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the payment 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

1. Two sentences shall be added to paragraph 2 of Article 11 (Interest) of the Convention that shall read as follows:

“Penalty charges for late payment shall not be regarded as interest for the purposes of this Article. The term “interest” shall not include any item of income which is considered as a dividend under the provisions of paragraph 5 of Article 10.”

2. New paragraph 4 shall be added to Article 11 (Interest) of the Convention that shall read as follows:

“4. 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.”

3. The existing paragraph 4 of Article 11 (Interest) of the Convention shall be renumbered as paragraph 5.

ARTICLE VI

The first sentence of paragraph 5 of Article 12 (Royalties) of the Convention shall be modified as follows:

“5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State.”

ARTICLE VII

Paragraph 3 of Article 17 (Artistes and sportsmen) of the Convention shall be modified as follows:

“3. The provisions of paragraphs 1 and 2 shall not apply to income from activities performed in a Contracting State by an entertainer or a sportsman who is a resident of the other Contracting State if the performance in the first-mentioned State is wholly or mainly financed from public funds of the other Contracting State or of a political subdivision or a local authority thereof. In such case, the income shall be taxable only in the other Contracting State.”

ARTICLE VIII

1. Paragraph 1 of Article 23 (Elimination of double taxation) of the Convention shall be modified as follows:

“1. In the case of a resident of the Czech Republic, double taxation shall be eliminated as follows:

- a) The Czech Republic, when imposing taxes on its residents, may include in the tax base upon which such taxes are imposed the items of income or of capital which according to the provisions of this Convention may also be taxed in Switzerland, but shall allow as a deduction from the amount of tax computed on such a base an amount equal to the tax paid in Switzerland. Such deduction shall not, however, exceed that part of the Czech tax, as computed before the deduction is given, which is appropriate to the income or capital which, in accordance with the provisions of this Convention, may be taxed in Switzerland.
- b) Where in accordance with any provision of the Convention income derived or capital owned by a resident of the Czech Republic is subject to tax only in Switzerland, the Czech Republic will exempt such income or capital from tax, but may, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.
- c) Notwithstanding the provisions of subparagraph a) of this paragraph, the exemption method may also be applicable in the Czech Republic provided that its domestic laws allow so and in accordance with these laws.”

2. Subparagraph a) of paragraph 2 of Article 23 (Elimination of double taxation) of the Convention 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 the Czech Republic, 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.”

3. The following subparagraph c) shall be added to paragraph 2 of Article 23 (Elimination of double taxation) of the Convention:

“c) A company which is a resident of Switzerland and which derives dividends from a company which is a resident of the Czech Republic shall be entitled, for the purposes of taxation in Switzerland with respect to such dividends, to the same relief which would be granted to the company if the company paying the dividends were a resident of Switzerland.”

ARTICLE IX

1. The first sentence of paragraph 2 of Article 24 (Non-discrimination) of the Convention shall be modified as follows:

“2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or a fixed base available to a resident of a Contracting State in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises or residents of that other State carrying on the same activities.”

2. Paragraph 3 of Article 24 (Non-discrimination) of the Convention shall be modified by replacing the text “the provisions of Article 9, paragraph 4 of Article 11” by the text “the provisions of paragraph 1 of Article 9, paragraph 5 of Article 11”.

3. The following paragraphs shall be added to Article 24 (Non-discrimination) of the Convention:

“6. Contributions to a pension scheme established in and recognised for tax purposes in a Contracting State that are made by or on behalf of an individual who renders dependent personal 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 State, be treated in that State in the same way and subject to the same conditions and limitations as contributions made to a pension scheme that is recognised for tax purposes in that State, provided that:

- a) the individual was not a resident of that State, and was participating in the pension scheme, immediately before beginning to provide services in that State, and
- b) the pension scheme is accepted by the competent authority of that State as generally corresponding to a pension scheme recognised as such for tax purposes by that State.

7. For the purposes of paragraph 6:
 - a) the term “a pension scheme” means a scheme in which the individual participates in order to secure retirement benefits and
 - b) a pension scheme is recognised for tax purposes in a State if the contributions to the scheme would qualify for tax relief in that State.”

ARTICLE X

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. 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 XI

Paragraphs 1 and 2 of the Protocol to the Convention shall be replaced by the following paragraphs:

“1. ad Article 4

Both States confirm that a legal person which is established in a Contracting State under the laws of that State, and which is generally tax exempt in that State, shall be deemed to be a resident of that Contracting State for the purposes of this Convention.

2. ad Article 7

In respect of paragraphs 1 and 2 of Article 7, where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other State through a permanent establishment situated therein, the profits of that permanent establishment shall be determined only on the basis of that part of the total receipts which is attributable to the actual activity of the permanent establishment for such sales or business.

In the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the State where the permanent establishment is situated.

The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the State of which the enterprise is a resident.

3. ad Article 10

- a) Where the minimum holding period laid down in subparagraph a) of paragraph 3 of Article 10 was not met at the time of the payment of the dividend and, therefore, the tax stipulated in paragraph 2 of Article 10 was withheld at the time of the payment, and the condition of the minimum holding period is met subsequently, then the beneficial owner of the dividend shall be entitled to a refund of the tax withheld.
- b) It is understood for the purposes of subparagraph b) of paragraph 3 of Article 10 that a pension scheme is recognized for tax purposes when
 - (i) contributions paid by the beneficiary to the pension scheme are deducted wholly or partly from the beneficiary's taxable income in that State under the laws of that State; or
 - (ii) the full amount of the contributions paid by an employer is not included in the taxable income of the beneficiary in that State under the laws of that State.

It is further understood that the term "a pension fund or other similar institution providing pension schemes recognized for tax purposes" also includes any investment fund, foundation or other institution in which exclusively such pension funds or other similar institutions providing such pension schemes may invest in.

4. ad Article 12

With reference to paragraph 2 it is understood that, as long as Switzerland does not, according to its internal law, levy a tax at source on royalties paid to non-residents, the provisions of paragraph 2 shall not apply and the tax charged in the Contracting State in which the royalties arise shall not exceed 5 per cent of the gross amount of the royalties.

5. ad Articles 18 and 19

It is understood that Article 18 and paragraph 2 of Article 19, respectively, do not only cover periodic payments, but also include lump sum payments.

6. ad Article 25

In the event that pursuant to an Agreement or Convention for the avoidance of double taxation concluded with another third country after the date of signature of this Protocol, the Czech Republic agrees to include an arbitration provision in such an Agreement or Convention, the competent authorities of Switzerland and the Czech Republic will start negotiations, as soon as possible, in view of concluding an amending protocol aiming at inserting an arbitration provision into this Convention.

7. ad Article 26

- a) It is understood that the competent authority of the requesting State shall provide the following information to the competent authority 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;
 - (vi) a statement that the requesting State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.
- b) 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 speculative requests that have no apparent nexus to an open examination or investigation (“fishing expeditions”) or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. While subparagraph a) contains important procedural requirements that are intended to ensure that fishing expeditions do not occur, clauses (i) through (vi) of subparagraph a) nevertheless are not to be interpreted in order to frustrate effective exchange of information.
- c) 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.
- d) 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.

8. It is understood for the purposes of the Convention that the competent authority of a Contracting State may, after consultation with the competent authority of the other Contracting State, deny the benefits of this Convention to any person, or with respect to any transaction, if in its opinion the granting of those benefits would constitute an abuse of the Convention.”

ARTICLE XII

Each of the Contracting States shall notify the other, through diplomatic channels, of the completion of the procedures required by its domestic law for the bringing into force of this Protocol. The Protocol, which shall form an integral part of the Convention, shall enter into force on the date of the later of these notifications and its provisions shall have effect for taxable periods beginning on or after 1st January in the calendar year next following that in which the Protocol enters into force.

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

Done in duplicate at Prag, this 11th day of September 2012 in the German, Czech and English languages, all texts being equally authentic. In case there is any divergence between the German and Czech texts, the English text shall prevail.

For the Swiss Federal Council

André Regli

Swiss Ambassador in Prag

For the Government of the Czech Republic

Miroslav Kalousek

Minister of Finance