

CONVENTION

BETWEEN

THE SWISS CONFEDERATION

AND

THE REPUBLIC OF BULGARIA

FOR THE AVOIDANCE OF DOUBLE TAXATION
WITH RESPECT TO TAXES ON INCOME AND CAPITAL

THE SWISS FEDERAL COUNCIL

AND

THE GOVERNMENT OF THE REPUBLIC OF BULGARIA

DESIRING to conclude a Convention for the avoidance of double taxation with respect to taxes on income and on capital

HAVE AGREED as follows:

Article 1

Persons covered

This Convention shall apply to persons who are residents of one or both of the Contracting States.

Article 2

Taxes covered

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from

the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are in particular:

a) in Bulgaria:

- (i) the personal income tax;
- (ii) the corporate income tax;
- (iii) the patent tax;

(hereinafter referred to as "Bulgarian tax");

b) in Switzerland: the federal, cantonal and communal taxes:

- (i) on income (total income, earned income, income from capital, industrial and commercial profits, capital gains, and other items of income); and
- (ii) on capital (total property, movable and immovable property, business assets, paid-up capital and reserves, and other items of capital)

(hereinafter referred to as "Swiss tax").

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of important changes which have been made in their respective taxation laws.

5. The Convention shall not apply to taxes withheld at source on lottery prizes.

Article 3

General definitions

1. For the purposes of this Convention, unless the context otherwise requires:

- a) the term "Bulgaria" means the Republic of Bulgaria and when used in a geographical sense means the territory and the territorial sea over which it exercises its State sovereignty, as well as the continental shelf and the exclusive economic zone over which it exercises sovereign rights and jurisdiction in conformity with international law;
- b) the term „Switzerland“ means the territory of the Swiss Confederation as defined by its laws in accordance with international law;
- c) the term “person” includes an individual, a company and any other body of persons;
- d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- e) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean, respectively, an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

- f) the term "international traffic" means any transport by a ship, aircraft or road transport vehicle operated by an enterprise of a Contracting State, except when the ship, aircraft or road transport vehicle is operated solely between places in the other Contracting State;
- g) the term "competent authority" means:
 - (i) in Bulgaria, the Minister of Finance or his authorized representative;
 - (ii) in Switzerland, the Head of the Federal Department of Finance or his authorized representative;
- h) the term "pension scheme" means any plan, scheme, fund, foundation, trust or other arrangement established in a Contracting State which is:
 - (i) regulated by the laws of that State; and
 - (ii) operated principally to administer or provide pension or retirement benefits or to earn income for the benefit of one or more such schemes;
- i) the term "national" means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

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 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, the competent authorities of the Contracting States shall determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention.

Article 5

Permanent establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
 - a) a place of management;
 - b) a branch;
 - c) an office;
 - d) a factory;
 - e) a workshop, and
 - f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.
4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
 - a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- 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;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

Income from immovable property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7
Business profits

1. The 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 of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. 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 8
International traffic

1. Profits of an enterprise of a Contracting State from the operation of ships, aircraft or road transport vehicles in international traffic shall be taxable only in that State.
2. Profits of an enterprise of a Contracting State from the operation of boats engaged in inland waterways transport shall be taxable only in that State.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated enterprises

1. Where

- a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

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 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 10 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 resident of the other Contracting State which holds directly at least 10 per cent of the capital in the company paying the dividends for at least one year prior to the payment of the dividend; or

- b) a pension scheme; 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 exemption under paragraph 3 of this Article shall not apply in cases of hidden distribution of profits.
6. 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 income from other 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.
7. 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.
8. 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 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 recipient is the beneficial owner of the interest 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) with respect of indebtedness arising as a consequence of the sale on credit of any equipment, merchandise or services;
 - b) on any loan of whatever kind granted by a financial institution;

- c) to a pension scheme;
- d) to the Government of that other State, a political subdivision or local authority thereof or to the central bank of that other State; or
- e) 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 10 per cent in the capital for at least one year prior to the payment of the interest or where both companies are held by a third company which has directly a minimum holding of 10 per cent, both in the capital of the first company and in the capital of the second company for at least one year prior to the payment of the interest.

4. 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 purposes of this Article.

5. 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.

6. 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 liability to pay the interest 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.

7. 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 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 law of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 5% of the gross amount of the royalties.
3. 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.
4. The provisions of paragraphs 1 and 2 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.
5. 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 with which the right or property in respect of which the royalties are paid is effectively connected, 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.
6. 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 13

Capital gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contract-

ing State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains of an enterprise of a Contracting State from the alienation of ships, aircraft or road transport vehicles operated in international traffic, boats engaged in inland waterways transport or movable property pertaining to the operation of such ships, aircraft, road transport vehicles or boats, shall be taxable only in that State.

4. Gains derived by a resident of a Contracting State from the alienation of shares 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 from the alienation of shares quoted on a Stock Exchange in either Contracting State or any other Stock Exchange as may be agreed between the competent authorities.

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 14

Independent personal services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

Income from employment

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned; and

- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship, aircraft or road transport vehicle, which is operated in international traffic by an enterprise of a Contracting State, or aboard a boat engaged in inland waterways transport operated by an enterprise of a Contracting State may be taxed in that State.

Article 16

Directors' fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or any similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17

Entertainers and sportsmen

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised. The provisions of this paragraph shall not apply if it is established that neither the entertainer or the sportsman nor persons related to them, participate directly in the profits of the person referred to in that paragraph.

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 financed for more than 50 percent 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 18

Pensions

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State. However, where such pensions and other similar remuneration aris-

ing in the other Contracting State are not liable to tax in the first-mentioned State, that other Contracting State may tax such income.

Article 19

Government service

1. a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16, and 18 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20

Students

1. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. In respect of grants and remuneration from employment not covered by paragraph 1, a student or business apprentice within the meaning of paragraph 1 shall be entitled during such education or training to the same exemptions, reliefs and reductions available to residents of the State which he is visiting.

Article 21
Other income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income 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.

Article 22
Capital

1. Capital represented by immovable property referred to in paragraph 2 of Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.
3. Capital represented by ships, aircraft or road transport vehicles operated in international traffic by an enterprise of a Contracting State and by boats engaged in inland waterways transport by an enterprise of a Contracting State, and by movable property pertaining to the operation of such ships, aircraft, boats or road transport vehicles, shall be taxable only in that State.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 23
Elimination of double taxation

1. In Bulgaria double taxation shall be eliminated as follows:
 - a) where a resident of Bulgaria derives income or owns capital which in accordance with the provisions of this Convention may be taxed in Switzerland Bulgaria shall, subject to the provisions of subparagraphs (b) and (c) of this paragraph, exempt such income or capital from tax;
 - b) where a resident of Bulgaria derives dividends, interest or royalties which in accordance with the provisions of Articles 10, 11 or 12 of this Convention may be taxed in Switzerland, Bulgaria shall allow as a deduction from the tax on the dividends, interest or royal-

ties of that resident an amount equal to the tax paid in Switzerland. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such dividends, interest or royalties derived from Switzerland;

- c) where in accordance with any provision of this Convention income derived or capital owned by a resident of Bulgaria is exempt from tax in Bulgaria, Bulgaria may nevertheless, in calculating the amount of the tax on the remaining income or capital of such resident, take into account the exempted income or capital.

2. In Switzerland, double taxation shall be eliminated as follows:

- a) Where a resident of Switzerland derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Bulgaria, Switzerland shall, subject to the provisions of subparagraphs b) and c), exempt such income or capital from tax but may, in calculating tax on the remaining income or capital of such 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 Bulgaria is demonstrated.
- b) Where a resident of Switzerland derives dividends, interest or royalties which, in accordance with the provisions of Articles 10, 11 and 12, may be taxed in Bulgaria, Switzerland shall allow, upon request, a relief to such resident. The relief may consist of:
 - (i) a deduction from Swiss tax on the income of that resident of an amount equal to the tax levied in Bulgaria in accordance with the provisions of Articles 10, 11 and 12; such deduction shall not, however, exceed that part of Swiss tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Bulgaria; or
 - (ii) a lump-sum reduction of the Swiss tax; or
 - (iii) a partial exemption of such dividends, interest or royalties from Swiss tax, consisting at least of the deduction of the tax levied in Bulgaria from the gross amount of the dividends, interest or royalties.

Switzerland shall determine the applicable relief and regulate the procedure in accordance with the Swiss provisions relating to the carrying out of international conventions of the Swiss Confederation for the avoidance of double taxation.

- c) A company which is a resident of Switzerland and which derives dividends from a company which is a resident of Bulgaria shall be entitled, for the purposes of Swiss tax 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 24

Non-discrimination

- 1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision

shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 25

Mutual agreement procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

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 27

Diplomatic agents and consular officers

1. Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.
2. For the purposes of the Convention, diplomatic agents and consular officers of a Contracting State who are accredited to the other Contracting State or to a third State and who are nationals of the accrediting State shall be considered residents of that State, provided that they are subject to the same obligations in respect of taxes on income and on capital as residents of that State.
3. The Convention shall not apply to international organizations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent delegation of a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income and on capital.

Article 28

Entry into force

1. Each Contracting State shall notify to the other, through diplomatic channels, the completion of the procedures required by its law for the bringing into force of this Convention. The Convention shall enter into force on the date on which the later of those notifications has been received.
2. The provisions of the Convention shall have effect:
 - a) in respect of taxes withheld at source on amounts paid or credited on or after the first day of January of the calendar year next following the entry into force of the Convention;
 - b) in respect of other taxes for taxation years beginning on or after the first day of January of the calendar year next following the entry into force of the Convention;
 - c) in respect to Article 26, to information that relates to taxation years or business years beginning on or after the first day of January of the calendar year next following the entry into force of the Convention.
3. The Convention between the Swiss Confederation and Republic of Bulgaria for the avoidance of double taxation with respect to taxes on income and on capital, with Protocol, signed at Berne on 28 October 1991 shall terminate upon the entry into force of this Convention. However, the provisions of the first-mentioned Convention shall continue to have effect for taxable years and periods which are expired before the time at which the provisions of this Convention shall be effective.

Article 29
Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year. In such event, the Convention shall cease to have effect:

- a) in respect of taxes withheld at source on amounts paid or credited on or after the first day of January of the calendar year next following that in which the notice was given;
- b) in respect of other taxes for taxation years beginning on or after the first day of January of the calendar year next following that in which the notice was given.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Convention.

Done in duplicate at Sofia, this 19 September 2012, in the German, Bulgarian and English languages, all texts being equally authentic. In case there is any divergence of interpretation between the German and the Bulgarian texts, the English text shall prevail.

For
The Swiss Federal Council
Regina Escher
Swiss Ambassador in Bulgaria

For
The Government of the Republic of Bulgaria
Simeon Dyankov
First Minister and Minister of Finance of
Bulgaria

PROTOCOL

THE SWISS FEDERAL COUNCIL

AND

THE GOVERNMENT OF THE REPUBLIC OF BULGARIA

have agreed at the signing at Sofia on 19 September 2012 of the Convention between the Swiss Confederation and the Republic of Bulgaria for the avoidance of double taxation with respect to taxes on income and on capital upon the following provisions which shall form an integral part of the Convention.

1. Ad subparagraph h) of paragraph 1 of Article 3

It is understood that the term “pension scheme” includes the following and any identical or substantially similar schemes which are established pursuant to legislation introduced after the date of signature of this Convention:

- a) in Bulgaria, any pension schemes covered by the Social Security Code;
- 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 the forms of individual recognised pension schemes comparable with the occupational pension plans.
 - (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.

2. Ad paragraph 1 of Article 4

It is understood and confirmed that the term “resident of a Contracting State” includes in particular:

- a) a pension scheme established in that State;
- b) 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

- c) a general or limited partnership established according to Swiss law, which has its place of effective management in Switzerland.

3. Ad paragraph 3 of Article 4

In determining the residence of a person other than an individual, who is a resident of both Contracting States, the competent authorities of the Contracting States shall apply as a preference criterion the "place of effective management". It is understood that the term "place of effective management" is the place where key management and commercial decisions that are necessary for the conduct of the entity's business are in substance made. The place of effective management will ordinarily be the place where the most senior person or group of persons makes its decisions, the place where the actions to be taken by the entity as a whole are determined.

4. Ad paragraphs 1 and 2 of Article 7

Where an enterprise of a Contracting State sells goods or merchandise or carries on an activity in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but only on the basis of that part of the total income 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 or installation or the construction of commercial, industrial 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 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.

5. Ad Articles 10 and 11

Where the minimum holding period laid down in subparagraph a) of paragraph 3 of Article 10 or in subparagraph e) of paragraph 3 of Article 11 was not met at the time of the payment of the dividend or the interest and, therefore, the tax stipulated in paragraph 2 of Article 10 or in paragraph 2 of Article 11 was withheld at the moment of the payment, and the condition of the minimum holding period is met subsequently, then the beneficial owner of the dividend or the interest shall be entitled to a refund of the tax withheld.

6. 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 sub-

stantially 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 a 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 favourable than, those available under this Convention to a resident of a Contracting State; and the main effect of such structuring is obtaining benefits under this Convention.

7. Ad paragraph 2 of Article 12

As long as the Swiss Confederation in accordance with its domestic legislation, does not levy a withholding tax on royalties paid to non-residents, paragraph 2 of Article 12 shall not apply, and royalties shall be taxable only in the State of which the beneficial owner of the royalties is a resident.

8. Ad Articles 18 and 19

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

9. Ad Article 25

It is understood that, if Bulgaria agrees to an arbitration clause in a double taxation agreement with any third state, the following paragraph 5 shall have effect between Bulgaria and Switzerland from the date on which the agreement between Bulgaria and that third state becomes effective.

“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.”

In cases, where proceedings have been initiated before the date on which paragraph 5 becomes effective, the three year period referred to in subparagraph b) shall start on that date.

10. 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 the above 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 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 these provisions aim at guaranteeing the taxpayer a fair procedure and not at preventing or unduly delaying the exchange of information process.

Done in duplicate at Sofia, this 19 September 2012, in the German, Bulgarian and English languages, all texts being equally authentic. In case there is any divergence of interpretation between the German and the Bulgarian texts the English text shall prevail.

For
The Swiss Federal Council
Regina Escher
Swiss Ambassador in Bulgaria

For
The Government of the Republic of Bulgaria
Simeon Dyankov
First Minister and Minister of Finance of
Bulgaria