

**Protocol between the Swiss Confederation and the Kingdom of Norway amending the Convention of 7 September 1987 between the Swiss Confederation and the Kingdom of Norway for the avoidance of double taxation with respect to taxes on income and on capital**

The Swiss Federal Council

and

The Government of the Kingdom of Norway,

Desiring to amend the Convention of 7 September 1987 between the Swiss Confederation and the Kingdom of Norway for the avoidance of double taxation with respect to taxes on income and on capital, as amended by the Protocols of 12 April 2005 and 31 August 2009 (hereinafter referred to as “the Convention”) and the Exchange of Letters of 31 August 2009 and of 15 May/13 June 2012 regarding the application and interpretation of Article 26 of the Convention,

Have agreed as follows:

**Article I**

Sub-paragraph i) of paragraph 1 of Article 3 of the Convention shall be deleted and replaced by the following sub-paragraph:

- “i) the term “competent authority” means:
  - (i) in Norway: the Minister of Finance or the Minister`s authorised representative;
  - (ii) in Switzerland: the Head of the Federal Department of Finance or his authorised representative.”

**Article II**

The following new paragraphs 5, 6, 7 and 8 shall be inserted immediately after paragraph 4 of Article 25 of the Convention (Mutual Agreement Procedure):

- “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 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.

6. The provisions of paragraph 5 shall not apply if:

- a) both competent authorities agree, before the date on which arbitration proceedings would otherwise have begun, that the particular case is not suitable for resolution through arbitration; or
- b) the particular case involves abusive transactions with the view of obtaining unintended benefits under the provisions of the Convention to which domestic anti-abuse rules apply.

7. The Contracting States may release to the arbitration board, established under the provisions of paragraph 5, 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.

8. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of paragraphs 5, 6 and 7.”

### **Article III**

Article IV of the amending Protocol signed 31 August 2009 shall be deleted.

### **Article IV**

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

“Article 26

#### **Exchange of Information**

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this 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, 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.”

## **Article V**

The interpretation and application in relation to Article 26 of the Convention as specified by the Contracting States through the exchange of letters of 31 August 2009 and of 15 May/13 June 2012 shall no longer apply.

## Article VI

The following new paragraph 5 shall be inserted immediately after paragraph 4 of the Protocol to the Convention:

“5. It is understood that for the interpretation of Article 26 the principles established in the OECD Commentaries shall be considered. In particular;

- a) It is understood that an exchange of information will only be requested once the requesting Contracting State has exhausted all reasonable 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(s) 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 reference to “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. The standard of “foreseeable relevance” can be met both in cases dealing with one taxpayer (whether identified by name or otherwise) or several taxpayers (whether identified by name or otherwise).
- d) It is understood that automatic exchange of financial account information and spontaneous exchange of information with effect between the parties are intended to be covered based on separate instruments.
- 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.”

## Article VII

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 Protocol. The Protocol shall enter into force on the date of the later of these notifications and shall thereupon have effect from that date.
2. Notwithstanding paragraph 1, the Protocol shall have effect in respect of
  - a) Article II of the Protocol to mutual agreement procedures concerning assessments for taxable years and periods beginning on or after the first day of January of the year next following the entry into force of this Protocol;
  - b) Article IV, V and VI of the Protocol to information for taxable years beginning on or after the first day of January of the year next following the entry into force of this Protocol. Article 26 of the Convention as amended by the Protocol of 12 April 2005 shall continue to be applicable for information regarding the taxable years beginning on or after the first day of January 2006 and ending on the last day of December 2010. Article 26 of the Convention as amended by the Protocol of 31 August 2009 shall continue to apply for information regarding the taxable years beginning on or after the first day of January 2011 and ending on the last day of December of the year this Protocol enters into force.

IN WITNESS WHEREOF the undersigned, duly authorized thereto by their respective Governments, have signed this Protocol.

DONE in duplicate at ..... this ..... of ..... 20.. in the German, Norwegian and English languages. In case of any divergence of interpretation, the English text shall prevail.

For the  
Swiss Federal Council:

For the  
Government of the Kingdom of Norway: