

PROTOCOL

BETWEEN THE SWISS CONFEDERATION AND THE REPUBLIC OF ECUADOR AMENDING THE CONVENTION BETWEEN THE SWISS CONFEDERATION AND THE REPUBLIC OF ECUADOR FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND CAPITAL AND ITS PROTOCOL, SIGNED AT QUITO ON 28 NOVEMBER 1994

The Swiss Federal Council

and

the Government of the Republic of Ecuador,

Desiring to conclude a Protocol to amend the Convention between the Swiss Confederation and the Republic of Ecuador for the Avoidance of Double Taxation with respect to Taxes on Income and Capital, signed at Quito on 28 November 1994 (hereinafter referred to as “the Convention”) and the Protocol signed at Quito on 28 November 1994 (hereinafter referred to as “the Protocol to the Convention”)

Have agreed as follows:

ARTICLE I

The following new Article 25 bis (Exchange of information) is inserted after Article 25 (Mutual agreement procedure) of the Convention:

“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 covered by this Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1.

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.”

ARTICLE II

The following new paragraph 4 (Ad Article 25 bis) shall be added to the Protocol to the Convention:

“4. Ad Article 25 bis

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 25 bis:

- (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 25 bis 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.”

ARTICLE III

Each of the Contracting States shall notify to the other, through the diplomatic channel, the completion of the procedures required by its law for the bringing into force of this Protocol. This Protocol shall enter into force on the date of receipt of the later of these notifications and this Protocol shall apply to requests for the exchange of information regarding information that relates to fiscal periods beginning on or after the first day of January next following the entry into force of this Protocol.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Amending Protocol.

Done in duplicate at Quito this 26 July 2017 in the French and Spanish languages, each text being equally authentic.

For the Swiss Federal Council:

For the Government of the Republic of Ecuador: