

PROTOCOL

**AMENDING THE CONVENTION BETWEEN
SWITZERLAND AND THE REPUBLIC OF
KOREA FOR THE AVOIDANCE OF DOUBLE
TAXATION WITH RESPECT
TO TAXES ON INCOME**

**SIGNED AT BERNE ON FEBRUARY 12, 1980,
AS AMENDED BY THE PROTOCOL,
SIGNED AT SEOUL ON DECEMBER 28, 2010**

*The Swiss Federal Council
and
the Government of the Republic of Korea;*

Desiring to conclude a Protocol to amend the Convention between Switzerland and the Republic of Korea for the Avoidance of Double Taxation with Respect to Taxes on Income, signed at Berne on February 12, 1980, as amended by the protocol, signed at Seoul on December 28, 2010 (hereinafter “the Convention”);

Have agreed as follows:

ARTICLE I

The existing preamble of the Convention shall be deleted and replaced by the following text:

“The Swiss Federal Council and the Government of the Republic of Korea;

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters;

Intending to conclude a Convention for the elimination of double taxation with respect to taxes on income without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Convention for the indirect benefit of residents of third States);

Have agreed as follows:”

ARTICLE II

The first sentence of paragraph 1 of Article 24 (Mutual Agreement Procedure) of the Convention shall be deleted and replaced by the following sentence:

“Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Convention, that person may, irrespective of the remedies provided by the domestic law of those States, present the case to the competent authority of either Contracting State.”

ARTICLE III

1. The existing Articles 27 (Entry into Force) and 28 (Termination) of the Convention shall be renumbered as Articles 28 and 29.

2. The following new Article 27 (Entitlement to Benefits) shall be added to the Convention:

“*ARTICLE 27* Entitlement to Benefits

Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention.”

ARTICLE IV

1. Each of the Contracting States shall notify to the other via diplomatic channels the completion of the procedures required by its law for the bringing into force of this Protocol.
2. This Protocol shall enter into force on the fifteenth day after the date of the later of these notifications, and its provisions 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 year following the entry into force of this Protocol;
 - b) in respect of other taxes, for taxation years beginning on or after the first day of January of the year following the entry into force of this Protocol;
 - c) in respect of Article II of this Protocol, for a case presented to the competent authority of a Contracting State on or after the date of entry into force of this Protocol, without regard to the taxable period to which the case relates.

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

Done in duplicate at this day of 20 in the German, Korean and English languages, all texts being equally authoritative. In the case of any divergence of interpretation between the German and the Korean texts, the English text shall prevail.

For the
Swiss Federal Council

For the
Government of the Republic of
Korea