

PROTOCOL

BETWEEN

THE SWISS FEDERAL COUNCIL

AND

**THE GOVERNMENT OF THE ISLAMIC REPUBLIC
OF IRAN**

**AMENDING THE AGREEMENT OF 27 OCTOBER
2002 (5 ABAN 1381 SOLAR HIJRA) BETWEEN THE
SWISS FEDERAL COUNCIL AND THE
GOVERNMENT OF THE ISLAMIC REPUBLIC OF
IRAN FOR THE AVOIDANCE OF DOUBLE
TAXATION WITH RESPECT TO TAXES ON
INCOME AND ON CAPITAL AND ITS PROTOCOL**

*The Swiss Federal Council
and
the Government of the Islamic Republic of Iran;*

Desiring to conclude a Protocol to amend the Agreement of 27 October 2002 (5 Aban 1381 Solar Hijra) between the Swiss Federal Council and the Government of the Islamic Republic of Iran for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital and its Protocol (hereinafter referred to as “the Agreement”),

Have agreed as follows:

Article 1

The preamble of the Agreement shall be deleted and replaced by the following preamble:

“The Swiss Federal Council and the Government of the Islamic Republic of Iran;

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,

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

Have agreed as follows:”

Article 2

Clause (ii) of subparagraph f) of paragraph 1 of Article 3 (General definitions) of the Agreement shall be replaced by the following clause:

“(ii) in the case of Switzerland, the Head of the Federal Department of Finance or his authorised representative;”

Article 3

1. The following new paragraph 8 is added to Article 7 (Business profits) of the Agreement:

“8 A Contracting State shall make no adjustment to the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States after 5 years from the end of the taxable year in which the profits would have been attributable to the permanent establishment. The

provisions of this paragraph shall not apply in the case of fraud, gross negligence or wilful default.”

2. The following new paragraph 3 is added to Article 9 (Associated enterprises) of the Agreement:

“3. A Contracting State shall not include in the profits of an enterprise, and tax accordingly, profits that would have accrued to the enterprise but by reason of the conditions referred to in paragraph 1 have not so accrued, after 5 years from the end of the taxable year in which the profits would have accrued to the enterprise. The provisions of this paragraph shall not apply in the case of fraud, gross negligence or wilful default.”

3. The following provision is added to the end of paragraph 2 of Article 25 (Mutual agreement procedure) of the Agreement:

“Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States, but in any case not later than ten years after the end of the concerned taxable year.”

Article 4

Article 26 (Exchange of information) of the Agreement 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 Agreement 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 Agreement. 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 5

The existing Articles 28 and 29 of the Agreement shall be renumbered as Articles 29 and 30.

Article 6

The following new Article 28 (Entitlement to benefits) shall be added to the Agreement:

“Article 28 Entitlement to benefits

Notwithstanding the other provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income or capital 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 Agreement.”

Article 7

The following paragraph 5 shall be added to the Protocol to the Agreement:

“5. ad Article 26, it is understood that:

- a) 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) 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 including, if available, the name of that person; as well as any other particulars facilitating that person’s identification, such as address, TIN and National ID No.;
 - (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 and other particulars mentioned in subparagraph (i) above, of any person believed to be in possession of the requested information.
- c) 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 or a group of taxpayer(s). 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 a way 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, neither does it prevent such forms of exchange of information if the Contracting States so agree later
- 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.
- f) In cases where the exchange of information entails costs exceeding the usual administrative practice costs of the requested State, the requesting State shall bear the excessive costs.
- g) If it emerges that inaccurate information or information which should not have been supplied have been supplied, the requesting State shall be

informed of this without delay. That State shall be required to correct or erase such information without delay.”

Article 8

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 on which the later of those notifications has been received.

2. The provisions of the Protocol shall have effect to requests for exchange of information made on or after the date of entry into force of this Protocol relating to information regarding fiscal years

- a) in case of the Confederation of Switzerland, beginning on or after the first day of January (corresponding to Dey 11 Solar Hijra) of the year next following the entry into force of this Protocol;
- b) in case, beginning on or after the first day of Farvardin (corresponding to March 21) of the year next following the entry into force of this Protocol

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

Done in duplicate at this.....day of in the German, Persian and English languages, all texts being equally authentic. In case there is any divergence of interpretation, the English text shall prevail.

For the Swiss Federal Council

For the
Government of the
Islamic Republic of Iran