

P R O T O C O L

BETWEEN THE SWISS CONFEDERATION AND THE HELLENIC REPUBLIC AMENDING THE CONVENTION BETWEEN THE SWISS CONFEDERATION AND THE HELLENIC REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND THE PROTOCOL, SIGNED AT BERNE ON 16th JUNE 1983

The Swiss Federal Council

and

the Government of the Hellenic Republic,

Desiring to conclude a Protocol to amend the Convention between the Swiss Confederation and the Hellenic Republic for the Avoidance of Double Taxation with respect to Taxes on Income, signed at Berne on 16th June 1983 (hereinafter referred to as "the Convention") and the Protocol signed at Berne on 16th June 1983 (hereinafter referred to as "the Protocol to the Convention"),

Have agreed as follows:

ARTICLE I

1. Paragraph 2 of Article 10 (Dividends) of the Convention shall be deleted and replaced by the following paragraph 2:

"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:

- a) 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends;
- b) 15% of the gross amount of the dividends in all other cases;

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid”.

2. A new paragraph 3 is inserted into the Convention. The paragraphs 3, 4 and 5 are consequently renumbered 4, 5 and 6. The new paragraph 3 reads as follows:

“3. Notwithstanding the provisions of paragraphs 1 & 2, dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State shall be taxable only in that other State if the beneficial owner of the dividends is:

- a) the other Contracting State, a political subdivision or a local authority of that other Contracting State;
- b) any pension fund or pension scheme. ”

ARTICLE II

Paragraph 2 of Article 11 (Interest) of the Convention shall be deleted and replaced by the following paragraph 2:

“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 beneficial owner of the interest is a resident of the other Contracting State the tax so charged shall not exceed 7% of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.”

ARTICLE III

1. Paragraph 4 of Article 13 (Capital Gains) of the Convention shall be deleted and replaced by the following paragraph 4:

“4. Gains derived by a resident of a Contracting State from the alienation of shares or other participation rights, 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.”

2. A new paragraph 5 is added into Article 13 and it reads as follows:

“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 IV

1. The following sentence is added to paragraph 2 of Article 22 (Methods for elimination of double taxation) of the Convention:

“However, such exemption shall apply to gains referred to in paragraph 4 of Article 13 only if actual taxation of such gains in Greece is demonstrated.”

2. Paragraph 4 of Article 22 shall be deleted.

ARTICLE V

A new paragraph 5 is added to Article 24 (Mutual agreement procedure) of the Convention and it reads as follows:

“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, that decision shall be binding on both Contracting 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 25 with respect to the information so released.”

ARTICLE VI

Article 25 (Exchange of information) of the Convention shall be deleted and replaced by the following new Article 25:

“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. In order to obtain such information, the tax authorities of the requested Contracting State shall, if necessary to comply with its obligations under this paragraph, 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 VII

1. Paragraph 1 of the Protocol to the Convention shall be deleted and replaced by the following new paragraph 1:

“1a. With respect to paragraph 1 of Article 4, it is understood that the term “resident of a Contracting State” includes a recognized pension fund or pension scheme in that Contracting State; and the Contracting State itself, a political subdivision or a local authority.

b. It is understood that as a recognized pension fund or pension scheme of a Contracting State shall be regarded any pension fund or pension scheme recognized and controlled according to statutory provisions of that State, which is generally exempt from income taxation in that State and which is operated principally to

administer or provide pension or retirement benefits or to earn income for the benefit of one or more such arrangements.”

2. The following new paragraph 3 shall be added to the Protocol to the Convention:

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

3. The following new paragraph 4 shall be added to the Protocol to the Convention:

“4. With reference to Article 25

- 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 administrative assistance provided for in Article 25 does not include measures aimed only at the simple collection of pieces of evidence (“fishing expeditions”).
- c) 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 of the Convention:
 - (i) the name and address of the person(s) under examination or investigation and, if available, other particulars facilitating that persons identification, such as date of birth, marital status, tax identification number;
 - (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) the name and address of any person believed to be in possession of the requested information.

- d) It is further understood that Article 25 of the Convention shall not commit 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 before the information is transmitted to the requesting Contracting State. It is further understood that this provision aims at guaranteeing the taxpayer a fair procedure and not at preventing or unduly delaying the exchange of information process.”

ARTICLE VIII

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:

- a) with respect to tax withheld at source on amounts due on or after the first day of January of the year next following the entry into force of this Protocol;
- b) with respect to other taxes for fiscal years beginning on or after the first day of January of the year that follows the entry into force of this Protocol;
- c) to requests for the exchange of information made on or after the date of entry into force of this Protocol regarding information that relates to taxable periods beginning on or after the first day of January next following the entry into force of this Protocol;
- d) with respect to Article V of this Protocol to cases that are under consideration by the competent authorities as of the date on which this Protocol enters into force and cases that come under consideration after that date.

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

Done in duplicate at Bern this 4th day of November 2010 in the French, Hellenic and English languages, each text being equally authentic. In case of any divergence between the French and the Hellenic texts, the English text shall prevail.

For the Swiss Federal Council:

For the Government of the Hellenic Republic:

Eveline Widmer-Schlumpf
Federal Councillor
Head of the Federal Department
of Finance

John Mourikis
Ambassador
of the Hellenic Republic in Bern