

## PROTOCOL

BETWEEN THE SWISS FEDERAL COUNCIL AND THE GOVERNMENT OF THE REPUBLIC OF ESTONIA AMENDING THE CONVENTION OF 11 JUNE, 2002 BETWEEN THE SWISS FEDERAL COUNCIL AND THE GOVERNMENT OF THE REPUBLIC OF ESTONIA FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Swiss Federal Council

and

The Government of the Republic of Estonia

Desiring to conclude a Protocol to amend the Convention of 11 June, 2002 between the Swiss Federal Council and the Government of the Republic of Estonia for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital (hereinafter referred to as “the Convention”),

Have agreed as follows:

### ARTICLE I

1. Clause (ii) of subparagraph h) of paragraph 1 of Article 3 (General definitions) of the Convention 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;”

2. The following subparagraph j) shall be added to paragraph 1 of Article 3 (General definitions) of the Convention:

- “j) the term “pension scheme” means any plan, scheme, fund, foundation, trust or other arrangement established in a Contracting State which is:
- (i) regulated by and generally exempt from income taxation in that State; and
  - (ii) operated principally to administer or provide pension or retirement benefits or to earn income for the benefit of one or more such schemes.”

## ARTICLE II

Paragraph 3 of Article 4 (Resident) of the Convention shall be replaced by the following paragraph:

“3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall settle its status by mutual agreement.”

## ARTICLE III

Paragraph 3 of Article 5 (Permanent establishment) of the Convention shall be replaced by the following paragraph:

“3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.”

## ARTICLE IV

Paragraph 2 of Article 6 (Income from immovable property) of the Convention shall be replaced by the following paragraph:

“2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, any rights of claim in respect of immovable property, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the

right to work, mineral deposits, sources and other natural resources. Ships and aircraft shall not be regarded as immovable property.”

## ARTICLE V

Paragraph 2 of Article 9 (Associated enterprises) of the Convention shall be replaced by the following paragraph:

“2. Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.”

## ARTICLE VI

Article 10 (Dividends) of the Convention shall be replaced by the following Article:

### “Article 10 Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
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 10 per cent of the gross amount of the dividends.

3. Notwithstanding the provisions of paragraph 2, the Contracting State of which the company is a resident shall exempt from tax dividends paid by that company, if the beneficial owner of the dividends is:

- a) a company (other than a partnership) which is resident of the other Contracting State which holds directly at least 10 per cent of the capital in the company paying the dividends for at least one year prior to the payment of the dividend; or
- b) a pension scheme; or
- c) the central bank of the other State.

4. Paragraphs 2 and 3 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

5. The term „dividends“ as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

6. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

7. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.”

## ARTICLE VII

Article 11 (Interest) of the Convention shall be replaced by the following Article:

### “Article 11

#### Interest

1. Interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.
2. The term „interest“ as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. The term "interest" shall not include any income, which is treated as a dividend under the provisions of Article 10. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
4. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or the fixed base is situated.
5. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of

this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.”

## ARTICLE VIII

Article 12 (Royalties) of the Convention shall be replaced by the following Article:

### “Article 12 Royalties

1. Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.
2. The term „royalties“ as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.
3. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.
4. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
5. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the

use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.”

## ARTICLE IX

Paragraph 4 of Article 13 (Capital gains) of the Convention shall be replaced by the following paragraph:

“4. Gains derived by a resident of a Contracting State from the alienation of shares 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. The provisions of the preceding sentence shall not apply to gains from the alienation of shares quoted on a stock exchange established in either Contracting State or on a stock exchange as may be agreed by the competent authorities of the Contracting States.”

## ARTICLE X

Article 18 (Pensions) of the Convention shall be replaced by the following Article:

### “Article 18 Pensions

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State shall be taxable only in that State.”

## ARTICLE XI

Article 23 (Elimination of double taxation) shall be replaced by the following Article:

“Article 23

Avoidance of double taxation

1. In the case of Estonia, double taxation shall be avoided as follows:
  - a) Where a resident of Estonia derives income or owns capital which, in accordance with the provisions of this Convention, has been taxed in Switzerland, Estonia shall, subject to the provisions of subparagraphs b) and c), exempt such income or such capital from tax, and;
  - b) Where a resident of Estonia derives income which in accordance with the provisions of paragraph 2 of Article 10 may be taxed in Switzerland, Estonia shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Switzerland. Such deduction shall not, however, exceed the part of the Estonian tax, as computed before the deduction is given, which is attributable to such items of income derived from Switzerland.
  - c) Where in accordance with any provision of the Convention income or capital derived by a resident of Estonia is exempt from tax in Estonia, Estonia may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income.
2. In the case of Switzerland, double taxation shall be avoided as follows:
  - a) Where a resident of Switzerland derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Estonia, Switzerland shall, subject to the provisions of subparagraph b), exempt such income or capital from tax but may, in calculating tax on the remaining income or capital of that resident, apply the rate of tax which would have been applicable if the exempted income or capital had not been so exempted. However, such exemption shall apply to gains referred to in paragraph 4 of Article 13 only if actual taxation of such gains in Estonia is demonstrated.
  - b) Where a resident of Switzerland derives dividends which, in accordance with the provisions of Article 10, may be taxed in Estonia, Switzerland shall allow, upon request, a relief to such resident. The relief may consist of:



- (i) a deduction from the tax on the income of that resident of an amount equal to the tax levied in Estonia in accordance with the provisions of Article 10; such deduction shall not, however, exceed that part of the Swiss tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in Estonia; or
- (ii) a lump sum reduction of the Swiss tax; or
- (iii) a partial exemption of such dividends from Swiss tax, in any case consisting at least of the deduction of the tax levied in Estonia from the gross amount of the dividends.

Switzerland shall determine the applicable relief and regulate the procedure in accordance with the Swiss provisions relating to the carrying out of international conventions of the Swiss Confederation for the avoidance of double taxation.

3. A company which is a resident of a Contracting State and which derives dividends from a company which is a resident of the other Contracting State shall be entitled, for the purposes of taxation in the first mentioned Contracting State with respect to such dividends, to the same relief which would be granted to the company if the company paying the dividends were a resident of the first mentioned State.”

## ARTICLE XII

The following paragraphs shall be added to Article 25 (Mutual agreement procedure) of the Convention:

“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 and the persons directly affected by the case 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. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

6. 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.”

### ARTICLE XIII

Article 26 (Exchange of information) of the Convention 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 Convention or to the administration or enforcement of the domestic laws concerning taxes covered by the 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 XIV

1. Paragraphs 1 and 2 of the Protocol to the Convention shall be renumbered as paragraphs 3 and 4.

2. Paragraphs 3, 4, 5 and 6 of the Protocol to the Convention shall be deleted.

## ARTICLE XV

The following paragraph 1 shall be added to the Protocol to the Convention:

“1. ad subparagraph j) of paragraph 1 of Article 3

It is understood that the term “pension scheme” includes the following and any identical or substantially similar schemes which are established pursuant to legislation introduced after the date of signature of this Protocol:

- a) in Estonia, any pension schemes covered by
  - (i) State Pension Insurance Act;
  - (ii) Funded Pensions Act;
  
- b) in Switzerland, any pension schemes covered by
  - (i) the Federal Act on old age and survivors’ insurance, of 20 December 1946;
  - (ii) the Federal Act on disabled persons’ insurance of 19 June 1959;
  - (iii) the Federal Act on supplementary pensions in respect of old age, survivors’ and disabled persons’ insurance of 6 October 2006;
  - (iv) the Federal Act on old age, survivors’ and disabled persons’ insurance payable in respect of employment or self-employment of 25 June 1982, including the non-registered pension schemes which offer occupational pension plans and the forms of individual recognised pension schemes comparable with the occupational pension plans.”

## ARTICLE XVI

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

“2. ad Article 4

In respect of paragraph 1 of Article 4, it is understood and confirmed that the term “resident of a Contracting State” includes in particular:

- a) a pension scheme established in that State; and
- b) an organisation that is established and is operated for religious, charitable, scientific, cultural, sporting, or educational purposes and that is a resident of that State according to its laws, notwithstanding that all or part of its income or gains may be exempt from tax under the domestic law of that State.”

## ARTICLE XVII

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

“5. ad subparagraph a) of paragraph 3 of Article 10

Where the minimum holding period laid down in subparagraph a) of paragraph 3 of Article 10 was not met at the time of the payment of the dividend and, therefore, the tax stipulated in paragraph 2 of Article 10 was withheld at the moment of the payment, and the condition of the minimum holding period is met subsequently, then the beneficial owner of the dividend shall be entitled to a refund of the tax withheld.”

## ARTICLE XVIII

The following paragraph 6 shall be added to the Protocol to the Convention:

“6. ad Articles 10, 11 and 12

The provisions of Articles 10, 11 and 12 shall not apply in respect to any dividend, interest or royalty paid under, or as part of a conduit arrangement. The term “conduit arrangement” means a transaction or series of transactions which is structured in such a way that a resident of a Contracting State entitled to the benefits of the Convention receives an item of income arising in the other Contracting State but that resident pays, directly or indirectly, all or substantially all of that income (at any time or in any form) to another person who is not a resident of either Contracting State and who, if it received that item of income directly from the other Contracting State, would not be entitled under a Convention for the avoidance of double taxation between the State in which that other person is a resident and the Contracting State in which the income arises, or otherwise, to benefits with respect to that item of income which are equivalent to, or more favourable than, those available under this Convention to a

resident of a Contracting State; and the main purpose of such structuring is obtaining benefits under this Convention.

The competent authorities of the Contracting States shall notify each other when this provision is applied to such conduit arrangement.”

#### ARTICLE XIX

The following paragraph 7 shall be added to the Protocol to the Convention:

“7. ad Articles 18 and 19

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

#### ARTICLE XX

The following paragraph 8 shall be added to the Protocol to the Convention:

“8. ad Articles 18 and 24

As regards Article 18 and Article 24 contributions to a pension scheme of a Contracting State that are made by or on behalf of an individual who renders services in the other Contracting State shall, for the purposes of determining the individual's tax payable and the profits of an enterprise which may be taxed in that State, be treated in that State in the same way and subject to the same conditions and limitations as contributions made to a pension scheme in that Contracting State, provided that the individual was not a resident of that State, and was participating in the pension scheme, immediately before beginning to provide services in that State.

#### ARTICLE XXI

The following paragraph 9 shall be added to the Protocol to the Convention:

“9. ad Article 26

- 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 26:
  - (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 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 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.
- 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 XXII

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:

- a) in respect of taxes withheld at source, on amounts paid or credited to non-residents either on or after the first day of January of the year next following the entry into force of this Protocol.
- b) in respect of other taxes for fiscal years beginning on or after the first day of January of the year next following the entry into force of this Protocol.
- c) in respect of paragraph 5 and 6 of Article 25 to mutual agreement procedures that are
  - (i) pending between the competent authorities of the Contracting States at the entry into force of this Protocol (in such cases the three year period under subparagraph b) of paragraph 5 begins with the entry into force of this Protocol); or
  - (ii) initiated after that date;
- d) in respect of Article 26 of the Convention, the exchange of information provided for in this Protocol shall be applicable to requests made on or after the date of entry into force to information that relates to fiscal years beginning on or after the first day of January 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 Tallinn this 25<sup>th</sup> day of August 2014 in the German, Estonian and English languages, all texts being equally authentic. In case there is any divergence of interpretation between the German and the Estonian texts the English text shall prevail.

For the  
Swiss Federal Council:

For the  
Government of the Republic of Estonia: