

PROTOCOL

**BETWEEN THE SWISS CONFEDERATION AND THE KINGDOM OF DENMARK
AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH
RESPECT TO TAXES ON INCOME AND CAPITAL, SIGNED AT BERNE ON 23RD
NOVEMBER 1973, AS AMENDED BY THE PROTOCOL SIGNED AT COPENHAGEN ON
11TH MARCH 1997**

The Swiss Confederation

and

the Kingdom of Denmark,

Desiring to conclude a Protocol to amend the Convention between the Swiss Confederation and the Kingdom of Denmark for the Avoidance of Double Taxation with respect to Taxes on Income and Capital, signed at Berne on 23rd November 1973, as amended by the Protocol signed at Copenhagen on 11th March 1997 (hereinafter referred to as "the Convention"),

Have agreed as follows:

ARTICLE I

Article 10 (Dividends) of the Convention shall be deleted and 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 15 per cent of the gross amount of the dividends.
3. Notwithstanding the provisions of paragraph 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 is
 - a) a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends; or

- b) a pension fund or other similar institution providing pension schemes in which individuals may participate in order to secure retirement, disability and survivors' benefits, where such pension fund or other similar institution is established, recognized for tax purposes and controlled in accordance with the laws of that other State.

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.

4. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate 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.

5. 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.

6. 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 II

1. Article 11 paragraph 1 (Interest) of the Convention shall be deleted and replaced by the following paragraph:

"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. Article 11 paragraph 3 (Interest) of the Convention shall be deleted and replaced by the following paragraph:

“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.”

ARTICLE III

1. Article 12 paragraph 1 (Royalties) of the Convention shall be deleted and replaced by the following paragraph:

“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. Article 12 paragraph 3 (Royalties) of the Convention shall be deleted and replaced by the following paragraph:

“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.”

ARTICLE IV

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

"Article 18 Pensions

1. Pensions and other similar remuneration, whether in consideration of past employment or not, arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the first-mentioned State if the contributions paid by

- a) the beneficiary to the pension scheme were deducted from the beneficiary's taxable income in the first-mentioned Contracting State under the law of that State; or
- b) an employer were not taxable income for the beneficiary in the first-mentioned Contracting State under the law of that State.

2. For the purpose of this Article, the term “pensions and other similar remuneration” does not include payments under the social security legislation of a Contracting State.”

ARTICLE V

1. The current wording of Article 21 (Other Income) of the Convention shall become paragraph 1.

2. The following paragraph 2 shall be added to this Article:

“2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State 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 income 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.”

ARTICLE VI

Article 23 paragraph 2 (Elimination of Double Taxation) of the Convention shall be deleted and replaced by the following paragraph:

“2. In 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 Conventions, may be taxed in Denmark, 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.
- b) Where a resident of Switzerland derives dividends which, in accordance with the provisions of Article 10 may be taxed in Denmark, Switzerland shall allow, upon request, a relief to such resident. The relief may consist of:
 - (i) a deduction from the Swiss tax on the income of that resident of an amount equal to the tax levied in Denmark 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 Denmark; 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 Denmark 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.

- c) A company which is a resident of Switzerland and which derives dividends from a company which is a resident of Denmark shall be entitled, for the purposes of Swiss tax 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 Switzerland.”

ARTICLE VII

The following paragraph 5 shall be added to Article 25 (Mutual Agreement Procedure):

“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.

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 27 with respect to the information so released.”

ARTICLE VIII

Article 27 (Exchange of Information) of the Convention shall be deleted and replaced by the following Article:

“Article 27 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. In order to obtain such information, the tax authorities of the requested Contracting State shall 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 IX

Paragraphs 3 and 4 of Article 28 (Miscellaneous) shall be deleted and replaced by the following paragraph:

“3. Contributions to a pension fund or other similar institution providing pension schemes established in and recognised for tax purposes in 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 that is recognised for tax purposes in that State, provided that:

- a) 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, and
- b) the pension scheme is accepted by the competent authority of that State as generally corresponding to a pension scheme recognised as such for tax purposes by that State.”

ARTICLE X

A Protocol is added to the Convention with the following provisions:

“PROTOCOL

The Swiss Confederation

and

The Kingdom of Denmark

Have agreed at the signing of the Protocol between the Swiss Confederation and the Kingdom of Denmark amending the Convention for the avoidance of double taxation with respect to taxes on income and capital, signed at Berne on 23rd November 1973, as amended by the Protocol signed at Copenhagen on 11th March 1997 upon the following provisions, which shall form an integral part of the Convention.

1. Regarding subparagraph b) of paragraph 3 of Article 10 and paragraph 3 of Article 28

It is understood that the terms “pension fund or other similar institution providing pension schemes” include 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 Denmark, pension schemes falling under Section I of the Act on Taxation of Pension Schemes (Pensionsbeskatningsloven).
- b) in Switzerland, any plans and 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 professional pension plans, and
 - (v) the forms of individual recognised pension schemes comparable with the professional pension plans, in accordance with article 82 of the Federal Act on old age, survivors’ and disabled persons’ insurance payable in respect of employment or self-employment of 25 June 1982.

It is further understood that the term “pension fund or pension scheme” includes investment funds or trusts where all of the interest of the funds or trusts are held by pension funds or pension schemes.

2. Regarding Articles 18 and 19

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. Regarding Article 27

- 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 27 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 27 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 27 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 XI

This Protocol shall enter into force upon the exchange of notes confirming that the constitutional formalities which require to be fulfilled in each of the Contracting States before the Protocol can enter into force have been completed and this Protocol shall apply:

- a) with respect to Articles 10 and 23 of the Convention, to dividends 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 Article 18 of the Convention, to pensions due on or after the first day of January of the year next following the entry into force of this Protocol except for pensions that were running at the date of signature of this Protocol and are paid to beneficiaries who moved from one Contracting State to the other Contracting State before that date;
- c) with respect to paragraph 5 of Article 25 of the Convention, upon notice given by Denmark that it has put into place its internal basis and procedures for the implementation of said paragraph or from the date on which a convention for the avoidance of double taxation between Denmark and a third state which includes a similar paragraph (Arbitration) becomes effective, whichever is the earlier;
- d) with respect to Article 27 of the Convention, for taxable years beginning on or after the first day of January of the year next following the entry into force of this Protocol;

- e) with respect to paragraph 3 of Article 28 of the Convention, to contributions paid for taxable 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 by their respective Governments, have signed this Protocol.

Done in duplicate at Copenhagen this 21st day of August 2009 in the German, Danish and English languages, each text being equally authoritative. In case there is any divergence of interpretation between the German and the Danish texts the English text shall prevail.

For the Swiss Confederation:

Werner Bardill

For the Kingdom of Denmark:

Kristian Jensen