

PROTOCOL

BETWEEN THE SWISS CONFEDERATION AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME, SIGNED AT LONDON ON 8 DECEMBER 1977, AS AMENDED BY THE PROTOCOLS SIGNED AT LONDON ON 5 MARCH 1981, AT BERNE ON 17 DECEMBER 1993 AND AT LONDON ON 26 JUNE 2007.

The Swiss Federal Council

and

the Government of the United Kingdom of Great Britain and Northern Ireland;

Desiring to conclude a Protocol to amend the Convention between the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation with respect to Taxes on Income, signed at London on 8 December 1977, as amended by the Protocols signed at London on 5 March 1981, at Berne on 17 December 1993 and at London on 26 June 2007 (hereinafter referred to as “the Convention”),

Have agreed as follows:

ARTICLE I

Article 24 (Mutual Agreement Procedure) of the Convention shall be deleted and replaced by the following Article:

“Article 24 Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual

agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

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 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.”

ARTICLE II

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

“Article 25 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 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 Convention. 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. 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 III

The Exchange of Notes of 26 June 2007 which forms part of the Convention shall be disregarded and replaced by the following Protocol:

"PROTOCOL

The Swiss Confederation

and

The United Kingdom of Great Britain and Northern Ireland

Have agreed at the signing of the Protocol amending the Convention for the avoidance of double taxation with respect to taxes on income, signed on 8 December 1977, as amended by the Protocols signed on 5 March 1981, 17 December 1993 and 26 June 2007, upon the following provisions, which shall form an integral part of the Convention.

1. In relation to paragraph 1 of Article 4 (Residence)

It is understood and confirmed that the term "resident of a Contracting State" includes:

- (a) a pension scheme established in that State; and
- (b) an organisation that is established and is operated exclusively for religious, charitable, scientific, cultural, or educational purposes (or for more than one of those 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.

2. In relation to sub-paragraph (a) (ii) of paragraph 2 of Article 10 (Dividends)

It is understood and confirmed that the term "pension scheme" means any plan, scheme, fund, trust or other arrangement established in a Contracting State which is:

- (a) generally exempt from income taxation in that State; and
- (b) operated principally to administer or provide pension or retirement benefits or to earn income for the benefit of one or more such arrangements.

3. In relation to Article 15 (Dependent personal services)

It is understood that Article 15 applies to the employment benefit derived from stock-options regardless of when that benefit is taxed.

4. In relation to Article 25 (Exchange of information)

- a) It is understood that an exchange of information will only be requested once the requesting Contracting State has exhausted all its normal procedures under domestic law to obtain the information.
- b) It is understood that the standard of “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.
- 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 person’s 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 understood that Article 25 of the Convention 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 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 IV

1. Each of the Contracting States shall notify to the other 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 date of the receipt of the later of these notifications and shall thereupon have effect:

- a) With respect to paragraph 5 of Article 24 of the Convention, three years after that date;
- b) For all other matters, 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 this day of in the English and French languages, each text being equally authoritative.

For the Swiss Federal Council:

For the Government of the United Kingdom of Great Britain and Northern Ireland: