

PROTOCOL

AMENDING THE CONVENTION BETWEEN THE SWISS FEDERAL COUNCIL AND THE GOVERNMENT OF THE UNITED MEXICAN STATES FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME, SIGNED AT MEXICO CITY ON AUGUST 3, 1993

The Swiss Federal Council

and

the Government of the United Mexican States;

Desiring to conclude a Protocol to amend the Convention between the Swiss Federal Council and the Government of the United Mexican States for the Avoidance of Double Taxation with respect to Taxes on Income, signed at Mexico City on August 3, 1993 (hereinafter referred to as “the Convention”);

Have agreed as follows:

ARTICLE I

Subparagraph a), paragraph 3 of Article 2 (Taxes covered) of the Convention shall be deleted and replaced by a new subparagraph a), paragraph 3 as follows:

“ a) in Mexico:

- i) the income tax (*el impuesto sobre la renta*);
- ii) the business flat rate tax (*el impuesto empresarial a tasa única*);

(hereinafter referred to as “Mexican tax”);”

ARTICLE II

Paragraph 3 of Article 4 (Resident) of the Convention shall be deleted and replaced by a new paragraph 3 as follows:

“3. Where by reason of the provisions of paragraph 1, a company is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement, having regard to the company's place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such company shall not be entitled to claim any benefits under this Convention, except that such company may claim the benefits of Articles 22 (Non-discrimination) and 23 (Mutual agreement procedure).”

ARTICLE III

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

“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:

- a) shall be exempt from tax in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is:
 - i) a company which is a resident of the other Contracting State and controls, directly or indirectly, at least 10 per cent of the capital in the company paying the dividends; or
 - ii) a recognized pension fund or pension scheme;
- b) except as provided in sub-paragraph a), 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.”

ARTICLE IV

1. Subparagraphs a) and b) of paragraph 2 of Article 11 (Interest) of the Convention shall be deleted and replaced by the following subparagraphs a) and b):

“a) 5 per cent of the gross amount of the interest:

- i) paid to a bank or an authorized securities dealer or an insurance or a reinsurance institution;
- ii) derived from bonds or securities regularly traded on an authorized securities market;

b) 10 per cent of the gross amount of the interest in all other cases.”

2. Paragraph 4 of Article 11 (Interest) of the Convention shall be deleted and replaced by the following paragraph 4:

“4. 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, as well as income which is subjected to the same taxation treatment as income from money lent by the laws of the State in which the income arises.”

ARTICLE V

1. A new paragraph 6 shall be inserted after paragraph 5 of Article 13 (Capital gains) of the Convention and shall read as follows:

“6. a) Gains from the alienation of shares of a company resident in one of the Contracting States may be taxed in that State. However, the tax so charged shall not exceed 10 per cent of the taxable gains.

- b) Notwithstanding subparagraph a), paragraph 5 shall remain applicable in the case of the alienation of shares:

- i) regularly traded and realized on an authorized Stock Exchange;
- ii) by banks or insurance or reinsurance companies; or
- iii) by pension funds.”

2. A new paragraph 7 shall be inserted after new paragraph 6 of Article 13 (Capital gains) of the Convention and shall read as follows:

“7. For purposes of paragraph 6 of this Article, gains from the alienation of shares of a company resident in one of the Contracting States shall be taxable only in the other Contracting State, if the alienation of shares takes place between members of the same group of companies to the extent that the remuneration received by the transferor consists of shares or other rights in the capital of the transferee or of another company that owns directly or indirectly 80 per cent or more of the voting rights and value of the transferee and that is resident of one of the Contracting States or of a country with which Mexico has a broad exchange of information agreement in terms of the Annex 10 of the Administrative Tax Regulations (*Resolución Miscelánea Fiscal*), but only if the following conditions are met:

- a) the transferee is a company resident of one of the Contracting States or of a country with which Mexico has a broad exchange of information agreement in terms of the Annex 10 of the Administrative Tax Regulations (*Resolución Miscelánea Fiscal*);
- b) before and immediately after the transfer, the transferor or the transferee owns, directly or indirectly, 80 per cent or more of the voting rights and value of the other, or a company resident in one of the Contracting States or of a country with which Mexico has a broad exchange of information agreement in terms of the Annex 10 of the Administrative Tax Regulations (*Resolución Miscelánea Fiscal*) owns directly or indirectly (through companies resident in one of those States) 80 per cent or more of the voting rights and value of each of them; and
- c) for the purpose of determining the gain on any subsequent disposition:
 - i) the initial cost of the shares for the transferee is determined based on the cost it had for the transferor, increased by any cash or other remuneration other than shares or other rights paid; or
 - ii) the gain is measured by another method that gives substantially the same result.

Notwithstanding the foregoing, if cash or other remuneration other than shares or other rights is received, the amount of the gain (limited to the amount of cash or other remuneration other than shares or other rights received), may be taxed by the Contracting State of which the company of which the shares are alienated is a resident.”

ARTICLE VI

Subparagraph c) of paragraph 2 of Article 21 (Elimination of double taxation) of the Convention shall be deleted and replaced by the following new subparagraph c):

“c) Where a resident of Switzerland derives income covered by paragraph 6 of Article 13, Switzerland shall allow, upon request, a deduction from the Swiss tax on this income of an amount equal to the tax levied in Mexico, in accordance with this paragraph 6; such deduction shall not, however, exceed that part of the Swiss income tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in Mexico.”

ARTICLE VII

Paragraphs 1 and 2 of Article 24 (Exchange of information) of the Convention shall be deleted and replaced by the following provisions:

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 VIII

Paragraph 2 of the Protocol to the Convention shall be deleted and replaced by the following new paragraph 2:

“2. With reference to Article 4

- a) With respect to paragraph 1, it is understood that the term “resident of a Contracting State” includes:
 - i) a recognized pension fund or pension scheme established in that State; and
 - ii) an organization that is established and is operated exclusively for religious, charitable, scientific, cultural, artistic, sportive 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.

Regarding subparagraph i) 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.

- b) With respect to paragraph 3, it is understood that the “place of effective management” is the place where key management, commercial decisions and operations that are necessary for the conduct of the entity’s business are in substance undertaken, under consideration of all relevant facts and circumstances. ”

ARTICLE IX

Subparagraphs a) and c) of paragraph 3 with reference to Article 7 of the Protocol to the Convention shall be deleted. Subparagraph a) shall be replaced by the following new subparagraph a):

- “a) It is understood that in the case of profits derived from activities carried out by the permanent establishment, there shall only be attributed to such permanent establishment the amount resulting from the functions performed, assets used and risks assumed by such permanent establishment.”

ARTICLE X

Paragraph 6 of the Protocol to the Convention shall be deleted and replaced by the following new paragraph 6:

“6. With reference to Articles 10, 11 and 12

1. 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 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 favorable 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, under the mutual agreement procedure, may agree on the cases or circumstances where the structuring of a conduit arrangement has as main purpose the obtaining of benefits under this paragraph.

2. A company, being a resident of a Contracting State, in which persons who are residents of the other Contracting State have, directly or indirectly, a substantial interest in the form of a participation or otherwise, may only claim the reduction of taxes which this other Contracting State levies on dividends, interest or royalties which it derives from this other Contracting State if such dividends, interest or royalties are subject in the first mentioned Contracting State to corporation tax without being exempted, or without being subject to a special deduction, rebate or other concession or benefit which is not available to other residents of that Contracting State.”

ARTICLE XI

The following paragraph 6 bis, Ad Article 11, shall be added after new paragraph 6 ad Articles 10, 11 and 12 of the Protocol to the Convention:

“ 6 bis. Ad Article 11

For purposes of paragraph 2 of Article 11, in the event that pursuant to an agreement or convention concluded with a country that is a member of the Organization for Economic Co-operation and Development after the date of signature of this Convention, Mexico agrees to a rate of tax on interest that is lower than those mentioned in this paragraph, then such lower rate shall apply to this Convention as from the date in which such Agreement or Convention enters into force.”

ARTICLE XII

The following subparagraphs c) and d) shall be added after sub-paragraph b) of paragraph 7 with reference to Article 12 of the Protocol to the Convention:

- “c) For purposes of paragraph 2, in the event that pursuant to an agreement or convention concluded with a country that is a member of the Organization for Economic Co-operation and Development after the date of signature of this Convention, Mexico agrees to a rate of tax on royalties that is lower than 10 per cent, then such lower rate shall apply to this Convention as from the date in which such agreement or convention enters into force.

- d) For purposes of paragraph 3, in the event that pursuant to an agreement or convention concluded with a country that is a member of the Organization for Economic Co-operation and Development after the date of signature of this Convention, Mexico agrees to exclude the use or the right to use industrial, commercial or scientific equipment from the application of Article 12, such exclusion shall apply to this Convention as from the date in which such agreement or convention enters into force.”

ARTICLE XIII

Paragraph 9 shall be deleted. New paragraphs 9, 10 and 11 shall be added into the Protocol to the Convention, which shall read as follows:

“9. With reference to 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.

10. With reference to Article 23

In the event that pursuant to an agreement or convention for the avoidance of double taxation concluded with another third country after the date of signature of this Convention, Mexico agrees to include an arbitration provision in such agreement or convention, the competent authorities of the Swiss Confederation and the United Mexican States will start negotiations, as soon as possible, in view of concluding an amending protocol aiming at inserting an arbitration provision into this Convention.

11. With reference to Article 24

- 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 24 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 Contracting State shall provide the following information to the tax authorities of the requested Contracting State when making a request for information under Article 24 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 Contracting State wishes to receive the information from the requested Contracting 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 24 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 XIV

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. The Protocol shall enter into force thirty days after the date of the receipt of the later of these notifications and shall thereupon have effect:
 - a) in respect of tax withheld at the source on income paid or accrued on or after the first day of January of the year following that in which this Protocol enters into force; and
 - b) in respect of other taxes for taxation years beginning on or after the first day of January of the year following that in which this Protocol enters into force.
3. With respect to Article 24 of the Convention, the exchange of information provided for in this Protocol will be applicable 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 Mexico City this eighteenth day of September of two thousand and nine, in two originals in the English, Spanish and French languages, all texts being equally authentic. In the case of any divergence, the English text shall prevail."

For the Swiss Federal Council:

For the Government of the United Mexican States:

Heinrich Schellenberg
Chargé d'affaires a.i. of Switzerland

Patricia Espinosa Cantellano
Minister of Foreign Affairs