

# **1987 Income Tax Convention and Final Protocol (English Translation)**

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## **CONVENTION BETWEEN THE SWISS FEDERAL COUNCIL AND THE REPUBLIC OF THE IVORY COAST FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME**

[TRANSLATION]

The Swiss Federal Council and the Government of the Republic of the Ivory Coast, Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income,

Have agreed to the following provisions:

### **Article 1 Personal Scope**

This Convention shall apply to persons who are residents of one or both of the Contracting States.

### **Article 2 Taxes Covered**

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State, a political subdivision or a local authority thereof, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amount of salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are:

a) in Switzerland:

les impôts fédéraux, cantonaux et communaux sur le revenu (federal, county and local income taxes) (total income, earnings from work, yields from capital, business profits, capital gains and other income);

(referred to hereinafter as "Swiss tax").

b) in the Ivory Coast:

(i) l'impôt sur les bénéfices industriels et commerciaux et sur les bénéfices agricoles (tax on industrial and commercial profits and on agricultural profits);

(ii) l'impôt sur les bénéfices non commerciaux (tax on non-commercial profits);

(iii) l'impôt sur les traitements et salaires (tax on wages and salaries);

(iv) l'impôt sur le revenu des capitaux mobiliers (tax on income from moveable assets);

(v) l'impôt général sur le revenu (general tax on income);

(referred to hereinafter as "Ivorian tax").

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall inform each other of any substantial changes made in their respective tax laws.

5. The Convention shall not apply to withholding taxes on gains derived from lotteries.

### **Article 3 General Definitions**

1. For the purposes of this Convention, unless the context otherwise requires:

a) the term "Switzerland" means the Swiss Confederation;

b) the term "Ivory Coast" means the national territory, as well as the offshore zones of national jurisdiction of the Republic of the Ivory Coast, including all areas situated outside the territorial waters of the Ivory Coast which, in accordance with international law, have been or may eventually be designated, under the laws of the Ivory Coast concerning the continental plateau, as areas within which the rights of the Ivory Coast may be exercised with respect to the resources in the seabed and the marine subsoil as well as the natural resources thereof;

c) the terms "a Contracting State" and "the other Contracting State" mean Switzerland or the Ivory Coast, depending on the context;

d) the term "person" includes an individual, a company and any other body of persons;

e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

- f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise whose effective place of management is situated in a Contracting State, except when the ship or aircraft is operated solely between places situated in the other Contracting State;
- h) the term "competent authority" means:
- (i) in Switzerland, the Chief of the Federal Tax Administration or his authorized representative;
  - (ii) in the Ivory Coast, the Minister of Finance or his authorized representative.
2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that Contracting State concerning the taxes to which the Convention applies.

#### **Article 4 Resident**

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable for taxation in that State solely on income from sources situated in that State. In the case of Switzerland, the term includes any partnership formed or organized under Swiss law.
2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows:
- a) such person shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
  - b) if the State in which such person has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
  - c) if such person has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
  - d) if such person is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

#### **Article 5 Permanent Establishment**

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
- a) a place of management;
  - b) a branch;
  - c) an office;
  - d) a factory;
  - e) a sales outlet
  - f) a workshop;
  - g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
  - h) a fixed place of business used for the purpose of gathering information where such activity is the actual purpose of the enterprise.
3. A building site, a temporary assembly line or supervisory activities shall be regarded as a permanent establishment only if they last for more than six months.
4. Notwithstanding the foregoing provisions of this Article, the term "permanent establishment" shall be deemed not to include:
- a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
  - b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

d) the use of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information for the enterprise;

e) the use of a fixed place of business for the enterprise, for the sole purpose of advertising, providing information, performing scientific research or any similar activity of a preparatory or auxiliary character.

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sections a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. A person (other than an agent of an independent status to whom paragraph 7 applies) who is acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed a "permanent establishment" in the first-mentioned Contracting State:

a) if it has and habitually exercises in that State the authority to conclude contracts on behalf of the enterprise;

b) if it maintains in the first-mentioned Contracting State a warehouse of merchandise belonging to the enterprise which it uses regularly to fill orders and make deliveries on behalf of the enterprise.

6. Notwithstanding the foregoing provisions of this Article, an insurance enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State, with the exception of its reinsurance business, if it collects premiums in the territory of that other State or insures local risks therein through a person other than an agent with an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, if the activities of such agent are carried out solely or almost exclusively on behalf of such enterprise, he shall not be deemed an independent agent for the purposes of this paragraph.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

### **Article 6 Income From Immovable Property**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture and forestry) situated in the other Contracting State shall be taxed in that other State.

2. The term "immovable property" shall have the meaning attributed to it by the laws 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, 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.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, sharecropping or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

### **Article 7 Business Profits**

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, either in the State in which such permanent establishment is situated, or elsewhere.

4. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

### **Article 8 Shipping and Air Transport**

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. If the place of effective management of a shipping enterprise or of an inland waterways transport enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbor of the ship or boat is situated, or, if there is no such home harbor, in the Contracting State of which the operator of the ship is a resident.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency. This provision shall apply solely to that portion of the profits attributed to the Ivorian participant in the multinational company, Air Afrique.

### **Article 9 Associated Enterprises**

Where

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

### **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 person who receives the dividends is the beneficial owner thereof, the tax so charged may not exceed 15 percent of the gross amount of the dividends.

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.

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, 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.

4. The provisions of paragraphs 1 and 2 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, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 or Article 14 shall apply.

5. 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 to residents of the first-mentioned State, except insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or situated in that other State, nor subject the company to a tax on 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 11 Interest**

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises, according to the laws of that State, but if the person who receives the interest is the beneficial owner thereof, the tax so charged may not exceed 15 percent 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.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner thereof may be taxed only in that other State insofar as such interest is paid:

a) in connection with supplier financing for the sale of industrial, commercial or scientific equipment, or

b) in connection with credit granted by the supplier for the sale of merchandise.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalties for late payment shall not be regarded as interest under the terms of this Article.

5. The provisions of paragraphs 1, 2 and 3 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, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. 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 under the laws of each Contracting State and the other provisions of this Convention.

### **Article 12 Royalties**

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, under the laws of that State, but if the person who receives the royalties is the beneficial owner thereof, then the tax so charged may not exceed 10 percent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

3. 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 the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the income, 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, and the right or property in

respect of which the royalties are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or 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 in connection with which the obligation to pay the royalties was agreed to, and such royalties are paid by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

6. 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 under the laws of each Contracting State and in accordance with the other provisions of this Convention.

### **Article 13 Capital Gains**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property as defined in Article 6, and situated in the other Contracting State, may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains derived from the alienation of such permanent establishment (alone or with the whole enterprise) may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic, or from movable property pertaining to the operation of such ships or aircraft or boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the Contracting State of which the alienator is a resident.

### **Article 14 Independent and Dependent Personal Services**

1. Subject to the provisions of Articles 15, 17, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment, as well as income derived by him from an independent profession or other independent activities or a similar character, may be taxed only in that State, unless the employment, the services or activities are exercised or carried out in the other Contracting State. If the employment, services or activities are so exercised or carried out, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration or income derived by a resident of a Contracting State in respect of an employment or services or activities performed or carried out in the other Contracting State shall be taxable only in the first-mentioned State if:

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in a twelve-month period, and

b) the remuneration or income is paid by, or on behalf of, a person who is not a resident of the other State;

c) the remuneration is not borne or the income is not paid by a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

### **Article 15 Directors' Fees**

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or the supervisory board of a company which is a resident of the other Contracting State may be taxed in that other State.

### **Article 16 Entertainers and Athletes**

1. Notwithstanding the provisions of Article 14, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income

may notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to income in respect of activities exercised by entertainers who are subsidized to a large extent, either directly or indirectly, by allocations from public funds.

### **Article 17 Pensions and Annuities**

1. Subject to the provisions of paragraphs 1 and 2 of Article 18, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment may be taxed only in that State.

2. The term "annuity" means a given sum payable periodically at fixed terms, during the entire life or for a determined or determinable period, under an agreement to make payments in exchange for full and sufficient consideration paid in money or which can be valued in monetary terms.

### **Article 18 Government Service**

1.

a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2.

a) Pensions paid by a Contracting State, a political subdivision or a local authority thereof, either directly or by withdrawal from funds created by them, to an individual in respect of services rendered to that State, a political subdivision or a local authority thereof, may be taxed only in that State;

b) However, such pensions may be taxed only in the other Contracting State if the individual is a resident of that State and possesses the nationality thereof.

3. The provisions of Articles 14, 15 and 17 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, a political subdivision or a local authority thereof.

### **Article 19 Students**

1. Payments which a student or a business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of pursuing his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided they are from sources situated outside that State.

2. Any individual who is or was a resident of a Contracting State and who is present in the other Contracting State for the purpose of his education, research or training or for the purpose of acquiring technical, professional or commercial experience shall be exempt from taxation in that other Contracting State, for a period or periods not to exceed twelve months, for remuneration in respect of an employment in that other State, provided that such employment is directly connected to his education, research or training or his apprenticeship, and that the remuneration derived from such employment does not exceed 18,000 Swiss francs or the equivalent in Ivorian currency, at the official exchange rate.

### **Article 20 Other Income**

1. Items of income of a resident of a Contracting State, irrespective of where such income arises, which are not mentioned in the foregoing Articles of this Convention may be taxed only in that State.

2. The provisions of paragraph 1 shall not apply to income other than income arising from immovable property as defined in paragraph 2 of Article 6, where 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, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

### **Article 21 Elimination of Double Taxation**

1. With regard to Switzerland, double taxation shall be avoided as follows:

a) Where a resident of Switzerland derives income which, in accordance with the provisions of this Convention, is taxable in the Ivory Coast in accordance with this Convention, Switzerland shall exempt such income from taxation, subject to the provisions of section b) and c), but it may, in computing the

amount of taxes owed on the remainder of the income of such resident, apply the rate corresponding to the total income without regard to the exemption.

b) Where a resident of Switzerland receives dividends, interest or royalties which, in accordance with the provisions of Articles 10 and 12, are taxable in the Ivory Coast, then Switzerland shall grant a deduction to such resident, upon request. Such deduction shall consist of:

(i) a deduction from the Swiss tax on the income of such resident in an amount equal to the income tax paid in the Ivory Coast; such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to the income which is taxable in the Ivory Coast; or

(ii) of a lump-sum reduction in the Swiss tax; or

(iii) of a partial exemption of the dividends or royalties in question from the Swiss tax, but at least a deduction from the income tax paid in the Ivory Coast of the gross amount of the dividends or royalties.

Switzerland shall determine the applicable reduction and shall complete the procedure according to the Swiss procedures concerning the implementation of international conventions concluded by the Swiss Confederation for the avoidance of double taxation.

c) Where a resident of Switzerland receives interest which, in accordance with the provisions of Article 11, are taxable in the Ivory Coast, then Switzerland shall grant a deduction to such resident, upon request. Such deduction shall consist of:

(i) a 5 percent deduction from the gross amount of the interest in question, and

(ii) a deduction from the Swiss tax on the income of such resident, calculated based on the deduction mentioned in sub-section c (i), of 10 percent of the gross amount of the interest; such deduction shall be determined according to the general deduction principles referred to in section b).

2. With regard to the Ivory Coast, double taxation shall be avoided as follows:

The tax authorities of the Ivory Coast may not, under the terms of this Convention, include in the tax base income which is taxable in the other Contracting State. However, the Ivory Coast reserves the right to take such income into account in calculating the tax rate.

3. For the purposes of paragraphs 1 and 2, profits, income or capital gains of a resident of a Contracting State who has paid income tax in the other Contracting State under the terms of this Convention, shall be deemed to arise from sources situated in that other Contracting State.

## **Article 22 Non-Discrimination**

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The term "national" means:

a) any individual possessing the nationality of a Contracting State;

b) any legal entity, partnership or association deriving its status as such from the laws in force in a Contracting State.

3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Except where the provisions of Article 9, of paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

## **Article 23 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 22, to the competent authority 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 cooperate for the purpose of eliminating double taxation in cases not referred to in the Convention.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching agreement as indicated in the foregoing paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

## **Article 24 Diplomatic Agents and Consular Officers**

1. The provisions of this Convention shall not affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or the provisions of specific agreements.
2. Notwithstanding the provisions of Article 4, any individual who is a member of a diplomatic mission or a consular post or a permanent delegation from a Contracting State which is situated in the other Contracting State or in a third State shall be deemed a resident of the accrediting State provided that:
  - a) in accordance with international law, such person is not subjected to taxation in the accredited State for income from sources outside that State, and
  - b) that such person is subjected in the accrediting State to the same requirements with respect to taxation on all his income as the residents of that State.
3. This Convention shall not apply to international organizations, the bodies or functionaries thereof nor to persons who are members of a diplomatic mission, a consular post or a permanent delegation from a Third State, when they are present in the territory of a Contracting State and are not treated as residents in either of the Contracting States with respect to taxes on income.

## **Article 25 Entry Into Force**

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Bern as soon as possible.
2. The Convention shall enter into force on the thirtieth day following the date of exchange of the instruments of ratification and its provisions shall apply:
  - a) in Switzerland:
    - (i) to taxes withheld from income paid after January 1 of the year following the year in which the instruments of ratification are exchanged;
    - (ii) to other taxes for tax periods beginning on January 1 of the year following the year in which the instruments of ratification are exchanged and after that date.
  - b) in the Ivory Coast:
    - (i) to taxes on industrial, commercial or agricultural profits levied in all taxable periods starting October 1 of the calendar year following the year in which the instruments of ratification are exchanged;
    - (ii) to other taxes on income levied for all taxable periods starting January 1 of the calendar year following the year in which the instruments of ratification are exchanged;
    - (iii) to taxes withheld from income paid after January 1 of the year following the year in which the instruments of ratification are exchanged.

## **Article 26 Termination**

This Convention shall remain in force as long as it is not terminated by a Contracting State. Each Contracting State may terminate the Convention through diplomatic channels with a minimum of six months' notice before the end of each calendar year. In such case, the Convention shall cease to apply:

a) in Switzerland:

(i) to taxes withheld from income paid after December 31 of the year of termination.

(ii) to other taxes paid for tax years ending before December 31 of the year immediately following the year of termination.

b) in the Ivory Coast:

(i) to taxes withheld from income paid after December 31 of the year of termination;

(ii) to taxes on industrial, commercial or agricultural profits from income for tax periods ending no later than September 30 of the year following the year of termination;

(iii) to taxes on income for tax periods starting January 1 of the year following the year of termination..

In witness whereof, the undersigned, duly authorized to that effect, have signed this Convention.

Done in duplicate at Abidjan, this twenty-third day of November 1987, in the French language.

**FOR THE SWISS FEDERAL COUNCIL:**

*C. Caratsch*

**FOR THE GOVERNMENT OF THE REPUBLIC OF THE IVORY COAST:**

*S. Ake*

### **PROTOCOL**

At the time of signature of the Convention between the Swiss Confederation and the Republic of the Ivory Coast for the avoidance of double taxation with respect to taxes on income, the undersigned have agreed to the following provisions:

Notwithstanding the provisions of paragraph 2 of Article 10, as long as a company which is a resident of the Ivory Coast is exempt from the Ivory Coast tax on profits, or pays that tax only at a rate lower than under ordinary law, the dividends paid by that company may be taxed in the Ivory Coast at a rate not to exceed 18 percent of the gross amount of the dividends.

In such case, the deduction allowed by Switzerland consists of an 18 percent deduction from the gross amount of the dividends, notwithstanding the provisions of Article 21 of the Convention.

In witness whereof, the undersigned have signed this protocol, which shall have the same force and validity as the Convention.

**FOR THE SWISS FEDERAL COUNCIL:**

*C. Caratsch*

**FOR THE GOVERNMENT OF THE REPUBLIC OF THE IVORY COAST:**

*S. Ake*