

**AGREEMENT OF 21ST JANUARY, 1993 AS AMENDED BY PROTOCOLS OF 25TH AUGUST, 2009 and
11TH JULY, 2012**

CONVENTION BETWEEN THE SWISS CONFEDERATION AND THE GRAND DUCHY OF LUXEMBOURG
FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON
CAPITAL

**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 and on capital imposed on behalf of a Contracting State, its political subdivisions or its local authorities, irrespective of the manner in which they are levied.

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

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

a) in Luxembourg:

- (i)** income tax on individuals (l'impôt sur le revenu des personnes physiques)
- (ii)** corporation tax (l'impôt sur le revenu des collectivités);
- (iii)** special tax on directors' fees (l'impôt spécial sur les tantièmes);
- (iv)** capital tax (l'impôt sur la fortune); and
- (v)** municipal trade tax on profits and capital ('impôt commercial communal d'après les bénéfiques et capital d'exploitation);

(which shall be referred to hereinafter as "Luxembourg tax");

b) in Switzerland:

federal, cantonal and local income taxes (les impôts fédéraux, cantonaux et communaux)

- (i)** on income (total income, earned income, income from capital, industrial and commercial profits, capital gains and other income); and
- (ii)** on capital (total capital, movable and immovable property, industrial and commercial capital and reserves and other elements of capital);

(which shall be referred to hereinafter as “Swiss 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 notify each other of significant changes which have been made in their respective taxation laws.

5. The Convention shall not apply to the advance federal tax levied in Switzerland on lottery winnings.

Article 3 **General Definitions**

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

- a)* the terms “a Contracting State” and “the other Contracting State” mean Luxembourg or Switzerland, as the context requires;
- b)* the term “Luxembourg” means the Grand Duchy of Luxembourg;
- c)* the term “Switzerland” means the Swiss Confederation;
- 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 which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- h)* the term “competent authority” means:
 - (i)** in the case of Luxembourg, the Minister of Finance or his authorized representative;
 - (ii)** in the case of Switzerland, the Director of the Federal Tax Administration 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 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.

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) he 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 he has his centre of vital interests cannot be determined, or if he has no 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 he 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 he 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 workshop, and
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building or construction site constitutes a permanent establishment only if it lasts more than 12 months.

4. Notwithstanding the preceding 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, display or delivery 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 maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs 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. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. 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.

7. 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 or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, 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, boats 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, farm-leasing, 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 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, whether such expenses are incurred in the State in which the 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 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. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
6. 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.
7. 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, Inland Waterways Transport 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. Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
3. If the place of effective management of a shipping 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 or boat is a resident.
4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated Enterprises

1. 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.

2. Where a Contracting State includes in the profits of an enterprise of that State--and taxed accordingly--profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the other State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, the competent authorities of the Contracting States may consult each other in order to arrive at an agreement on the adjustments to the profits in both Contracting States.

3. A Contracting State shall not change the profits of an enterprise in the circumstances referred to in paragraph 1 after the expiry of the time limits provided in its national laws and, in any case, after five years from the end of the year in which the profits which would be subject to such change would have accrued to an enterprise of that State. This paragraph does not apply in the event of fraud or voluntary omission.

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. a) 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:

(i) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends;

(ii) 15 per cent of the gross amount of the dividends, in all other cases.

b) Notwithstanding the provisions of subparagraph a), the Contracting State of which the company is a resident shall not levy a tax on dividends paid by that company, if the beneficial owner of the dividends is:

(i) a company which is a resident of the other Contracting State and which holds directly, for at least two years, 10 per cent of the share capital of the company paying the dividends; or

- (ii) a pension fund or a pension scheme.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

The provisions of 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, 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 a trade or 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.

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, 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 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. Notwithstanding the provisions of paragraph 1, the interest from bonds and other similar securities as from customer deposits with banks or savings institutions may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient of the interest is the beneficial owner, the tax so charged may not exceed 10 % of the gross amount of the interest. The competent authorities of the Contracting States shall determine by mutual agreement the conditions for the application of this limit.

3. 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. Penalty charges for late payments shall not be regarded as interest for the purpose of this Article.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on industrial or commercial 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.

5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority, a public corporate body, 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 or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base 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 interest, having regard to the debt-claim for which it is paid, exceeds for any reason the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if that resident is the beneficial owner.

2. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, as well as for information concerning industrial, commercial or scientific experience.

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

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

Article 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to 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 or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic, of boats engaged in inland waterways transport or movable property pertaining to the operation of such ships, 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 Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State, unless the resident has a fixed base regularly available to him in the other Contracting State for the purpose of carrying on his activities. If he has such a fixed base, the income may be taxed in the other State, but only so much of it as is attributable to that fixed base.

2. The term “professional services” includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

Dependent Personal Services

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised 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 the fiscal year in question; and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

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

Article 16

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 of the supervisory board of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17

Artists and Sportsmen

1. Notwithstanding the provisions of Articles 14 and 15, 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 a sportsman, 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 a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. The provisions of paragraph 2 shall not apply if it is established that neither the entertainer or the sportsman, nor persons related thereto, participate directly or indirectly in the profits of the person referred to in that paragraph.

Article 18

Pensions

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

Article 19

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) Any pension paid by, or out of funds created 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 pensions shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and to pensions paid in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20

Students

Payments which a student or 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 his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 21

Other Income

1. Items of income of a resident of a Contracting State, wherever arising not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraphs 1 shall not apply to income other than income from immovable property as defined in paragraph 2 of Article 6, where the beneficial owner of such income, being a resident of a Contracting State, carries on a trade or 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 22

Capital

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by 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 or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic, by boats used for inland waterways transport, and by movable property pertaining to the operation of such ships, aircraft, or boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 23
Methods for Elimination of Double Taxation

Double taxation shall be avoided as follows:

1. In Luxembourg:

- a)* Where a resident of Luxembourg derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Switzerland, Luxembourg shall exempt such income or capital from taxation, subject to the provisions of sub-paragraphs b) and c), but may, in order to compute the amount of the tax on the rest of the income or capital of the resident, apply the same tax rates as if the income or the capital were not exempt.
- b)* Where a resident of Luxembourg derives income which, in accordance with the provisions of Articles 10 and 11, may be taxed in Switzerland, Luxembourg shall allow, as a deduction from the tax that it collects on the income of this resident, an amount equal to the tax paid in Switzerland. The deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income which derived from Switzerland.
- c)* Where a company which is a resident of Luxembourg derives dividends from Swiss sources, Luxembourg shall exempt such dividends from tax, provided that this company which is a resident of Luxembourg, has held directly since the beginning of its fiscal year at least 10 % of the capital of the Swiss company paying the dividends. The shares or interests cited hereinabove in the Swiss company are exempt from Luxembourg capital tax under the same conditions from the Luxembourg capital tax.

2. In Switzerland:

- a)* Where a resident of Switzerland derives income or owns capital, not described in sub-paragraphs b) and c), which may be taxed in Luxembourg in accordance with the provisions of this Convention, Switzerland shall exempt such income or capital from the tax, but may, in order to compute the amount of the tax on the remaining income or capital of this resident, apply the same rate as if the income in question had not been exempted. However, this exemption shall apply to the directors' fees and salaries and wages paid by one of the Luxembourg companies described in Article 28 of this Convention to a resident of Switzerland only insofar as taxation of such income in Luxembourg is demonstrated.
- b)* When a resident of Switzerland receives income which may be taxed in Luxembourg in accordance with the provisions of Articles 10 and 11, Switzerland shall grant a relief to this resident on his request.

Such relief shall consist of:

- (i)** charging of the tax paid in Luxembourg in accordance with the provisions of Articles 10 and 11 to the Swiss tax on the income of this resident, the sum thus charged may not, however, exceed that part of the Swiss income tax, as computed before the charge, which is appropriate to the income which may be taxed in Luxembourg; or
- (ii)** a fixed reduction of the Swiss tax; or

- (iii) or a partial exemption of the income in question from the Swiss tax, but at least of a deduction from the tax paid in Luxembourg on the gross amount of the income received from Luxembourg.

Switzerland shall determine the type of relief and shall define the procedure in accordance with Swiss regulations concerning the execution of international conventions concluded by the Confederation for the elimination of double taxation.

- c) A company which is a resident of Switzerland and receives dividends from a company which is a resident of Luxembourg shall benefit, with respect to the Swiss tax on such dividends, from the same advantages which it would enjoy if the company paying the dividends were a resident of Switzerland.

Article 24

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:

- (i) all individuals possessing the nationality of a Contracting State;
- (ii) all legal persons, partnerships and associations deriving their status as such from the law 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, paragraph 6 of Article 11, or paragraph 4 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. In the same manner, the debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted with 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 any kind and description.

Article 25

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 falls under paragraph 1 of Article 24, 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 endeavor, 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 endeavor 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, including through a joint commission consisting of themselves or their representatives, 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 Contracting 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 in accordance with the provisions of this paragraph, all information which is necessary for carrying out the arbitration procedure. With regard to the information so released, the members of the arbitration board shall be subject to the limitations of disclosure described in paragraph 2 of Article 26.

Article 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorizes 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 it 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 the information referred to in this paragraph, 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 27

Members of Diplomatic Missions and Consular Posts

1. Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements

2. Notwithstanding the provisions of Article 4, an individual who is a member of a diplomatic, consular or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed, under this Convention, to be a resident of the accrediting State, provided that:

- a) in accordance with public international law, he is not liable for taxes in the receiving State for income from sources outside this State, or for capital situated outside this State; and
- b) he is subject in the accrediting State to the same obligations in respect of taxes on his total income or capital, as the residents of that State.

3. This Convention shall not apply to international organizations, to organs or officials thereof, nor to persons who are members of a diplomatic, consular or permanent mission of a third State, when they are present in a Contracting State and are not treated as residents of either Contracting State with respect to taxes on income or capital.

Article 28

Exclusion of Certain Companies

This Convention shall not apply to holding companies within the meaning of the special Luxembourg legislation currently governed by the law of July 31, 1929, and the Grand Duchy order of December 17, 1938, nor to companies subject in Luxembourg to similar tax laws. Nor shall it apply to income, other than the salaries and wages and directors' fees cited in Articles 15 and 16 which a Swiss resident draws from similar companies, nor to shares or other capital securities of such companies as such person owns.

Article 29

Entry Into Force

1. This Convention shall be ratified and the ratification instruments shall be exchanged in Luxembourg as soon as possible.

2. This Convention shall enter into force thirty days after the exchange of the ratification instruments and its provisions shall apply:

a) in Luxembourg:

- (i)** in respect of taxes withheld at the source on income credited or paid on or after 1 January of the year in which the ratification instruments have been exchanged;
- (ii)** in respect of other taxes charged for tax years beginning on or after 1 January of the year in which the ratification instruments have been exchanged;

b) in Switzerland:

- (i)** in respect of taxes withheld at the source on income paid on or after 1 January of the year in which the ratification instruments have been exchanged;
- (ii)** in respect of other taxes charged for tax years beginning on or 1 January of the year in which the ratification instruments have been exchanged.

Article 30

Termination

This Agreement shall continue in effect as long as it has not been terminated by a Contracting State. Each Contracting State may give notice of termination through diplomatic channels with a minimum advance notice of six months before the end of each calendar year. In such event, the Convention shall cease to have effect:

a) in Luxembourg:

- (i) in respect of taxes withheld at the source on income credited or paid after 31 December of the year in which the Convention is terminated;
 - (ii) in respect of other taxes charged for tax years beginning after 31 December of the year in which the Convention is terminated.
- b) in Switzerland:
- (i) in respect of taxes withheld at the source on income paid after 31 December of the year in which the Convention is terminated;
 - (ii) in respect of other taxes charged for tax years beginning after 31 December of the year in which the Convention is terminated.

Protocol

Protocol to the Convention of January 21, 1993 between the Swiss Confederation and the Grand Duchy of Luxembourg for the avoidance of double taxation with respect to taxes on income and capital.

On the occasion of the signing of the Protocol amending the Convention for the avoidance of double taxation with respect to taxes on income and capital signed by the Swiss Confederation and the Grand Duchy of Luxembourg on January 21, 1993, the undersigned have agreed that the following Protocol shall form an integral part of the Convention:

1. With reference to Article 4

It is understood that the term “resident of a Contracting State” includes a pension fund or a pension scheme recognized and controlled according to statutory provisions of a Contracting 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.

2. With reference to Articles 18 and 19

It is understood that the term “pensions” used in Articles 18 and 19 covers not only periodic payments but also lump sum payments.

3. With reference to Article 26

- a) It is understood that the requesting State has exhausted all regular sources of information available under its internal taxation procedure before submitting the request for information.
- b) “It is understood that the standard of “foreseeably relevance” is intended to provide for exchange of information in tax matters to the widest possible extent, without allowing the Contracting States to engage in “fishing expeditions” or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. While the details to be given when making a request for information are important procedural requirements that are intended to ensure that “fishing expeditions” do not occur, they nevertheless need to be interpreted in order not to frustrate effective exchange of information.”
- 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 submitting a request for information under Article 26 of the Convention:

- (i) the identity of the person under examination or investigation; such identification may be provided by other means than by indicating the name and address;
 - (ii) the period of time for which the information is requested;
 - (iii) a statement of the information sought including its nature and the form in which the requesting State wishes to receive the information from the requested State;
 - (iv) the tax purpose for which the information is sought;
 - (v) to the extent known, the name and address of any person believed to be in possession of the requested information.
- d)* It is further understood that Article 26 of the Convention shall not commit the Contracting States to exchange information on an automatic or 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.

The Governments of the Contracting States shall notify each other through diplomatic channels that all legal procedures for the entry into force of this Protocol have been completed.

This Protocol, which shall form an integral part of the Convention and which introduces the Protocol thereto, shall enter into force on the date of the later of the notifications referred to in paragraph 1 and its provisions shall apply:

- a)* subject to the provisions of subparagraph b), to taxes withheld at source on income paid or credited to nonresidents from January 1 of the calendar year following that in which this Protocol enters into force;
- b)* to other taxes on income and elements of capital for the calendar year following the entry into force of this Protocol (including the business year for that year).

The provisions of Article 3 of this Protocol shall apply with respect to fiscal years beginning on or after January 1 of the calendar year following that in which this Protocol enters into force.