

1983 Income and Capital Tax Convention and Final Protocol

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Status: In Force

CONVENTION BETWEEN THE SWISS CONFEDERATION AND THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Swiss Federal Council and the Government of the Democratic Socialist Republic of Sri Lanka Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income and on capital

Have agreed as follows:

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 or of its political subdivisions or 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 or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which this Convention shall apply are, in particular:
 - a) In Sri Lanka:
 - (i) the income tax, including the income tax based on the turnover of enterprises licensed by the Greater Colombo Economic Commission; and
 - (ii) the wealth tax;
(hereinafter referred to as "Sri Lanka tax");
 - b) In Switzerland:
the federal, cantonal and communal taxes
 - (i) on income (total income, earned income, income from capital, industrial and commercial profits, capital gains, and other items of income); and
 - (ii) on capital (total property, movable and immovable property, business assets, paid-up capital and reserves, and other items of capital);
(hereinafter referred to as "Swiss tax").
4. The Convention shall also apply 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 any important changes which have been made in their respective taxation laws.

Article 3 General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:
 - a) the term "Sri Lanka" means the Democratic Socialist Republic of Sri Lanka, including any area outside the territorial sea of Sri Lanka which in accordance with international law has been or may hereafter be designated, under the laws of Sri Lanka concerning the Continental Shelf, as an area within which the rights of Sri Lanka with respect to the sea bed and sub-soil and the natural resources may be exercised;
 - b) the term "Switzerland" means the Swiss Confederation;
 - c) the terms "a Contracting State" and "the other Contracting State" mean Sri Lanka or Switzerland as the context requires and, in the case of Sri Lanka, when used in a geographical sense, the territory in which the tax law of Sri Lanka is in force;
 - 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 "nationals" 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 laws in force in a Contracting State;

i) the term "competent authority" means:

(i) in the case of Sri Lanka, the Commissioner-General of Inland Revenue;

(ii) in the case of Switzerland, the Director of the Federal Tax Administration or his authorised 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 law 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 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 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;

f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources, and

g) an agricultural or farming estate or plantation.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than six 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. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State -- other than an agent of an independent status to whom paragraph 6 applies -- shall have deemed to be a permanent establishment in the first-mentioned State if:

a) he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or

b) he has, and habitually exercises in that State, an authority to fill orders on behalf of the enterprise from a stock of goods or merchandise which he maintains in that State and which belongs to the enterprise.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

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 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, 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 professional 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, whether 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 purpose 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 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. Notwithstanding the provisions of paragraph 1, profits derived from the operation of ships in international traffic may be taxed in the Contracting State in which such operation is carried on; but the tax so charged shall not exceed 50 per cent of the tax otherwise imposed by the internal law of that State.

3. The provisions of paragraphs 1 and 2 shall likewise apply in respect of the participation in a pool, in a joint business or in an international operations agency of any kind by enterprises engaged in the operation of ships or aircraft in international traffic.

4. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

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 recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

a) 10 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 25 per cent of the capital of the company paying the dividends;

b) 15 per cent of the gross amount of the dividends in all other cases.

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 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 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. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.
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 payment 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 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.
5. 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 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 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 may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.
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, or tapes for television or broadcasting, 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 royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, 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 liability to pay the royalties was incurred, and such royalties are borne 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 according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13 Payments for Services

1. Payments for furnishing of services, including consultancy services, arising in a Contracting State and derived by a resident of the other Contracting State may be taxed in that other State.
2. However, such payments may also be taxed in the Contracting State in which they arise, and according to the laws of that State, provided that the services are furnished in that State by an enterprise through employees or other personnel engaged by the enterprise for such purpose and the activities of that nature continue within that State for a period or periods aggregating more than six months within any twelve month period; but the tax so charged shall not exceed 5 per cent of the gross amount of such payments.
3. The term "payments for services" as used in this Article means payments for services of any kind including consultancy services furnished by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but excluding payments for professional services or other independent activities of a similar character referred to in Article 15.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the payments, being a resident of a Contracting State, carries on business in the other Contracting State in which the payments arise, through a permanent establishment situated therein and the activity in respect of which the payments are made is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.
5. Payments for the furnishing of services 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 for the furnishing of services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the services are rendered, and the payment is borne by such permanent establishment, then such payment 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 payments for furnishing of services, having regard to the activity 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 according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 14 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, including such gains from the alienation of such a 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 movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated. For the purposes of this paragraph the provisions of paragraph 4 of Article 8 shall apply.
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 15 Personal Services

1. Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration in respect of an employment as well as income in respect of professional services or other independent activities of a similar character, derived by a resident of a Contracting State, shall be taxable only in that State, unless the employment, services or activities are exercised or performed in the other Contracting State. If the employment, services or activities are so exercised or performed, such remuneration or income 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, services or activities exercised or performed 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 any 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, and
- c) the remuneration or income is not borne by a permanent establishment which that person 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 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 of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17 Artistes and Athletes

1. Notwithstanding the provisions of Article 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 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 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

Article 18 Pensions and Annuities

1. Any pension (other than a pension referred to in Article 19) or annuity derived by a resident of a Contracting State shall be taxable only in that State.

2. The term "pension" means a periodic payment made in consideration of past employment or by way of compensation for injuries received in the course of the performance of services.

3. The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

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 pension 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 pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or local authority thereof.

Article 20 Students and Apprentices

1. Payments which a student or business apprentice who is or was formerly a resident of a Contracting State and who is present in the other Contracting 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 other State.

2. An individual who is or was formerly a resident of a Contracting State and who is present in the other Contracting State for the purpose of study, research or training or of acquiring technical, professional or business experience, shall be exempt from tax in that other Contracting State for a period or periods not exceeding in the aggregate twelve months on remuneration in respect of an

employment in such other State provided that such employment is directly related to his studies, research, training or acquiring of experience and that the remuneration from that employment does not exceed 18'000 Swiss francs or the equivalent thereof in Sri Lanka currency at the official rate of exchange.

Article 21 Other Income

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.

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 may be taxed in that other State.
3. Capital represented by ships and aircraft operated in international traffic, and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated. For the purposes of this paragraph the provisions of paragraph 4 of Article 8 shall apply.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 23 Elimination of Double Taxation

1. Subject to the provisions of the law of Sri Lanka regarding the allowance as a credit against Sri Lanka tax of tax payable in a territory outside Sri Lanka (which shall not affect the general principle hereof) Swiss tax payable under the laws of Switzerland and in accordance with this Convention, whether directly or by deduction, on income or profits from sources within Switzerland or on capital situated therein (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Sri Lanka tax computed by reference to the same items of income or capital by reference to which the Swiss tax is computed. Provided that such credit shall not exceed Sri Lanka tax (as computed before allowing any such credit), which is appropriate to the income derived from sources within Switzerland or to capital situated therein.
2. a) Where a resident of Switzerland derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Sri Lanka, Switzerland shall, subject to the provisions of subparagraph b, exempt such income or capital from tax but may, in calculating tax on the remaining income or capital of that resident, apply the rate of tax which would have been applicable if the exempted income or capital had not been so exempted; provided, however, that where profits derived by a resident of Switzerland from sources within Sri Lanka which in accordance with paragraph 2 of Article 8 are subject to tax in Sri Lanka, the Swiss tax charged on those profits shall be reduced by one half.
- b) Where a resident of Switzerland derives dividends, interest, royalties or payments for services which, in accordance with the provisions of Articles 10, 11, 12 and 13, may be taxed in Sri Lanka, Switzerland shall allow, upon request, a relief to such resident. The relief may consist of
 - (i) a deduction from the Swiss tax on the income of that resident of an amount equal to the tax levied in Sri Lanka in accordance with the provisions of Articles 10, 11, 12 and 13; such deduction shall not, however, exceed that part of the Swiss tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in Sri Lanka; or
 - (ii) a lump sum reduction of the Swiss tax; or
 - (iii) a partial exemption of such dividends, interest, royalties or payments for services from Swiss tax, in any case consisting at least of the deduction of the tax levied in Sri Lanka from the gross amount of the dividends, interest, royalties or payments for services.

Switzerland shall determine the applicable relief and regulate the procedure in accordance with the Swiss provisions relating to the carrying out of international conventions of the Swiss Confederation for the avoidance of double taxation.

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 taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably 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.

3. Except where the provisions of Article 9, or of paragraph 6 of Articles 11, 12 or 13, apply, interest, royalties, payments for services 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. Similarly, any 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 to a resident of the first-mentioned State.

4. 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.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every 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 comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention.

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

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

Article 26 Diplomatic Agents and Consular Officers

1. Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers 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 mission, consular post or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed, for the purposes of the Convention, to be a resident of the sending State if:

a) in accordance with international law he is not liable to tax in the receiving State in respect of income from sources outside that State or on capital situated outside that State, and

b) he is liable in the sending State to the same obligations in relation to tax on his total income or on capital as are residents of that State.

3. The Convention shall not apply to international organisations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income or on capital.

Article 27 Entry Into Force

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Berne as soon as possible.

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

- a) in the case of Sri Lanka for income or capital assessable for any year of assessment beginning on or after the first day of April 1981;
- b) in the case of Switzerland for any fiscal year beginning on or after the first day of January 1982.

Article 28 Termination

This Convention shall remain in force indefinitely but either Contracting State may, on or before June 30 in any calendar year, give to the other Contracting State, through diplomatic channels, written notice of termination. In such event, this Convention shall cease to have effect:

- a) in the case of Sri Lanka for income or capital assessable for any year of assessment beginning on or after the first day of April in the calendar year next following that in which such notice has been given;
- b) in the case of Switzerland for any fiscal year beginning on or after the first day of January in the calendar year next following that in which such notice has been given.

In witness whereof the undersigned, duly authorized thereto, have signed this Convention.

Done in duplicate at Colombo this 11th day of January 1983, in the German, Sinhala and English languages, all texts being equally authentic. In case there is any divergency of interpretation between the Sinhala and the German texts the English text shall prevail.

FOR THE SWISS FOR THE GOVERNMENT OF FEDERAL COUNCIL:

Cl. Ochsenbein

THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA:

J. A. R. Felix

PROTOCOL

The Swiss Federal Council and the Government of the Democratic Socialist Republic of Sri Lanka Have agreed at the signing at Colombo on the 11th day of January 1983 of the Convention between the two States for the avoidance of double taxation with respect to taxes on income and on capital upon the following provisions which shall form an integral part of the said Convention:

1. With reference to Article 7

In respect of paragraphs 1 and 2 of Article 7, where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of that part of the total receipts which is attributable to the actual activity of the permanent establishment for such sales or business.

In the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the State where the permanent establishment is situated.

The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the State of which the enterprise is a resident.

2. With reference to article 13

If in any Convention for the avoidance of double taxation which is subsequently made between Switzerland and a third State, Switzerland shall agree to a higher rate of taxation in the country of source on payments for services than that provided in paragraph 2 of Article 13, the Swiss Federal Council shall without undue delay inform the Government of the Democratic Socialist Republic of Sri Lanka and shall enter into negotiations in order to provide the same treatment to the Democratic Socialist Republic of Sri Lanka as that provided for the third State.

3. With reference to article 11 and article 23

Notwithstanding the provisions of paragraph 2 of Article 11 the tax charged on interest arising in one of the States and derived and beneficially owned by a bank or other financial institution, which is a resident of the other State, shall not exceed 5 per cent of the gross amount of the interest.

4. With reference to article 23

In respect of subparagraph b of paragraph 2, it is understood that according to the Federal Decree of August 22, 1967, the relief granted to a resident of Switzerland for withholding taxes levied in Sri Lanka on dividends, interest, royalties or payments for services consists of a lump sum reduction of the Swiss tax amounting to the tax levied in Sri Lanka pursuant to the Convention; such reduction shall not exceed that part of the Swiss tax, as computed before the reduction is given, which is appropriate to the said income.

Done in duplicate at Colombo this 11th day of January 1983, in the German, Sinhala and English languages, all texts being equally authentic. In case there is any divergency of interpretation between the Sinhala and the German texts, the English text shall prevail.

FOR THE SWISS FOR THE GOVERNMENT OF FEDERAL COUNCIL:

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