

# 1994 Income and Capital Tax Convention and Final Protocol (English Translation)

**Signed date:** November 28, 1994

**In force date:** December 22, 1995

**Effective date:** January 1, 1995. See Article 27.

**Status:** In Force

## CONVENTION BETWEEN THE SWISS CONFEDERATION AND THE REPUBLIC OF ECUADOR FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

[TRANSLATION]

The Swiss Federal Council and the Government of the Republic of Ecuador,  
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 the Convention shall apply are in particular:
  - a) in Ecuador:  
the income tax;  
(which shall be referred to hereafter as the "Ecuadorian tax");
  - b) in Switzerland:  
les impôts fédéraux, cantonaux et communaux (federal, cantonal and communal taxes)
    - (i) sur le revenu (revenu total, produit du travail, rendement de la fortune, bénéfices industriels et commerciaux, gains en capital et autres revenus) ([on income] total income, earned income, return on capital, industrial and commercial profits, capital gains and other income); and
    - (ii) sur la fortune (fortune totale, fortune mobilière et immobilière, fortune industrielle et commerciale, capital et réserves et autres éléments de la fortune) ([on capital] total capital, movable and immovable wealth, industrial and commercial wealth, capital and reserves and other capital assets);  
(which shall be referred to hereafter as the "Swiss tax").
4. This Convention shall also apply to any identical or similar taxes which may have been imposed after the signature date of this Convention in addition to, or in place of, existing taxes. The competent authorities of the Contracting States shall notify each other of changes which have been made in their respective taxation laws.
5. The Convention shall not apply to estimated federal withholding taxes charged in Switzerland on lottery prizes.

### Article 3 General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:
  - a) the term "Ecuador" means the Republic of Ecuador;
  - b) the term "Switzerland" means the Swiss Confederation;
  - c) the terms "a Contracting State" and "the other Contracting State" mean, according to the context, Ecuador or Switzerland;
  - 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 Ecuador, the Minister of Finance and Public Credit, the Director General of Revenue, or any authorized representative.

(ii) in Switzerland, the Director of the Federal Tax Administration or his authorized representative;

i) the term "national" means:

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

(ii) any legal entities, partnerships or associations deriving their status as such from the laws in force in a Contracting State.

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. This term does not, however, include any person liable to taxation in that State in respect only of income from sources in that State or capital situated therein.

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, and

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

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. 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 and aircraft shall not be regarded as immovable property.

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

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

#### **Article 7 Business Profits**

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

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

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, 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 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 and Air Transport**

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

2. If the place of effective management of a shipping enterprise 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.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

### **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 taxes 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 first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

3. A Contracting State shall not make adjustments on the profits of an enterprise in those situations mentioned in paragraph 1 after expiration of the time limits provided under its domestic laws and, in any event, after expiration of five years from the end of the year during which the profits that would be subject to such an adjustment would have been accrued by an enterprise of that State. This paragraph shall not apply in cases involving fraud or intentional 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. 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 15 percent of the gross amount of the dividends.

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

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, 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. However, such interest may also be taxed in the Contracting State in which it arises and according to the law of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 percent of the gross amount of the interest. The competent authorities of the Contracting States, shall by mutual agreement settle the mode of application of this limitation.

3. Notwithstanding the provisions of paragraph 2, the interest mentioned in paragraph 1 may be taxable only in the Contracting State of which the beneficial owner is a resident, if this interest is paid:

- a) in connection with the credit sale of industrial, commercial or scientific equipment.
- b) in connection with the credit sale of goods or merchandise delivered by one enterprise to another enterprise, or
- c) on loans of every kind granted by a banking institution.

4. Notwithstanding the provisions of paragraph 2,

a) interest arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner of such interest may be taxed only in that other Contracting State if such interest is being paid on a bond, promissory note, or other similar security of that Contracting State or of one of its political subdivisions or local authorities thereof;

b) interest arising in Switzerland and paid to a resident of Ecuador may be taxed in Ecuador only if such interest is being paid by reason of a granted, secured or insured loan, or credit approved, secured, or insured by an official export development institution or any institution specified and agreed upon through an exchange of letters between the competent authorities of the Contracting States; or

c) interest arising in Ecuador and paid to a resident of Switzerland may be taxed in Switzerland only if such interest is paid by reason of a granted, secured or insured loan, or credit approved, secured, or insured in accordance with Swiss regulations governing the insurance coverage of export risks or by any institution which has been specified and agreed upon through an exchange of letters between the competent authorities of the Contracting States.

5. 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.

6. The provisions of paragraphs 1, 2, 3 and 4 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, 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.

7. 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 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.

8. 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 shall be taxable 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 thus incurred shall not exceed 10 percent of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

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

4. The provisions of paragraph 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, 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.

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 a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties 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 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 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 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.

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 activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing 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 during the fiscal year concerned, 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 cost of 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 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**

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

### **Article 17 Artistes and Athletes**

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 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, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

### **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) Salaries, wages and other similar 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 salaries, wages and other similar 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 salaries, wages and other similar remuneration, and to pensions, 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 paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, 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 and by 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.
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**

#### **I. In Ecuador**

1. Where a resident of Ecuador derives income or owns capital which, in accordance with the provisions of the Convention, may be taxed in Switzerland, Ecuador shall, subject to the provisions of paragraph 2, exempt such income or capital from tax but may, in calculating the amount of tax on the remaining income or capital of such resident, apply the same tax rates as those which would have been applied if the income or capital in question had not been exempt.
2. Where a resident of Ecuador derives dividends, interest or royalties which, in accordance with the provisions of Articles 10, 11 and 12, may be taxed in Switzerland, Ecuador shall grant a tax credit to such resident at his request; this tax credit consists:
  - a) of a deduction from the tax paid in Switzerland on the income of that resident, in accordance with the provisions of Articles 10, 11 and 12; the amount thus charged shall not, however, exceed that part of the Ecuadorian tax, as computed before the deduction is given, which corresponds to that income which is taxable in Switzerland, or
  - b) of a flat-rate reduction of the Ecuadorian tax, or
  - c) of a partial exemption of the dividends, interest or royalties in question from Ecuadorian tax, but at least of a deduction of the taxes paid in Switzerland on the gross amount of such dividends, interest or royalties.

Ecuador shall determine the nature of the tax credit and will carry out the procedure according to Ecuadorian laws governing the performance of international conventions concluded by Ecuador for the avoidance of double taxation.

3. A company which is a resident of Ecuador and derives dividends from a company which is a resident of Switzerland shall be entitled, in terms of the application of Ecuadorian taxes on such dividends, to the same tax benefits as those to which it would have been entitled if the company paying such dividends were a resident of Ecuador.

#### **II. In Switzerland**

1. Where a resident of Switzerland derives income or owns capital which, in accordance with the provisions of the Convention may be taxed in Ecuador, Switzerland shall, subject to the provisions of paragraph 2, exempt such income or capital from tax but may, in calculating the amount of tax on the remaining income or capital of such resident, apply the same tax rates as those which would have been applied if the income or capital in question had not been exempt.

2. Where a resident of Switzerland derives dividends, interest or royalties which, in accordance with the provisions of Articles 10, 11 and 12, may be taxed in Ecuador, Switzerland shall grant a tax credit to such resident at his request; this tax credit consists:

a) of a deduction from the tax paid in Ecuador on the income of that resident, in accordance with the provisions of Articles 10, 11 and 12; the amount thus charged shall not, however, exceed that part of the Swiss tax, as computed before the deduction is given, which corresponds to that income which is taxable in Ecuador, or

b) of a flat-rate reduction of the Swiss tax, or

c) of a partial exemption of the dividends, interest or royalties in question from Swiss tax, but at least of a deduction of the taxes paid in Ecuador on the gross amount of such dividends, interest or royalties.

Switzerland shall determine the nature of the tax credit and will carry out the procedure according to Swiss laws governing the performance of international conventions concluded by the Confederation for the avoidance of double taxation.

3. A company which is a resident of Switzerland and derives dividends from a company which is a resident of Ecuador shall be entitled, in terms of the application of Swiss taxes on such dividends, to the same tax benefits as those to which it would have been entitled if the company paying such 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 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 paragraph 1 of Article 9, paragraph 8 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. 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. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

### **Article 26 Diplomatic Agents and Consular Officers**

1. Nothing in this Convention shall affect the fiscal privileges of diplomatic agents and consular officers under the general rules of international law or under the provisions of special agreements.

2. Notwithstanding the provisions of Article 4, any individual who is a member of a diplomatic mission, a consular post, or a permanent delegation of a Contracting State which is situated in the other Contracting State or in another State, shall be deemed, for the purpose of this Convention, to be a resident of the accrediting State, provided:

a) that, in accordance with international law, the individual is not subject to taxation in the accrediting State for income derived from sources outside that State, or for capital situated outside that State, and

b) that the individual is subject in the accrediting State to the same requirements in terms of taxation on his entire income or his entire capital, as are the residents of that State.

3. This Convention does not apply to international organizations, their representative bodies or to their officials, nor to individuals who are members of a diplomatic mission, a consular post, or a permanent delegation of another State when they are located on the territory of a Contracting State and are not considered as residents in either of the Contracting States for purposes of taxation on income or on capital.

### **Article 27 Entry Into Force**

1. This Convention shall be ratified in accordance with respective national laws and shall enter into force as from the date of the exchange of the instruments of ratification. Its provisions shall be applicable in each of the Contracting States:

a) upon withholding taxes due on income attributed or paid from January 1 of the year following that during which the instruments of ratification shall have been exchanged; and

b) upon other taxes of taxable periods beginning on January 1 of the year following that during which the exchange of the instruments of ratification shall have been exchanged.

### **Article 28 Termination**

1. This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year. In such case, the Convention shall cease to have effect:

a) upon withholding taxes due on income attributed or paid from January 1 of the year following that of the notification; and

b) upon other taxes of taxable periods beginning on January 1 of the year following that of the notification.

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

Done in duplicate at Quito, this 28th day of November 1994, in the French and Spanish languages, each version being equally authentic.

**FOR THE SWISS FEDERAL COUNCIL:**

*Nicolas Imboden*

**FOR THE GOVERNMENT OF THE REPUBLIC OF ECUADOR:**

*Galo Leoro F.*

### **PROTOCOL**

The Swiss Federal Council and the Government of the Republic of Ecuador

In signing at Quito, on November 28, 1994, this Convention for the avoidance of double taxation with respect to taxes on income and on capital, have agreed upon the following provisions which form an integral part of said Convention.

1. Ad Article 7

In respect of paragraphs 1 and 2 of Article 7, where an enterprise of a Contracting State sells goods or merchandise or exercises a business in the other Contracting State through a permanent

establishment situated therein, the profits derived from this permanent establishment shall not be determined on the basis of the total income received by the enterprise, but solely on the basis of the portion of such income which is attributable to the actual business of the permanent establishment with respect to such sales or activity.

In the case of contracts for the design, supply, installation or construction of industrial, commercial or scientific installations or establishments, or public structures, where the enterprise has a permanent establishment, the profits of that permanent establishment shall not be determined on the basis of the total amount of the contract but solely upon the basis of that part of the contract which has been effectively performed by that permanent establishment in the Contracting State in which such permanent establishment is situated.

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

2. Ad Article 10

In the case of Ecuador, it is understood that the tax mentioned in paragraph 2 is the Ecuadorian tax on income levied and deducted where profits are distributed by a company which is a resident of Ecuador to a shareholder who is a resident of Switzerland.

It is also understood that no supplemental tax shall be levied on such distributions.

3. Ad Article 12

a) In respect of paragraph 1 of Article 12, it shall be understood that payments of any kind for the use of, or the right to use, industrial, commercial or scientific equipment shall be considered as profits of an enterprise to which the provisions of Articles 7 or 14, as the case may be, shall apply.

b) In view of paragraph 3 of Article 12, payments of any kind made for analyses or studies of a scientific, geological or technical nature, for special engineering projects and services, including any drawings and related documents, or for advisory activities or consulting services shall not be considered as payments made for information concerning industrial, commercial or scientific experience. In such case, the provisions of Articles 7 or 14, as the case may be, shall apply.

Done in duplicate at Quito, this 28th day of November 1994, in the French and Spanish languages, each version being equally authentic.

**FOR THE SWISS FEDERAL COUNCIL:**

*Nicolas Imboden*

**FOR THE GOVERNMENT OF THE REPUBLIC OF ECUADOR:**

*Galo Leoro F.*