

PROTOCOL
BETWEEN THE SWISS FEDERAL COUNCIL AND THE GOVERNMENT OF HUNGARY
AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH
RESPECT TO TAXES ON INCOME AND ON CAPITAL SIGNED AT BUDAPEST ON 12
SEPTEMBER 2013

The Swiss Federal Council and the Government of Hungary;

Desiring to conclude a Protocol to amend the Convention between the Swiss Confederation and Hungary for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital signed at Budapest on 12 September 2013 (hereinafter “the Convention”);

Have agreed as follows:

ARTICLE I

The preamble of the Convention shall be deleted and replaced by the following:

“THE SWISS FEDERAL COUNCIL

AND

THE GOVERNMENT OF HUNGARY

DESIRING to conclude a Convention for the avoidance of double taxation with respect to taxes on income and on capital;

DESIRING to further develop their economic relationship and to enhance their cooperation in tax matters;

INTENDING to eliminate double taxation with respect to taxes on income and on capital without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Convention for the indirect benefit of residents of third States),

HAVE AGREED as follows:”

ARTICLE II

The following new paragraphs 5 and 6 shall be added to Article 25 (Mutual agreement procedure):

“5. Where,

a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and

b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within three years from the date when all the information required by the competent authorities in order to address the case has been provided to both competent authorities,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests in writing. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision or the competent authorities and the persons directly affected by the case agree on a different solution within six months after the decision has been communicated to them, the arbitration decision shall be binding on both States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

6. The Contracting States may release to the arbitration board, established under the provisions of paragraph 5, such information as is necessary for carrying out the arbitration procedure. The members of the arbitration board shall be subject to the limitations of disclosure described in paragraph 2 of Article 26 with respect to the information so released.”

ARTICLE III

1. The following new Article 27A (Entitlement to benefits) shall be added to the Convention:

“Article 27A
Entitlement to benefits

1. Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention.

2. Where a benefit under this Convention is denied to a person under paragraph 1, the competent authority of the Contracting State that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income or capital, if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person or to another person in the absence of the transaction or arrangement referred to in paragraph 1. The competent authority of the Contracting State to which the request has been made will consult with the competent authority of the other State before rejecting a request made under this paragraph by a resident of that other State.”

2. Paragraph 3 of the Protocol to the Convention shall be deleted.

3. The existing paragraphs 4, 5 and 6 of the Protocol to the Convention shall be renumbered as paragraphs 3, 4 and 5.

ARTICLE IV

The following new paragraph 6 shall be added to the Protocol to the Convention:

“6. It is understood that the provisions of the Convention do not prevent Contracting States from implementing the provisions of domestic law relating to the minimum taxation of large multinational groups, which have been enacted on the basis of the Global Anti-Base Erosion Model rules (Pillar Two) developed by the Inclusive Framework of the Organization for Economic Cooperation and Development.”

ARTICLE V

1. Each of the Contracting States shall notify to the other via diplomatic channels the completion of the procedures required by its law for the bringing into force of this Protocol.

2. The Protocol shall enter into force 30 days after the date of the receipt of the later of these notifications and shall thereupon have effect:

- (a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January of the year next following the date on which the Protocol enters into force;
- (b) in respect of other taxes, for taxation years beginning on or after the first day of January of the year next following the date on which the Protocol enters into force.

3. Notwithstanding the provisions of paragraph 2, the amendments made by Article II and IV of this Protocol shall have effect from the date of entry into force of this Protocol, without regard to the taxable period to which the matter relates.

In witness whereof the undersigned, duly authorised thereto, have signed this Protocol.

Done in duplicate at this day of 20.... in the German, Hungarian and English languages, all three texts being equally authentic. In case there is any divergence of interpretation between the German and Hungarian texts, the English text shall prevail.

For the Swiss Federal Council

For the Government of Hungary