Protocol between the Swiss Confederation and the Republic of Croatia amending the Agreement between the Swiss Confederation and the Republic of Croatia for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital

The Swiss Federal Council and the Government of the Republic of Croatia,

Desiring to conclude a Protocol to amend the Agreement between the Swiss Confederation and the Republic of Croatia for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital, signed at Zagreb on 12 March 1999 (hereinafter "the Agreement"),

Have agreed as follows:

ARTICLE 1

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

"THE SWISS FEDERAL COUNCIL

AND

THE GOVERNMENT OF THE REPUBLIC OF CROATIA

DESIRING to conclude an Agreement 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 Agreement for the indirect benefit of residents of third States),

HAVE AGREED as follows:"

ARTICLE 2

1. The existing paragraph 7 of Article 7 (Business profits) of the Agreement shall be renumbered as paragraph 8.

2. The following new paragraph 7 shall be added to Article 7 (Business profits) of the Agreement:

"7. A Contracting State shall make no adjustment to the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States after 6 years from the end of the taxable year in which the profits would have been attributable to the permanent establishment. The provisions of this paragraph shall not apply in the case of fraud, gross negligence or wilful default."

ARTICLE 3

1. The existing provision of Article 9 (Associated enterprises) of the Agreement shall become paragraph 1.

2. The following new paragraphs 2 and 3 shall be added to Article 9 (Associated enterprises) of the Agreement:

"2. Where a Contracting State includes in the profits of an enterprise of that Contracting State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting 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 Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

3. A Contracting State shall not include in the profits of an enterprise, and tax accordingly, profits that would have accrued to the enterprise but by reason of the conditions referred to in paragraph 1 have not so accrued, after 6 years from the end of the taxable year in which the profits would have accrued to the enterprise. The provisions of this paragraph shall not apply in the case of fraud, gross negligence or wilful default."

ARTICLE 4

Article 26 (Exchange of information) of the Agreement shall be replaced by the following Article:

"Article 26
Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

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

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other Contracting State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person."

ARTICLE 5

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

"Article 27A
Entitlement to benefits

Notwithstanding the other provisions of this Agreement, a benefit under this Agreement 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 Agreement."

ARTICLE 6

1. The existing provision ad Article 7 of the Protocol to the Agreement shall become paragraph 2 of the Protocol to the Agreement.

2. The following new paragraph 1 shall be added to the Protocol to the Agreement:

"1. In general

It is understood that the provisions of the Agreement 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 on Base Erosion and Profit

Shifting (BEPS) of the Organization for Economic Cooperation and Development (OECD) and the Group of Twenty (G20)."

3. The following new paragraph 3 shall be added to the Protocol to the Agreement:

"3. ad Article 26

a) It is understood that an exchange of information will only be requested once the requesting Contracting State has exhausted all regular sources of information available under the internal taxation procedure.

b) It is understood that the tax authorities of the requesting Contracting State shall provide the following information to the tax authorities of the requested Contracting State when making a request for information under Article 26:
   (i) the identity of the person under examination or investigation;
   (ii) the period of time for which the information is requested;
   (iii) a statement of the information sought including its nature and the form in which the requesting Contracting State wishes to receive the information from the requested Contracting State;
   (iv) the tax purpose for which the information is sought;
   (v) to the extent known, the name and address of any person believed to be in possession of the requested information.

c) It is understood that the reference to "foreseeable relevance" is intended to provide for exchange of information in tax matters to the widest possible extent and, at the same time, to clarify that the Contracting States are not at liberty to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. While subparagraph b) contains important procedural requirements that are intended to ensure that fishing expeditions do not occur, clauses (i) through (v) of subparagraph b) nevertheless are not to be interpreted in order to frustrate effective exchange of information.

d) It is understood that Article 26 does not require the Contracting States to exchange information on an automatic or a spontaneous basis.

e) It is understood that in case of an exchange of information, the administrative procedural rules regarding taxpayers' rights provided for in the requested Contracting State remain applicable. It is further understood that these provisions aim at

guaranteeing the taxpayer a fair procedure and not at preventing or unduly delaying the exchange of information process."

ARTICLE 7

1. Each Contracting State shall notify to the other, through 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 on 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 of this Article, the amendments made by Articles 2 and 3 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.

4. Notwithstanding the provisions of paragraph 2 of this Article, the amendments made by Articles 4 and 6 of this Protocol shall have effect, in respect to Article 26 (Exchange of Information), to information that relates to taxable year beginning on or after the first day of January in the calendar year following that in which the Protocol enters into force.

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

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

For the Swiss Federal Council	**For the Government of the Republic of Croatia**