

**PROTOCOL
BETWEEN**

**THE SWISS CONFEDERATION
AND
MALTA**

**AMENDING THE CONVENTION OF 25 FEBRUARY
2011 BETWEEN THE SWISS CONFEDERATION AND
MALTA FOR THE AVOIDANCE OF DOUBLE
TAXATION WITH RESPECT TO TAXES ON INCOME**

*The Swiss Federal Council
and
the Government of Malta;*

Desiring to conclude a Protocol to amend the Convention of 25 February 2011 between the Swiss Confederation and Malta for the Avoidance of Double Taxation with Respect to Taxes on Income (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 Malta;

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

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 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

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

2. The following new paragraph 7 shall be added to Article 7 of the Convention:

“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 5 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 III

1. Paragraph 2 of Article 9 (Associated enterprises) of the Convention shall be deleted and replaced by the following:

“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.”

2. The following new paragraph 3 shall be added to Article 9 (Associated enterprises) of the Convention:

“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 5 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 IV

Article 23 (Anti-abuse) of the Convention shall be deleted and replaced by the following:

“ARTICLE 23 Entitlement to benefits

Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income 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.”

ARTICLE V

The first sentence of paragraph 1 of Article 25 (Mutual agreement procedure) of the Convention shall be deleted and replaced by the following:

“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 either Contracting State.”

ARTICLE VI

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 on the date of the receipt of the later of these notifications and shall thereupon have effect:

- a) in the case 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 Article III paragraph 2 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..... in the French and English languages, both texts being equally authentic.

For the Swiss Federal Council:

For the Government
of the Republic of Malta: