

PROTOCOL

BETWEEN

THE SWISS FEDERAL COUNCIL

AND

THE GOVERNMENT OF THE REPUBLIC OF SERBIA

AMENDING

THE CONVENTION

BETWEEN

THE SWISS FEDERAL COUNCIL

AND

THE COUNCIL OF MINISTERS OF SERBIA AND MONTENEGRO

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 SERBIA

Desiring to conclude a Protocol to amend the Convention between the Swiss Federal Council and the Council of Ministers of Serbia and Montenegro for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital and its Protocol, signed at Belgrade on 13 April 2005 (hereafter referred to as “the Convention” and “the Protocol to the Convention”),

Have agreed as follows:

Article 1

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

“THE SWISS FEDERAL COUNCIL
AND
THE GOVERNMENT OF THE REPUBLIC OF SERBIA

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 jurisdictions)

HAVE AGREED as follows:”

Article 2

It is understood that:

- the term “Serbia and Montenegro”, referred to in the Convention and the Protocol to the Convention, in relations between the Switzerland and the Republic of Serbia, means the Republic of Serbia, respectively the territory of the Republic of Serbia;

- the term “competent authority”, referred to in the Convention, in the case of the Republic of Serbia means, unless the context otherwise requires, the Ministry of Finance or its authorized representative.

Article 3

1. The following new paragraph 7 shall be added to Article 7 (Business Profits) 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 five years from the end of the fiscal 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, or wilful default.”

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

Article 4

Article 9 (Associated Enterprises) paragraph 2 of the Convention shall be replaced by the following paragraph:

“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.”

Article 5

Article 13 (Capital Gains) paragraph 4 of the Convention shall be replaced by the following paragraph:

“4. Gains derived by a resident of a Contracting State from the alienation of shares or comparable interests of any kind deriving more than 50 per cent of their value directly or indirectly from immovable property, as defined in Article 6, situated in the other Contracting State may be taxed in that other State.”

Article 6

The following new subparagraph (4) shall be added to paragraph 2 of Article 23 (Elimination of double taxation) of the Convention:

“(4) Subparagraph (1) shall not apply to the extent that, in accordance with the Swiss provisions on the minimum taxation of large multinational enterprise groups, which have been enacted on the basis of the Global Anti-Base Erosion Model Rules (Pillar Two), a top-up tax must be levied on the person resident in Switzerland for the tax year in question in respect of a permanent establishment situated in Serbia.”

Article 7

Article 24 (Non-Discrimination) paragraph 5 of the Convention shall be replaced by the following paragraph:

“5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.”

Article 8

Article 26 (Exchange of Information) of the Convention 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 Convention 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 Convention. 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 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 States and the competent authority of the supplying 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:

- (1) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (2) 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;
- (3) 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 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 9

1. The following new Article 28 (Entitlement to Benefits) shall be added to the Convention after Article 27 (Members of Diplomatic Missions and Consular Posts):

“Article 28 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 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. The existing Articles 28 (Entry into Force) and 29 (Termination) of the Convention shall be renumbered as Articles 29 (Entry into Force) and 30 (Termination).

Article 10

1. The following new paragraph 5 shall be added to the Protocol to the Convention:

“5. ad Article 13

With reference to new paragraph 4, it is understood that the term "comparable interests" includes interests in limited liability companies which are established under the laws of Serbia.”

2. The existing paragraphs 5 and 6 of the Protocol to the Convention shall be renumbered as paragraphs 6 and 7.

Article 11

The following new paragraph 8 shall be added to the Protocol to the Convention:

“8. ad Article 26

- 1) 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, except those that would give rise to disproportionate difficulties.
- 2) It is understood that the competent authority of the requesting State shall provide the following information to the competent authority of the requested State when making a request for information under Article 26 (Exchange of Information) of the Convention to demonstrate the foreseeable relevance of the information to the request:
 - (1) the identity of the person under examination or investigation;
 - (2) the period of time for which the information is requested;
 - (3) a statement of the information sought including its nature and the form in which the requesting State wishes to receive the information from the requested State;
 - (4) the tax purpose for which the information is sought;
 - (5) to the extent known, the name and address of any person believed to be in possession of the requested information.
- 3) 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” (speculative requests that have no apparent nexus to an open inquiry or investigation) or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer (it is understood that the scope of the exchange of information provided in this Convention does not include speculative requests that have no apparent nexus to an open inquiry or investigation). While subparagraph 2) contains important procedural requirements that are intended to ensure that “fishing expeditions” do not occur, clauses (1) through (5) of subparagraph 2) nevertheless are not to be interpreted in order to frustrate effective exchange of information.
- 4) It is understood that Article 26 (Exchange of Information) does not require the Contracting States to exchange information on an automatic or a spontaneous basis,

neither does it prevent such forms of exchange of information if the Contracting States so agree.

- 5) 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 12

1. Each of the Contracting States 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 later of these notifications and its provisions shall thereupon have effect in respect of the taxes on income derived and the taxes on capital owned in each fiscal year beginning on or after the first day of January in the calendar year following that in which the Protocol enters into force.
3. Notwithstanding the provisions of paragraph 2 of this Article, the amendments made by Articles 8 and 11 of this Protocol shall have effect, in respect to Article 26 (Exchange of Information), to information that relates to fiscal year beginning on or after the first day of January in the calendar year following that in which the Protocol enters into force.

Article 13

This Protocol shall remain in force and in effect as long as the Convention remains in force and in effect.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Protocol.

Done in duplicate at Belgrade this day of 19 September 2023, in the French, Serbian and English languages, all texts being equally authentic. In case there is any divergence of interpretation between the French and the Serbian texts, the English text shall prevail.

FOR
THE SWISS FEDERAL COUNCIL

FOR
THE GOVERNMENT
OF THE REPUBLIC OF SERBIA