

**PROTOCOL**

**BETWEEN**

**THE SWISS CONFEDERATION**

**AND**

**THE KINGDOM OF NORWAY**

**AMENDING THE CONVENTION OF 7 SEPTEMBER  
1987 BETWEEN THE SWISS CONFEDERATION  
AND THE KINGDOM OF NORWAY FOR THE  
AVOIDANCE OF DOUBLE TAXATION WITH  
RESPECT TO TAXES ON INCOME AND ON CAPITAL**

*The Swiss Federal Council  
and  
the Government of the Kingdom of Norway*

Desiring to conclude a Protocol to amend the Convention of 7 September 1987 between the Swiss Confederation and the Kingdom of Norway for the avoidance of Double Taxation with respect to Taxes on Income and on Capital, as amended by the Protocols of 12 April 2005, 31 August 2009 and 4 September 2015 (hereinafter referred to as “the Convention”),

*Have agreed as follows:*

## **ARTICLE I**

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

*“The Swiss Federal Council and the Government of the Kingdom of Norway*

INTENDING to conclude a Convention for the elimination of 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**

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

2. The following new paragraph 2 shall be added to Article 9 of the Convention:

“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 III**

The following new paragraph 3 shall be added to Article 23 (Elimination of double taxation) of the Convention:

“3. The provisions of subparagraph a of paragraph 2 shall not apply to income derived or capital owned by a resident of Switzerland where Norway applies the provisions of this Convention to exempt such income or capital from tax or applies the provisions of paragraph 2 of Article 10 to such income.”

### **ARTICLE IV**

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

“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 either Contracting State.”

2. The following new sub-paragraph shall be added to paragraph 6 of Article 25:

- “c) the particular case concerns issues where Chapter VI D.4 of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (July 2017), or later updates of those Guidelines (hard-to-value intangibles) is applied by a Contracting State in an adjustment according to paragraph 1 of Article 9;
  - (i) in a fiscal year that is not time barred but concerns profits that relate to a time barred fiscal year in that Contracting State;
  - (ii) through the application of domestic legislation which provides for a more extended period for adjustments specifically for hard-to-value intangibles than what applies under the regular statute of limitation reassessments.”

### **ARTICLE V**

The following new Article 28A (Entitlement to benefits) shall be added to the Convention:

“*Article 28A* 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.”

**ARTICLE VI**

1. Paragraph 2 of the Protocol to the Convention shall be deleted.
2. The existing paragraphs 3, 4, and 5 of the Protocol to the Convention shall be renumbered as paragraphs 2, 3 and 4.

**ARTICLE VII**

1. Each Contracting State shall notify to the other, through diplomatic channels, the completion of the procedures requires by its law for the bringing into force of this Protocol. The Protocol shall enter into force on the date of the later of these notifications and shall have effect:
  - a) in the case 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.
2. Notwithstanding the provisions of paragraph 1, the amendments made by paragraph 1 of Article IV of the Protocol shall have effect from the date of entry into force of the Protocol, without regard to the taxable period to which the matter relates.

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

Done in duplicate at ..... on ..... in the German, Norwegian and English languages. In case of any divergence of interpretation, the English text shall prevail.

For the  
Swiss Federal Council:

For the  
Government of the Kingdom of Norway:

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