

**CONVENTION**

**BETWEEN**

**THE SWISS CONFEDERATION**

**AND**

**THE FEDERAL DEMOCRATIC  
REPUBLIC OF ETHIOPIA**

**FOR THE AVOIDANCE OF DOUBLE TAXATION  
WITH RESPECT TO TAXES ON INCOME AND THE  
PREVENTION OF TAX EVASION AND AVOIDANCE**

*The Swiss Federal Council  
and  
the Government of the Federal Democratic Republic of Ethiopia,*

*Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,*

*Intending to conclude a Convention for the elimination of 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 1**      Persons covered

This Convention shall apply to persons who are residents of one or both of the Contracting States.

**Article 2**      Taxes covered

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, and taxes on the total amounts of wages or salaries paid by enterprises.

The existing taxes to which the Convention shall apply are in particular:

- a) In the case of Ethiopia:
  - (i) the tax on income and profit; and
  - (ii) the tax on income from mining, petroleum and agricultural activities;  
(hereinafter referred to as "Ethiopian tax");
- b) In the case of Switzerland:  
the federal, cantonal and communal taxes on income (total income, earned income, income from capital, industrial and commercial profits, capital gains, and other items of income)  
(hereinafter referred to as "Swiss tax").

3. The Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their respective taxation laws.

### **Article 3**      General definitions

1. For the purposes of this Convention, unless the context otherwise requires:
  - a) the terms "a Contracting State" and "the other Contracting State" mean Ethiopia or Switzerland as the context requires; and the term "Contracting States" means Ethiopia and Switzerland;
  - b) the term "Ethiopia" means the Federal Democratic Republic of Ethiopia, when used in a geographical sense, it means the national territory and any other area which in accordance with international law and the laws of Ethiopia is designated as an area in which Ethiopia exercises sovereign rights or jurisdiction;
  - c) the term "Switzerland" means the territory of the Swiss Confederation as defined by its laws in accordance with international law;
  - d) the term "person" includes an individual, a company and any other body of persons;
  - e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
  - g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
  - h) the term "national", in relation to a Contracting State, means:
    - (i) any individual possessing the nationality or citizenship of that Contracting State; and
    - (ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;
  - i) the term "competent authority" means:
    - (i) in the case of Ethiopia, the Minister of Finance and Economic Co-operation or his authorised representative;
    - (ii) in the case of Switzerland, the Head of the Federal Department of Finance or his authorised representative;
  - j) the term "pension fund" of a State means an entity or arrangement established in a Contracting State that is treated as a separate person under the taxation laws of that State and:
    - (i) that is constituted and operated exclusively to administer or provide retirement or similar benefits to individuals and that is regulated as such by that State or one of its political subdivisions; or

- (ii) that is constituted and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements referred to in clause (i).

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

#### **Article 4** Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

- a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
- b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

#### **Article 5** Permanent establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

- a) a place of management;
- b) a branch;
- c) an office;
- d) a factory;
- e) a shop;
- f) a workshop
- g) a commercial warehouse;
- h) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on; and
- i) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than six months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or similar activities which have a preparatory or auxiliary character for the enterprise;
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, where the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, and conditions are made or imposed between that enterprise and the agent in their commercial and financial relations which differ from those which would have been made between independent enterprises, he will not be considered an agent of independent status within the meaning of this paragraph.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

#### **Article 6**      Income from immovable property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning, which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

#### **Article 7**      Business profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as are attributable to that permanent establishment.

2. The term "profits" as used in this Article shall not include profits derived from the rendering of any service of a managerial, professional, technical or consultancy nature.

3. Subject to the provisions of paragraph 4, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
4. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. This provision shall apply subject to the limitations under the domestic law, provided that those limitations are consistent with the principles of paragraph 2 of Article 23.
5. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 3 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
6. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
7. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
8. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

**Article 8**      International traffic

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.
3. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include:
  - a) profits from the rental on a bareboat basis of ships or aircraft;

- b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise; and
- c) profits from the sale of tickets for the service of transportation by sea or air on behalf of other enterprises;

where such rental, use, maintenance or sale of tickets, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

4. For the purposes of this Article, interest on funds directly connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft, and the provisions of Article 11 shall not apply in relation to such interest.

5. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

#### **Article 9** Associated enterprises

1. Where

- a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

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 10** Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.



2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

- a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a merger or divisive reorganisation or change of legal form of the company that holds the shares or that pays the dividend);
- b) 5 per cent of the gross amount of the dividends if the beneficial owner is a pension fund or the central bank of the other Contracting State;
- c) 15 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

## **Article 11** Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the interest.

3. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

## **Article 12**      Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including computer software, cinematographic

films and recordings on tape or other media used for radio or television broadcasting or other means of reproduction or transmission, any patent, trade mark, design or model, plan, secret formula or process or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

### **Article 13**      Capital gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from

immovable property situated in the other Contracting State may be taxed in that other State.

5. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting State of which the alienator is a resident.

**Article 14** Independent personal services

1. Income derived by an individual, who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

2. The term "income" as used in this Article shall not include income derived from the rendering of any service of a managerial, professional, technical or consultancy nature.

3. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

**Article 15** Dependent personal services

1. Subject to the provisions of Articles 16, 18 and 19 salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the calendar year concerned; and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

**Article 16** Directors' fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

**Article 17** Entertainers and sportspersons

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that resident's personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson acting as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. Paragraphs 1 and 2 shall not apply to income from activities performed in a Contracting State by entertainers or sportspersons if the activities of the entertainer or sportsperson are funded, directly or indirectly, wholly or mainly from public funds of the other Contracting State, a political subdivision or a local authority thereof. In such a case, the income shall be taxable only in the Contracting State of which the entertainer or sportsperson is a resident.

**Article 18** Pensions

Pensions and other similar remuneration in consideration of past employment, and other retirement benefits arising in a Contracting State and paid to a resident of the other Contracting State, may be taxed in the first-mentioned State.

**Article 19** Government services

1. a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. The provisions of Articles 15, 16 and 17 shall apply to salaries, wages, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

**Article 20** Students and business apprentices

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first mentioned State solely for the purpose of his education or training, receives for the purpose of his maintenance, education or training, shall not be taxed in that State, provided that such payments arise from sources outside that State.

**Article 21** Other income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated there in, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State shall not be covered by the Convention. Each Contracting State may tax such income according to its domestic law.

4. A payment in consideration of any service of a managerial, professional, technical or consultancy nature shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person making the payment, whether he is resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base to which the services that are paid for were rendered, and such payment is borne by that permanent establishment or fixed base, then such payment shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

**Article 22** Elimination of double taxation

1. In the case of Ethiopia, double taxation shall be avoided as follows:

Where a resident of Ethiopia derives income, which in accordance with the provisions of this Convention, may be taxed in Switzerland, Ethiopia shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in Switzerland. Such deduction shall not, however, exceed that part of the income tax as computed before the deduction is given, which is attributable to the income which may be taxed in Switzerland.

2. In the case of Switzerland, double taxation shall be avoided as follows:

- a) Where a resident of Switzerland derives income which may be taxed in Ethiopia in accordance with the provisions of this Convention, Switzerland shall, subject to the provisions of subparagraph b), exempt such income from tax but may, in calculating tax on the remaining income of that resident, apply the rate of tax which would have been applicable if the exempted income had not been so exempted. However, such exemption shall apply to gains referred to in paragraph 4 of Article 13 and to income referred to in Article 18 only if actual taxation of such gains or income in Ethiopia is demonstrated.
- b) Where a resident of Switzerland derives dividends, interest or royalties which, in accordance with the provisions of Article 10, 11 or 12, may be taxed in Ethiopia, Switzerland shall allow, upon request, a relief to such resident. The relief may consist of:
  - (i) a deduction from the tax on the income of that resident of an amount equal to the tax levied in Ethiopia in accordance with the provisions of Article 10, 11 or 12; such deduction shall not, however, exceed that part of the Swiss tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in Ethiopia; or
  - (ii) a lump sum reduction of the Swiss tax; or
  - (iii) a partial exemption of such dividends, interest or royalties from Swiss tax, in any case consisting at least of the deduction of the tax levied in Ethiopia from the gross amount of the dividends, interest or royalties.

Switzerland shall determine the applicable relief and regulate the procedure in accordance with the Swiss provisions relating to the carrying out of international conventions of the Swiss Confederation for the avoidance of double taxation.

- c) Where a resident of Switzerland derives income from the rendering of any service of a managerial, professional, technical or consultancy nature, which is taxed in Ethiopia according to its internal law and in accordance with paragraph 3 of Article 21, Switzerland shall, upon request, take into consideration the amount of tax paid in Ethiopia as a deductible expense in order to determine the taxable base in Switzerland.

3. A company which is a resident of a Contracting State and which derives dividends from a company which is a resident of the other Contracting State shall be entitled, for the purposes of taxation in the first mentioned Contracting State with respect to such dividends, to the same relief which would be granted to the company if the company paying the dividends were a resident of the first mentioned State.

4. The provisions of subparagraph a) of paragraph 2 shall not apply to income derived by a resident of a Contracting State where the other Contracting State applies the provisions of this Convention to exempt such income from tax or applies the provisions of paragraphs 2 of Article 10, 11 or 12 to such income.

### **Article 23**      Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1 also apply to persons who are not residents of one or both of the Contracting States.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11 or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first mentioned State.
4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

### **Article 24**      Mutual agreement procedure

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. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States, but in any case no later than ten years after the end of the concerned tax year.



3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

#### **Article 25** 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 of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1.

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. 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:

- 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 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 26** Members of diplomatic missions and consular posts

1. Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

2. Notwithstanding the provisions of Article 4, an individual who is a member of a diplomatic mission or consular post of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed, for the purposes of this Convention, to be a resident of the sending State if:

- a) in accordance with international law he is not liable to tax in the receiving Contracting State in respect of income from sources outside that State and
- b) he is liable in the sending State to the same obligations in relation to tax on his total income as are residents of that State.

3. The Convention shall not apply to international organisations, to organs or officials thereof and to persons who are members of a diplomatic mission or consular post of a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income.

**Article 27** 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 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, 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.

#### **Article 28** Entry into force

1. The Contracting States shall notify each other in writing through diplomatic channels that their constitutional requirements for entry into force of the Convention have been fulfilled.

2. The Convention shall enter into force on the date of receipt of the later of these notifications and shall thereupon have effect:

- a) In the case of Ethiopia:
  - (i) with regard to taxes withheld at source, in respect of amounts paid on or after the eighth day of July next following the date on which the Convention enters into force;
  - (ii) with regard to other taxes, in respect of tax years beginning on or after the eighth day of July next following the date on which the Convention enters into force;
  - (iii) with regard to Article 25, in respect of information that relates to tax years beginning on or after the eighth day of July next following the entry into force of the Convention.
- b) In the case of Switzerland:
  - (i) in respect of taxes withheld at source, on amounts paid or credited on or after the first day of January of the calendar year next following the entry into force of the Convention;
  - (ii) in respect of other taxes, for fiscal years beginning on or after the first day of January of the calendar year next following the entry into force of the Convention;
  - (iii) in respect to Article 25, to information that relates to fiscal years or business years beginning on or after the first day of January of the calendar year next following the entry into force of the Convention.

#### **Article 29** Termination

1. The Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least 183 days before the 31 December of any calendar year.

2. In such event, the Convention shall cease to have effect:

- a) In the case of Ethiopia:
  - (i) with regard to taxes withheld at source, in respect of amounts paid on or after the eighth day of July of the year next following the date of termination;
  - (ii) with regard to other taxes, in respect of tax years beginning on or after the eighth day of July of the year next following the date of termination;

- b) In the case of Switzerland:
  - (i) in respect of taxes withheld at source, on amounts paid or credited on or after the first day of January of the year next following the date of termination;
  - (ii) in respect of other taxes, for fiscal years beginning on or after the first day of January of the year next following the date of termination.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed the Convention.

DONE at ..... this ..... day of .... 202... in duplicate each in the French and English languages, both texts being equally authentic. In case of divergence of interpretation of the French and the English texts, the English text shall prevail.

For the  
Swiss Federal Council:

For the  
Government of the Federal Democratic  
Republic of Ethiopia:

# PROTOCOL

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*The Swiss Federal Council*

*and*

*the Government of the Federal Democratic Republic of Ethiopia*

Have agreed at the signing at ..... on the ..... of the Convention between the two States for the avoidance of double taxation with respect to taxes on income and the prevention of tax evasion and avoidance upon the following provisions which shall form an integral part of the said Convention.

*1. ad sub-paragraph j of paragraph 1 of Article 3*

It is understood that the term "pension fund" includes the following and any identical or substantially similar funds which are established pursuant to legislation introduced after the date of signature of this Convention:

- a) in Ethiopia,
  - (i) Civil Servant Social Security Fund as established under Proclamation No. 714/2011;
  - (ii) Private Employees Social Security Fund as established under Proclamation No.715/2011;
  - (iii) Social Health Insurance Fund as established under Proclamation No. 690/2010.
- b) in Switzerland, any pension fund covered by
  - (i) the Federal Act on old age and survivors' insurance, of 20 December 1946;
  - (ii) the Federal Act on disabled persons' insurance of 19 June 1959;
  - (iii) the Federal Act on supplementary pensions in respect of old age, survivors' and disabled persons' insurance of 6 October 2006;
  - (iv) the Federal Act on income compensation allowances in case of service and in case of maternity of 25 September 1952;
  - (v) the Federal Act on old age, survivors' and disabled persons' insurance payable in respect of employment or self-employment of 25 June 1982, including pension funds which offer individual recognised pension plans comparable with occupational pension plans;
  - (vi) the Federal Act on Vested Benefits of 17 December 1993;
  - (vii) paragraph 6 and paragraph 7 of Article 89a of the Swiss Civil Code of 10 December 1907;

(viii) paragraph 1 of Article 331 of the Federal Act on the Amendment of the Swiss Civil Code (Part Five: The Code of Obligations) of 30 March 1911.

*2. ad Article 4*

In respect of paragraph 1 of Article 4, it is understood and confirmed that the term "resident of a Contracting State" includes in particular:

- a) a pension fund established in that State; and
- b) an organization that is established and is operated exclusively for religious, charitable, scientific, cultural, sporting, or educational purposes (or for more than one of those purposes) and that is a resident of that State according to its laws, notwithstanding that all or part of its income or gains may be exempt from tax under the domestic law of that State.

*3. ad Articles 7 and 12*

It is understood that payments received as a consideration for the use of, or the right to use industrial, commercial or scientific equipment constitute business profits covered by Article 7.

*4. ad sub-paragraph a of paragraph 2 of Article 10*

It is understood that where the minimum holding period laid down in sub-paragraph a of paragraph 2 of Article 10 was not met at the time of the payment of the dividend and, therefore, the tax stipulated in sub-paragraph c of paragraph 2 of Article 10 was withheld at the moment of the payment, and the condition of the minimum holding period is met subsequently, then the beneficial owner of the dividend shall be entitled to a refund of the difference between the tax withheld and the rate applicable according to sub-paragraph a of paragraph 2 of Article 10.

*5. ad Article 12*

With reference to Article 12 (Royalties), it is understood that the term "Royalties" shall not include payments of any kind received as a consideration for the use of, or the right to use computer software where the payments do not constitute payments for the rights to commercially exploit such a computer software by reproducing, modifying, adapting the computer software for the purpose of distribution or sale, or by preparing derivative works based on the computer software for the purpose of distribution or sale.

*6. ad Article 18*

It is understood that the term "pensions" as used in Article 18 does not only cover periodic payments, but also includes lump sum payments.

*7. ad Articles 18 and 23*

As regards Article 18 and Article 23, contributions to a pension fund of a Contracting State that are made by or on behalf of an individual who renders services in the other Contracting State shall, for the purposes of determining the individual's tax payable and the profits of an enterprise which may be taxed in that State, be treated in that State in the same way and subject to the same conditions and limitations as contributions made to a pension fund in that Contracting State, provided that the individual was not a resident of that State, and was participating in the pension fund, immediately before beginning to provide services in that State.

*8. ad Article 24*

It is understood that, if Ethiopia agrees to an arbitration clause in a double taxation agreement with any third state, the following paragraphs 5 and 6 shall have effect between Ethiopia and Switzerland from the date on which the agreement between Ethiopia and that third state becomes effective.

"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 presentation of the case to the competent authority of the other Contracting State,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests. 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 25 with respect to the information so released."

In cases where proceedings have been initiated before the date on which paragraphs 5 and 6 become effective, the three year period referred to in subparagraph b) of paragraph 5 shall start on that date.

9. *ad Article 25*

- 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 State shall provide the following information to the tax authorities of the requested State when making a request for information under Article 25:
  - (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 State wishes to receive the information from the requested 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 25 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.

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



Done at ..... this ..... in duplicate each in the French and English languages, both texts being equally authentic. In case of divergence of interpretation of the French and the English texts, the English text shall prevail.

For the  
Swiss Federal Council:

For the  
Government of the Federal Democratic  
Republic of Ethiopia: