

**C O N V E N T I O N**

**B E T W E E N**

**T H E S W I S S F E D E R A L C O U N C I L**

**A N D**

**T H E G O V E R N M E N T O F T H E K I N G D O M O F**

**B A H R A I N**

**F O R T H E E L I M I N A T I O N O F D O U B L E T A X A T I O N**

**W I T H R E S P E C T T O T A X E S O N I N C O M E A N D O N**

**C A P I T A L**

**A N D T H E P R E V E N T I O N O F T A X E V A S I O N A N D**

**A V O I D A N C E**

*THE SWISS FEDERAL COUNCIL  
AND  
THE GOVERNMENT OF THE KINGDOM OF BAHRAIN*

DESIRING to further develop the 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 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 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 and on capital 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 and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

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

a) in Switzerland:

the federal, cantonal and communal taxes :

- (i) on income (total income, earned income, income from capital, industrial and commercial profits, capital gains, and other items of income); and
- (ii) on capital (total property, movable and immovable property, business assets, paid-up capital and reserves, and other items of capital)

(hereinafter referred to as “Swiss tax”);

b) in Bahrain, the income tax payable under Amiri Decree No. 22/1979

(hereinafter referred to as “Bahrain tax”).

4. The Convention shall apply also to any identical or substantially similar taxes which 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 substantial changes which 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) (i) the term “Switzerland” means the territory of the Swiss Confederation as defined by its laws in accordance with international law;
- (ii) the term “Bahrain” means the territory of the Kingdom of Bahrain as well as the maritime areas, seabed and subsoil over which Bahrain exercises, in accordance with international law, sovereign rights and jurisdiction;
- b) the term “person” includes an individual, a company and any other body of persons;
- c) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes or any other entity constituted or recognised under the laws of one or other of the Contracting States as a body corporate;
- d) 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;
- e) 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;
- f) the term “competent authority” means:
  - (i) in the case of Switzerland, the Head of the Federal Department of Finance or his authorised representative;
  - (ii) in the case of Bahrain, the Minister of Finance and National Economy or his authorised representative;
- g) the term “national” in relation to a Contracting State means:
  - (i) any individual possessing the nationality of a Contracting State;
  - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
- h) the term “pension scheme” means any plan, scheme, fund, foundation, trust or other arrangement established in a Contracting State which is:
  - (i) regulated by and generally exempt from income taxation in that State; and
  - (ii) operated principally to administer or provide pension or retirement benefits or to earn income for the benefit of one or more such schemes.

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:

- a) in the case of Switzerland, any person who, under Swiss law, is subject to unlimited tax liability in Switzerland;
- b) in the case of Bahrain, an individual who has a permanent home, his centre of vital interest, or habitual abode in Bahrain for a period or periods totalling in the aggregate at least 183 days in the fiscal year concerned, and a company or legal entity incorporated or having its place of effective management in Bahrain.

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 or capital situated therein.

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 workshop;
- f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- g) a refinery;
- h) a sales outlet; and
- i) a warehouse in relation to a person providing storage facilities for others.

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

4. Notwithstanding the provisions of this Article, an enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if in that State it carries on for a period of more than 90 days any activity which is directly connected with the exploration for or production of crude oil or other natural hydrocarbons from the ground in that State either for its own account or on account of others, or in refining crude oil owned by it or by others, wheresoever produced, in its facilities in that State.

5. 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) an installation or assembly project carried on by an enterprise of a Contracting State in the other Contracting State in connection with the delivery of machinery or equipment produced by that enterprise;
- g) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs a) to f), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

6. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 7 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 5 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.

7. 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.

8. 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. Subject to the provisions of paragraph 3, 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.
3. 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.
4. 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 2 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.
5. 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.
6. 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.
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.
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** Shipping and air transport

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. 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.

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 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 10 per cent of the capital of the company paying the dividends;
- (b) 15 per cent of the gross amount of the dividends in all other cases.

3. Notwithstanding the provisions of paragraph 2, dividends paid by a company which is a resident of a Contracting State shall be taxable only in the other Contracting State if the beneficial owner of the dividends is that other State itself, political subdivisions, local governments, or the Central Bank thereof, pension funds, investment authorities or any other institution created by the Government of, political subdivisions of, or local governments of that other State which is recognized as an integral part of that government as shall be agreed by mutual agreement of the competent authorities of the Contracting States.

4. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of the limitations of paragraphs 2 and 3. Paragraphs 2 and 3 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

5. 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.

6. The provisions of paragraphs 1, 2 and 3 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.

7. 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** Income from debt-claims

1. Income from debt-claims arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.
2. The terms “income from debt-claims” or “income” 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 income from debt-claims for the purpose of this Article.
3. The provisions of paragraph 1 shall not apply if the beneficial owner of the income being a resident of a Contracting State, carries on business in the other Contracting State in which the income 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 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.
4. 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 income, 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 beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.
2. 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 cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.
3. The provisions of paragraph 1 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.

4. 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. The provisions of the preceding sentence shall not apply to gains:

- a) from the alienation of shares quoted on a stock exchange established in either Contracting State or on a stock exchange as may be agreed by the competent authorities of the Contracting States; or
- b) from the alienation of shares in a company the value of which consist of more than 50 per cent of immovable property, in which the company carries on its business.

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 “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 the fiscal 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 in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed 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 sportsmen

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 sportsman, from his 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 sportsman in his capacity as such accrues not to the entertainer or sportsman himself 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 sportsman are exercised. The provisions of the preceding sentence

shall not apply if it is established that neither the entertainer or the sportsman himself, nor persons related to him, participate directly in the profits of such person.

3. Paragraphs 1 and 2 shall not apply to income from activities performed in a Contracting State by entertainers or sportsmen if such income is derived, 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 sportsman is a resident.

#### **Article 18** Pensions

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State. However, where such pensions and other similar remuneration arising in the other Contracting State are not liable to tax in the first-mentioned State, that other Contracting State may tax such income.

#### **Article 19** Government service

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.

- a) Pensions and other similar remuneration paid by, or out of funds created 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 pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages, pensions, 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

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 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 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.

**Article 22**      Capital

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
2. Capital represented by 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 by 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, may be taxed in that other State.
3. Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

**Article 23**      Elimination of double taxation

1.        In the case of Switzerland, double taxation shall be avoided as follows:
  - a)        Where a resident of Switzerland derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Bahrain, Switzerland shall, subject to the provisions of subparagraph b), exempt such income or capital from tax. However, such exemption shall apply to gains

referred to in paragraph 4 of Article 13 only if actual taxation of such gains in Bahrain is demonstrated.

- b) Where a resident of Switzerland derives income which, in accordance with the provisions of Article 10 may be taxed in Bahrain, 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 Bahrain in accordance with the provisions of Article 10; 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 Bahrain; or
  - (ii) a lump sum reduction of the Swiss tax; or
  - (iii) a partial exemption of such dividends from Swiss tax, in any case consisting at least of the deduction of the tax levied in Bahrain from the gross amount of the dividends.

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) A company which is a resident of a Switzerland and which derives dividends from a company which is a resident of Bahrain shall be entitled, for the purposes of taxation in Switzerland 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 Switzerland.

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

- a) Where a resident of Bahrain derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Switzerland, Bahrain shall allow:
  - (i) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Switzerland;
  - (ii) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in Switzerland.

Such deduction in either case shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in Switzerland.

3. Where in accordance with any provision of the Convention income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

#### **Article 24** 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 4 of Article 11, or paragraph 4 of Article 12, apply, income from debt-claims, 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. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted 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 25** 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.

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.

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 26 with respect to the information so released.

## **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 covered by the 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 27** Members of diplomatic missions and consular posts

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.

#### **Article 28** Miscellaneous provisions

1. 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. 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 or capital, 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 29**      Entry into force

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 Convention. The Convention shall enter into force on the date on which the later of those notifications has been received.

2. The provisions of the Convention shall have effect:

- a) 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;
- b) in respect of other taxes for taxation years beginning on or after the first day of January of the calendar year next following the entry into force of the Convention;
- c) in respect to Article 26, 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.

3. The Agreement between Switzerland and Bahrain for the reciprocal exemption of taxes on income and on capital arising from the business of international air and sea transport, signed on 9 November 2004, is suspended and no more effective as long as the provisions of this Convention are applicable.

**Article 30**      Termination

This 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 six months before the end of any calendar year. In such event, the Convention shall cease to have effect:

- a) 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 that in which the notice was given;
- b) in respect of other taxes for taxation years beginning on or after the first day of January of the calendar year next following that in which the notice was given.

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

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

For the Swiss Federal Council

For the  
Government of  
the Kingdom of Bahrain

## Protokoll

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*The Swiss Federal Council*

*and*

*The Government of the Kingdom of Bahrain,*

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

### *1. Ad Article 2*

It is understood that the Convention shall not apply to taxes withheld at source on income by chance covered by Article 6 of the Swiss Anticipatory Tax Law.

### *2. Ad subparagraph h) of paragraph 1 of Article 3*

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

- a) in Bahrain, the Social Insurance Organisation (SIO) created in accordance with Law No.3/2008 together with any other schemes or companies created and established thereunder, or any entities licensed as pension funds by the Central Bank of Bahrain.
- b) in Switzerland, any pension schemes 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 old age, survivors’ and disabled persons’ insurance payable in respect of employment or self-employment of 25 June 1982, including the non-registered pension schemes which offer occupational pension plans and the forms of individual recognised pension schemes comparable with the occupational pension plans.

### *3. Ad Article 4*

In respect of paragraph 1 of Article 4, it is understood and confirmed that

- a) the criteria of permanent home, centre of vital interest, or habitual abode imply that an individual has a substantial presence in Bahrain;

- b) the term “resident of a Contracting State” includes in particular:
  - (i) a pension scheme established in that State; and
  - (ii) an organisation 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.

#### *4. 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.

#### *5. Ad Articles 18 and 19*

It is understood that the term “pensions” as used in Articles 18 and 19, respectively, does not only cover periodic payments, but also includes lump sum payments.

#### *6. 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 State shall provide the following information to the tax authorities of the requested 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 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 the Contracting States will only be expected to exchange information for tax purposes on an automatic or a spontaneous

basis once both States have entered into a specific agreement for that purpose.

- 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.

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

For the Swiss Federal Council

For the  
Government of  
the Kingdom of Bahrain