

PROTOCOL

BETWEEN

THE SWISS FEDERAL COUNCIL

AND

**THE GOVERNMENT OF THE REPUBLIC OF
NORTH MACEDONIA**

**AMENDING THE CONVENTION OF
14 APRIL 2000 BETWEEN THE SWISS FEDERAL
COUNCIL AND THE MACEDONIAN
GOVERNMENT FOR THE AVOIDANCE OF
DOUBLE TAXATION WITH RESPECT TO TAXES
ON INCOME AND ON CAPITAL**

*The Swiss Federal Council
and
the Government of the Republic of North Macedonia,*

Desiring to conclude a Protocol to amend the Convention between the Swiss Federal Council and the Macedonian Government for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital, with the Protocol, signed at Skopje on 14 April 2000, (hereinafter referred to as “the Convention”),

Have agreed as follows:

ARTICLE I

The preamble to the Convention shall be worded as follows:

“The Swiss Federal Council and the Government of the Republic of North Macedonia;

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 and on capital without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Convention for the indirect benefit of residents of third States);

Have agreed as follows:”.

ARTICLE II

1. Subparagraph a) of paragraph 1 of Article 3 (General definitions) of the Convention shall be worded as follows:

- “a) the terms “a Contracting State” and “the other Contracting State” mean Macedonia and Switzerland, as the context requires;
 - (i) the term “Macedonia” means the territory of the Republic of North Macedonia over which it has jurisdiction or sovereign rights for the purpose of exploring, exploiting, conserving and managing natural resources, pursuant to internal jurisdiction and international law;
 - (ii) the term “Switzerland” means the territory of the Swiss Confederation as defined by its laws in accordance with international law;”.

2. Clause (ii) of subparagraph f) of paragraph 1 of Article 3 of the Convention shall be worded as follows:

- “(ii) in the case of Switzerland, the Head of Federal Department of Finance or his authorised representative;”

ARTICLE III

Article 7 (Business profits) of the Convention shall be worded as follows:

“Article 7 Business profits

1. 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 that are attributable to the permanent establishment in accordance with the provisions of paragraph 2 may be taxed in that other State.

2. For the purposes of this Article and Article 23, the profits that are attributable in each Contracting State to the permanent establishment referred to in paragraph 1 are the profits it might be expected to make, in particular in its dealings with other parts of the enterprise, if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the enterprise.

3. Where, in accordance with paragraph 2, a Contracting State adjusts the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States and taxes accordingly profits of the enterprise that have been charged to tax in the other State, the other Contracting State shall, to the extent necessary to eliminate double taxation, make an appropriate adjustment if it agrees with the adjustment made by the first-mentioned State; if the other Contracting State does not so agree, the Contracting States shall eliminate any double taxation resulting therefrom by mutual agreement.

4. 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.

5. 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 IV

Paragraphs 2 and 3 of Article 9 (Associated enterprises) of the Convention shall be worded as follows:

“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 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 V

1. Paragraph 4 of Article 13 (Capital gains) of the Convention shall be re-numbered as paragraph 5.

2. The following new paragraph 4 shall be added to Article 13 of the Convention:

“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.”.

3. Paragraph 5 of Article 13 (Capital gains) of the Convention shall be worded as follows:

“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 VI

1. Paragraph 1 of Article 14 (Independent personal services) of the Convention shall be worded as follows:

“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.”.

ARTICLE VII

Paragraph 2 of Article 23 (Elimination of double taxation) of the Convention shall be worded as follows:

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

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) The provisions of subparagraph b shall not apply to income derived or capital owned by a resident of Switzerland where Macedonia applies the provisions of this Convention to exempt such income or capital from tax or applies the provisions of paragraph 2 of Article 10 or paragraph 2 of Article 11 to such income.”.

ARTICLE VIII

1. Paragraph 1 of Article 25 (Mutual agreement procedure) of the Convention shall be worded as follows:

“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 following paragraphs 5 and 6 shall be added to Article 25 (Mutual agreement procedure) of the Convention:

“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 date when all the information required by the competent authorities in order to address the case has been provided to both competent authorities,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests in writing. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. 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 IX

Article 26 (Exchange of information) of the Convention shall be worded as follows:

“**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 con-

cerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1 and Article 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorizes 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 X

The following Article 27a (Entitlement to benefits) shall be added to the Convention:

“Article 27a Entitlement to benefits

Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention.”.

ARTICLE XI

1. The existing paragraphs 1 and 2 of the Protocol to the Convention shall be renumbered as paragraphs 2 and 3.

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

“1. 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 pension fund established in that State; and 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. The following new paragraph 4 shall be added to the Protocol to the Convention:

“4. 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 Article 26 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.”.

ARTICLE XII

1. Each of the Contracting States shall notify to the other through diplomatic channels the completion of the procedures required by its law for the entry into force of this Protocol.
2. The Protocol shall enter into force on the date of the receipt of the later of these notifications and shall thereupon have effect:
 - a) in respect of taxes withheld at source, for amounts payable on or after the first day of January in the first calendar year following that in which this Protocol enters into force;
 - b) in respect of other taxes, for the taxable year beginning on or after the first day of January in the first calendar year following that in which this Protocol enters into force; and
 - c) in respect of Article IX of this Protocol, for a case presented to the competent authority of a Contracting State on or after the date of entry into force of this Protocol regarding 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 this Protocol.
3. Notwithstanding the provisions of subparagraphs a), b) and c) of paragraph 2, the amendments made by Article VIII of this Protocol shall have effect from the date of entry into force of this Protocol, without regard to the taxable period to which the matter relates.

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

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

For the
Swiss Federal Council:

For the
Government of the
Republic of North Macedonia: