

# CONVENTION BETWEEN THE SWISS CONFEDERATION AND THE REPUBLIC OF BULGARIA FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

*Prom. SG. 103/7 Dec 1993*

The Swiss Confederation and the Republic of Bulgaria,  
Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on  
income and on capital, and for the purpose of developing and fostering economic relations between  
them,

Have agreed as follows:

## **Personal Scope**

Art. 1

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

## **Taxes Covered**

Art. 2

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 amount of salaries paid by enterprises, as well as  
taxes on capital appreciation.

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

a) in Bulgaria:

(i) l'impot sur le revenu total (general income tax);

(ii) l'impot sur les benefices (tax on profits);

(iii) l'impot sur les immeubles (the tax on buildings);

(which shall be referred to hereinafter as the "Bulgarian tax").

b) in Switzerland:

les impots federaux, cantonaux et communaux (federal, cantonal and local taxes)

(i) sur le revenu (revenu total, produit du travail, rendement de la fortune, benefices industriels  
et commerciaux, gains en capital et autres revenus); (income tax [general income, earnings from work,  
earnings from capital, industrial and commercial profits, capital gains and other income]) and

(ii) sur la fortune (fortune totale, fortune mobiliere et immobiliere, fortune industrielle et  
commerciale, capital et reserves et autres elements de la fortune); (tax on capital [total capital, movable  
and immovable capital, industrial and commercial capital, capital and reserves and other items of  
capital]);

(which shall be referred to hereinafter as the "Swiss 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 changes which have been  
made in their respective taxation laws.

5. The Convention shall not apply to taxes withheld on lottery winnings.

## **General Definitions**

### **Art. 3**

1. For the purposes of this Convention, unless the context otherwise requires:

a) the term "Bulgaria" means the Republic of Bulgaria and, when used in a geographical sense, it means the territory over which Bulgaria exercises its sovereign rights, as well as the continental plateau and the exclusive economic area over which Bulgaria exercises its sovereign rights in accordance with international law;

b) the term "Switzerland" means the Swiss Confederation;

c) the term "person" includes an individual, a body corporate, a company or any other independent legal entity treated as a body corporate for tax purposes; the term also includes partnerships;

d) the term "company" means any entity with legal status or any entity which is treated as a body corporate for tax purposes;

e) 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.

f) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which 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;

g) the term "competent authority" means:

(i) in Bulgaria, the Minister of Finance or his authorized representative;

(ii) in Switzerland, the Director of the Federal Tax Administration or his authorized representative.

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

## **Resident**

### **Art. 4**

1. For the purposes of this Convention, the term "resident of a Contracting State" means:

a) with regard to Bulgaria, any person who, under the laws of Bulgaria, is liable to tax in Bulgaria for his income earned worldwide and who is not a resident of a third State, as well as any body corporate which has its place of management in Bulgaria or which is registered therein.

b) with regard to Switzerland, any person who, under the laws of Switzerland is liable to tax in Switzerland by reason of his domicile, residence, place of management or any other criterion of a similar nature; it also means commercial partnerships and limited partnerships incorporated under Swiss law which have their effective place of management in Switzerland.

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) such person shall be deemed a resident of the State in which he has a permanent home available to him; if he has a permanent home in both States, he shall be deemed a resident of the State with which his personal and economic relations are the closer (center of vital interests);

b) if the State in which such person has his center 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 of the State in which he has an habitual abode;

c) if such person has an habitual abode in both States or in neither of them, then 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 of the State in which its place of effective management is situated.

## **Permanent Establishment**

### **Art. 5**

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, and

f) a mine, a quarry, an oil or gas well or any other place of extraction of natural resources.

3. A building or construction or installation project shall constitute a permanent establishment only if it lasts longer than nine months.

4. Notwithstanding the preceding provisions of this Art., 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; the sale of objects presented during an exposition or a fair shall not be deemed a permanent establishment;

c) the maintenance of a stock of goods or merchandise belonging to an 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 for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of gathering or delivering information for the enterprise, of carrying out scientific research or simple supervision of a building, construction or installation project insofar as the enterprise neither performs construction work nor delivers nor assembles machinery or equipment nor carries out any other similar activities of a preparatory or auxiliary character in the other Contracting State

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.

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.

### **Income From Immovable Property**

#### **Art. 6**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture and 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, 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, sharecropping 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.

### **Business Profits**

#### **Art. 7**

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 is 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 Art..

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. Where profits include items of income which are dealt with separately in other Art.s of this Convention, then the provisions of those Art.s shall not be affected by the provisions of this Art..

### **Shipping, Inland Waterways Transport and Air Transport**

#### **Art. 8**

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. Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

3. If the place of effective management of a shipping enterprise or of an inland waterways transport enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbor of the ship or boat is situated, or, if there is no such home harbor, in the Contracting State of which the operator of the ship or boat is a resident.

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

### **Associated Enterprises**

#### **Art. 9**

##### **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 the competent authorities of the Contracting States may if necessary consult each other for the purpose of reaching an agreement on the adjustments to the profits in both Contracting States.

3. A Contracting State shall not adjust the profits of an enterprise in the cases mentioned in paragraph 1 after expiration of the deadlines specified by the domestic laws therein, and, in any event, after expiration of a period of five years from the end of the year in which the profits which would be subject to such adjustment would have been earned by an enterprise of that State. This paragraph shall not apply in cases of fraud or voluntary omissions.

## **Dividends**

### **Art. 10**

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 person receiving the dividends is the beneficial owner thereof, the tax so charged shall not exceed:

a) 5 percent of the gross amount of the dividends if the beneficial owner is a company (other than a body of persons) which owns at least 25 percent of the capital in the company paying the dividends,

b) 15 percent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

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 Art. 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 other income 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 Art. 7 or Art. 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.

## **Interest**

### **Art. 11**

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 recipient is the beneficial owner of the interest, the tax so charged shall not exceed 10 percent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

3. Notwithstanding the provisions of paragraph 2, the interest mentioned in paragraph 1 may be taxed solely in the Contracting State of which the person receiving the interest is a resident, if such person is the beneficial owner of the interest and if such interest is paid:

a) in connection with the sale on credit of industrial, commercial or scientific equipment,

b) in connection with the sale on credit of goods or merchandise delivered by an enterprise to another enterprise, or

c) on a loan of any kind, not represented by bearer shares, granted by a financial institution or by a Contracting State.

4. The term "interest" as used in this Art. 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 Art..

5. The provisions of paragraphs 1, 2 and 3 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 Art. 7 or Art. 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or 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 State in which the permanent establishment or fixed base is situated.

7. 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 Art. 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.

## **Royalties**

### **Art. 12**

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only 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, the tax so charged may not exceed 5 percent of the gross amount of the royalties.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

3. The term "royalties" as used in this Art. 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.

4. The provisions of paragraphs 1 and 2 shall not apply where 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 Art. 7 or Art. 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivisions, a local authority or 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 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 Art. 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.

### **Capital Gains**

#### **Art. 13**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Art. 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 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, boats engaged in inland waterways transport or movable property pertaining to the operation of such ships, aircraft or boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

### **Independent Personal Services**

#### **Art. 14**

1. Income derived by 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 such resident 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, only so much of the income as is attributable to that fixed base may be taxed in that other State.

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.

### **Dependent Personal Services**

#### **Art. 15**

1. Subject to the provisions of Art.s 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;

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 Art., remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, or a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

### **Directors' Fees**

#### **Art. 16**

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 or of the supervisory board of a company which is a resident of the other Contracting State may be taxed in that other State.

### **Entertainers and Athletes**

#### **Art. 17**

1. Notwithstanding the provisions of Art.s 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theater, motion picture, radio or television artiste, or a musician, or as an athlete, 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 athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Art.s 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised. The provisions of this paragraph shall not apply if it is determined that neither the entertainer nor the athlete nor the persons associated with them participate directly or indirectly in the profits of the person mentioned in this paragraph.

3. The provisions of paragraphs 1 and 2 shall not apply to income in respect of activities carried out by entertainers which are substantially subsidized, either directly or indirectly, by grants from public funds.

### **Pensions**

#### **Art. 18**

Subject to the provisions of paragraph 2 of Art. 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.

### **Government Service**

## Art. 19

1.

a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered in the performance of duties of a public nature for that State or subdivision or authority shall be taxable only in that State.

b) However, such 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) Any pension 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 in the performance of duties of a public nature for that State or subdivision or authority shall be taxable only in that State.

b) However, such pension 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 Arts 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority or a public law body corporate thereof.

## **Students**

### Art. 20

1. 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 be exempt from taxation in that other State provided that such payments arise from sources outside that State

2. In respect of grants, scholarships and remuneration from employment not covered by paragraph 1, a student or business apprentice described in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the State which he is visiting.

## **Other Income**

### Art. 21

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Arts 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 Art. 6, if the recipient of such income, being a resident of a Contracting State, carries on a trade or 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 Art. 7 or Art. 14, as the case may be, shall apply.

## **Capital**

## Art. 22

1. Capital represented by immovable property referred to in paragraph 2 of Art. 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 boats engaged inland waterways transport, as well as by movable property pertaining to the operation thereof, 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.

## **Methods for Elimination of Double Taxation**

### Art. 23

1. With regard to Bulgaria, double taxation shall be avoided in the following manner:

a) Where a resident of Bulgaria derives income or owns capital which may be taxed in Switzerland, in accordance with the provisions of this Convention, Bulgaria shall, subject to the provisions of sub-paragraph b), exempt such income or such capital from taxation, but may, in calculating the amount of tax on the remaining income or capital of such resident, apply the same rate as if the income or items of capital in question had not been exempted.

b) Where a resident of Bulgaria receives interest or royalties which, in accordance with the provisions of Art.s 11 and 12, may be taxed in Switzerland, then Bulgaria shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Switzerland. Such deduction shall not, however, exceed that part of the Bulgarian tax, as computed before the deduction is given, which is attributable to such income which is taxed in Switzerland.

2. With regard to Switzerland, double taxation shall be avoided in the following manner:

a) Where a resident of Switzerland derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Bulgaria, Switzerland shall, subject to the provisions of sub-paragraphs b) and c), exempt such income or capital from tax, but it may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, apply the same rate as if the income or capital in question had not been exempted.

b) Where a resident of Switzerland receives dividends, interest or royalties which, in accordance with the provisions of Art.s 10, 11 and 12, may be taxed in Bulgaria, Switzerland shall grant a deduction to such resident, at his request; such deduction shall consist of the following:

(i) a deduction of the tax paid in Bulgaria in accordance with the provisions of Art.s 10, 11 and 12 from the Swiss tax levied on the income of such resident. Such deduction shall not, however, exceed that part of the Swiss tax, as computed before the deduction is given, which is attributable to the income which is taxed in Bulgaria, or

(ii) a standard deduction from the Swiss tax or

(iii) a partial exemption of the dividends, interest or royalties in question from taxation in Switzerland, but at least a deduction in the amount of the tax paid in Bulgaria from the gross amount of the dividends, interest or royalties.

Switzerland shall determine the type of relief and the procedure to be used according to the Swiss requirements concerning the implementation of international conventions concluded by the

Confederation for the avoidance of double taxation.

c) Where a company which is a resident of Switzerland receives dividends from a company which is a resident of Bulgaria, it shall receive the same deductions with respect to the Swiss tax on such dividends as it would receive if the company paying the dividends were a resident of Switzerland.

### **Non-Discrimination**

#### **Art. 24**

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 are or may be subjected. This provision shall, notwithstanding the provisions of Art. 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The term "nationals" means:

a) all individuals possessing the nationality of a Contracting State;  
b) all legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State.

3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably 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 requiring 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.

4. Except where the provisions of paragraph 1 of Art. 9, paragraph 7 of Art. 11, or paragraph 6 of Art. 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. 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.

5. 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.

6. No provision of this Art. shall be construed as preventing Bulgaria from taxing, at the rate provided for under Bulgarian law, the total amount of profits of any Bulgarian permanent establishment, individual or partnership residing in Switzerland, provided that the foregoing rate does not exceed the rate generally applicable to the profits of a permanent establishment of a third State.

7. The provisions of this Art. shall, notwithstanding the provisions of Art. 2, apply to taxes of every kind and description.

### **Mutual Agreement Procedure**

#### **Art. 25**

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 the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Art. 24, to that of the Contracting State of which he is a national. 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 endeavor, 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 endeavor 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 for the purpose of reaching an agreement in the sense of the preceding paragraphs. If an oral exchange of opinion appears necessary to facilitate this agreement, such exchange of views may take place within a Commission made up of representatives of the competent authorities of the Contracting States.

### **Diplomatic Agents and Consular Officers**

#### **Art. 26**

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

2. For the purposes of this Convention, diplomatic agents and consular officers of a Contracting State accredited in the other Contracting State or in a Third State who are nationals of the accrediting State shall be deemed residents of said State if they are subject to the same obligations therein with respect to taxation on income and capital as the residents of that State.

3. The Convention shall not apply to international organizations, to the bodies or employees thereof, nor to persons who are members of a diplomatic mission, a consular post or a permanent delegation from a Third State where they are present in the territory of a Contracting State and are not treated as residents of either Contracting State with respect to taxation on income and capital.

### **Entry Into Force**

#### **Art. 27**

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Sophia as soon as possible.

The Convention shall enter into force on the fifteenth day following the date of exchange of the instruments of ratification, and the provisions thereof shall apply to all taxes levied for the fiscal years starting after December 31 of the year in which the instruments of ratification are exchanged.

3. Starting on the day on which this Convention applies, the exchange of notes between Bulgaria and Switzerland concerning the taxation of shipping and air transport enterprises dated January 20, 1969 shall no longer be valid.

### **Termination**

#### **Art. 28**

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 apply to all taxes levied for the fiscal years starting after December 31 of the year for the end of which termination is given.

In witness whereof, the undersigned, duly authorized to that effect, have signed this Convention.

Done in duplicate at Berne, this 28th day of October 1991, in the French and Bulgarian languages, each version being equally authentic.

FOR THE SWISS CONFEDERATION:

Stich

FOR THE REPUBLIC OF BULGARIA:

Kostov

## **PROTOCOL**

The Swiss Confederation and the Republic of Bulgaria,

Have agreed at the time of signature of the Convention between the Swiss Confederation and the Republic of Bulgaria for the avoidance of double taxation with respect to taxes on income and on capital, on October 28, 1991 at Berne to the following provisions which form an integral part of the Convention:

1. Ad Art. 3, paragraph 1 e)

With regard to Bulgaria, shall also be deemed enterprises the individual and collective firms of individuals, as well as the economic activities of such persons, registered with the municipalities under Bulgarian law.

2. Ad Art. 7, paragraphs 1 and 2

Where an enterprise of a Contracting State sells goods or merchandise or carries out an activity in the other Contracting State through a permanent establishment which is situated therein, the profits from such permanent establishment shall not be calculated based on the total amount received by the enterprise but shall be calculated based solely on the remuneration attributable to the real activity of the permanent establishment for such sales or activity.

In the event of contracts for research or for the supply, installation or construction of equipment or industrial, commercial or scientific facilities or public projects, where the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined based on the total amount of the contract, but only based on that part of the contract which is actually implemented by such permanent establishment in the Contracting State in which such permanent establishment is situated. The profits pertaining to that part of the contract which is implemented by the main office of the enterprise shall be taxable only in the State of which such enterprise is a resident.

3. Ad Art. 8, paragraphs 1 and 4

The provisions of these paragraphs as well as the provisions of Art. 3, paragraph 1 f), Art. 13, paragraph 3, Art. 15, paragraph 3, and Art. 22, paragraph 3 shall apply by comparison to highway vehicles operated in international traffic.

4. Ad Art. 12, paragraph 2

As long as the Swiss Confederation does not introduce domestic laws for withholding tax on royalties paid to non-residents, the provisions of paragraph 2 of Art. 12 shall not apply and royalties may be taxed only in the State of residence of the beneficial owner.

5. Ad Art. 19

The term "public law body corporate" does not include air transportation enterprises,

notwithstanding the fact that they belong to the State or to a third party.

Done in duplicate at Berne this 28th day of October 1991, in the French and Bulgaria languages, each version being equally authentic.

FOR THE SWISS CONFEDERATION:

Stich

FOR THE REPUBLIC OF BULGARIA:

Kostov

### **EXCHANGE OF NOTES**

The Head of the Federal Department of Finance

Berne, October 28, 1991

Dear Sir,

With reference to the Convention between the Swiss Confederation and the Republic of Bulgaria for the avoidance of double taxation with respect to taxes on income and on capital which was signed today, I am writing to inform you that the Swiss Federal Counsel has defined as follows, in a decision dated March 7, 1977, Swiss policy with respect to the exchange of information:

For Switzerland, the purpose of a double taxation convention is to avoid international double taxation; the information required for regular application and for preventing the abusive use of a convention may already be exchanged under the existing provisions of the convention concerning mutual agreement, reductions on withholding taxes, etc.

For Switzerland, a specific provision on the exchange of information is superfluous, since even an express formula may not, in accordance with the purpose of the double taxation Convention between the Swiss Confederation and the Republic of Bulgaria, stipulate that the exchange of information which is required for regular application is such that the abusive use of the double taxation Convention between the Swiss Confederation and the Republic of Bulgaria can be avoided.

Sincerely,

For the Swiss Confederation

Stich

His Excellency Ivan Kostov

Minister of Finance, Sofia