

## **P R O T O C O L**

### **BETWEEN THE GOVERNMENT OF UKRAINE AND THE SWISS FEDERAL COUNCIL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF UKRAINE AND THE SWISS FEDERAL COUNCIL FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL AND THE PROTOCOL, SIGNED AT KYIV ON 30TH OCTOBER 2000**

The Government of Ukraine and the Swiss Federal Council (hereinafter referred to as “the Contracting States”),

Desiring to conclude a Protocol to amend the Convention between the Government of Ukraine and the Swiss Federal Council for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital, with the Protocol, signed at Kyiv on 30<sup>th</sup> October 2000, (hereinafter referred to as “the Convention” and “the Protocol” respectively),

Have agreed as follows:

#### **ARTICLE I**

The preamble to the Convention shall be worded as follows:

“The Government of Ukraine and the Swiss Federal Council;

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**

Clause (ii) of subparagraph b) of paragraph 3 of Article 2 (Taxes covered) of the Convention shall be worded as follows:

“(ii) the personal income tax”.

### ARTICLE III

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

“a) the term “Switzerland” means the territory of the Swiss Confederation as defined by its laws in accordance with international law;”.

2. Subparagraph i) of paragraph 1 of Article 3 of the Convention shall be worded as follows:

“i) the term “competent authority” means:

- (i) in the case of Ukraine, the Ministry of Finance of Ukraine or its authorised representative;
- (ii) in the case of Switzerland, the Head of Federal Department of Finance or his authorised representative;”.

3. The following subparagraph j) shall be added to paragraph 1 of Article 3 of the Convention:

“j) the term “pension fund” of a State means an entity or arrangement established in a Contracting State that is treated as a separate person under the taxation laws of that State and:

- (i) that is constituted and operated exclusively to administer or provide retirement or similar benefits to individuals and that is regulated as such by that State or one of its political subdivision; or
- (ii) that is constituted and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements referred to in clause (i).”.

### ARTICLE IV

Paragraph 1 of Article 4 (Resident) of the Convention shall be worded as follows:

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



include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.”.

#### ARTICLE V

1. The following new paragraph 7 shall be added to Article 7 (Business profits) of the Convention after paragraph 6:

“7. A Contracting State shall not change 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 or wilful default.”.

2. The existing paragraph 7 of Article 7 of the Convention shall be renumbered as paragraph 8.

#### ARTICLE VI

Paragraph 2 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.”.

#### ARTICLE VII

Article 10 (Dividends) of the Convention shall be worded as follows:

##### “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 recipient is the beneficial owner of the dividends 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, the Contracting State of which the company is a resident shall exempt from tax dividends paid by that company, if the beneficial owner of the dividends is the Government of the other Contracting State, a political subdivision or local authority thereof, the central bank or a pension fund of that other State.

4. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of the limitations mentioned in 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 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 VIII

1. Paragraphs 2 and 3 of Article 11 (Interest) of the Convention shall be worded as follows:

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

3. Notwithstanding the provisions of paragraph 2, interest referred to in paragraph 1 shall be taxable only in the Contracting State of which the beneficial owner is a resident where:

- a) the beneficial owner is that State, a political subdivision of local authority thereof or the central bank;
- b) the interest is paid by the State in which the interest arises or by a political subdivision or local authority thereof; or
- c) the interest is paid in respect of a loan, debt claim or credit that is owed to, made, provided, guaranteed or insured by that State or a political subdivision, local authority or export financing agency thereof.”.

2. Paragraph 7 of Article 11 of the Convention shall be worded as follows:

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

## ARTICLE IX

1. Paragraph 2 and 3 of Article 12 (Royalties) of the Convention shall be replaced by the following paragraph:

“2. However such royalties may also be taxed in the Contracting State in which they arise in accordance with the laws of that State, but if the beneficial owner of

the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.”.

2. Paragraphs 4 to 8 of Article 12 of the Convention shall be renumbered as paragraphs 3 to 7.

3. Renumbered paragraph 6 of Article 12 of the Convention shall be worded as follows:

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

## ARTICLE X

Subparagraph a) of paragraph 1 of Article 23 (Elimination of double taxation) of the Convention shall be worded 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 Ukraine, 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 2 of Article 13 only if actual taxation of such gains in Ukraine is demonstrated.”.

## ARTICLE XI

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 sentence shall be added to paragraph 3 of Article 25 of the Convention:

“They may also consult together for the elimination of double taxation in cases not provided for in the Convention.”.

## ARTICLE XII

The following new Article 25a (Arbitration) shall be added to the Convention:

### “Article 25a Arbitration

1. Where:

- a) under paragraph 1 of Article 25 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 of Article 25 within a period of three years beginning on the start date referred to in paragraphs 8 or 9, as the case may be (unless, prior to the expiration of that period the competent authorities of the Contracting States have agreed to a different time period with respect to that case and have notified the person who presented the case of such agreement),

any unresolved issues arising from the case shall, if the person so requests in writing, be submitted to arbitration in the manner described in this Article, according to any rules or procedures agreed upon by the competent authorities of the Contracting States pursuant to the provisions of paragraph 10.

2. Where a competent authority has suspended the mutual agreement procedure referred to in paragraph 1 because a case with respect to one or more of the same issues is pending before court or administrative tribunal, the period provided in subparagraph b of paragraph 1 will stop running until either a final decision has been rendered by the court or administrative tribunal or the case has been suspended or withdrawn. In addition, where a person who presented a case and a competent authority have agreed to suspend the mutual agreement procedure, the period provided in subparagraph b of paragraph 1 will stop running until the suspension has been lifted.

3. Where both competent authorities agree that a person directly affected by the case has failed to provide in a timely manner any additional material information requested by either competent authority after the start of the period provided in subparagraph b of paragraph 1, the period provided in subparagraph b of paragraph 1 shall be extended for an amount of time equal to the period beginning on the date by which the information was requested and ending on the date on which that information was provided.

4. a) The arbitration decision with respect to the issues submitted to arbitration shall be implemented through the mutual agreement concerning the case referred to in paragraph 1. The arbitration decision shall be final.

b) The arbitration decision shall be binding on both Contracting States except in the following cases:

- (i) if a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision. In such a case, the case shall not be eligible for any further consideration by the competent authorities. The mutual agreement that implements the arbitration decision on the case shall be considered not to be accepted by a person directly affected by the case if any person directly affected by the case does not, within 60 days after the date on which notification of the mutual agreement is sent to the person, withdraw all issues resolved in the mutual agreement implementing the arbitration decision from consideration by any court or administrative tribunal or otherwise terminate any pending court or administrative proceedings with respect to such issues in a manner consistent with that mutual agreement.
- (ii) if a final decision of the courts of one of the Contracting States holds that the arbitration decision is invalid. In such a case, the request for arbitration under paragraph 1 shall be considered not to have been made, and the arbitration process shall be considered not to have taken place (except for the purposes of paragraphs 15, 16 and 19). In such a case, a new request for arbitration may be made unless the competent authorities agree that such a new request should not be permitted.
- (iii) if a person directly affected by the case pursues litigation on the issues which were resolved in the mutual agreement implementing the arbitration decision in any court or administrative tribunal.

5. The competent authority that received the initial request for a mutual agreement procedure as described in subparagraph a) of paragraph 1 shall, within two calendar months of receiving the request:



- a) send a notification to the person who presented the case that it has received the request; and
- b) send a notification of that request, along with a copy of the request, to the competent authority of the other Contracting State.

6. Within three calendar months after a competent authority receives the request for a mutual agreement procedure (or a copy thereof from the competent authority of the other Contracting State) it shall either:

- a) notify the person who has presented the case and the other competent authority that it has received the information necessary to undertake substantive consideration of the case; or
- b) request additional information from that person for that purpose.

7. Where pursuant to subparagraph b) of paragraph 6, one or both of the competent authorities have requested from the person who presented the case additional information necessary to undertake substantive consideration of the case, the competent authority that requested the additional information shall, within three calendar months of receiving the additional information from that person, notify that person and the other competent authority either:

- a) that it has received the requested information; or
- b) that some of the requested information is still missing.

8. Where neither competent authority has requested additional information pursuant to subparagraph b) of paragraph 6, the start date referred to in paragraph 1 shall be the earlier of:

- a) the date on which both competent authorities have notified the person who presented the case pursuant to subparagraph a) of paragraph 6; and
- b) the date that is three calendar months after the notification to the competent authority of the other Contracting State pursuant to subparagraph b) of paragraph 5.

9. Where additional information has been requested pursuant to subparagraph b) of paragraph 6, the start date referred to in paragraph 1 shall be the earlier of:

- a) the latest date on which the competent authorities that requested additional information have notified the person who presented the case and the other competent authority pursuant to subparagraph a) of paragraph 7; and

- b) the date that is three calendar months after both competent authorities have received all information requested by either competent authority from the person who presented the case.

If, however, one or both of the competent authorities send the notification referred to in subparagraph b) of paragraph 7, such notification shall be treated as a request for additional information under subparagraph b) of paragraph 6.

10. The competent authorities of the Contracting States shall by mutual agreement pursuant to paragraph 3 of Article 25 settle the mode of application of the provisions contained in this Article, including the minimum information necessary for each competent authority to undertake substantive consideration of the case. Such an agreement shall be concluded before the date on which unresolved issues in a case are first eligible to be submitted to arbitration and may be modified from time to time thereafter.

11. Except to the extent that the competent authorities of the Contracting States mutually agree on different rules, paragraphs 12 through 14 shall apply for the purposes of this Article.

12. The following rules shall govern the appointment of the members of an arbitration panel:

- a) The arbitration panel shall consist of three individual members with expertise or experience in international tax matters.
- b) Each competent authority shall appoint one panel member within 60 days of the date of the request for arbitration under paragraph 1. The two panel members so appointed shall, within 60 days of the latter of their appointments, appoint a third member who shall serve as Chair of the arbitration panel. The Chair shall not be a national or resident of either Contracting State.
- c) Each member appointed to the arbitration panel must be impartial and independent of the competent authorities, tax administrations, and ministries of finance of the Contracting States and of all persons directly affected by the case (as well as their advisors) at the time of accepting an appointment, maintain his or her impartiality and independence throughout the proceedings, and avoid any conduct for a reasonable period of time thereafter which may damage the appearance of impartiality and independence of the arbitrators with respect to the proceedings.

13. In the event that the competent authority of a Contracting State fails to appoint a member of the arbitration panel in the manner and within the time



periods specified in paragraph 12 or agreed to by the competent authorities of the Contracting States, a member shall be appointed on behalf of that competent authority by the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development that is not a national of either Contracting State.

14. If the two initial members of the arbitration panel fail to appoint the Chair in the manner and within the time periods specified in paragraph 12 or agreed to by the competent authorities of the Contracting States, the Chair shall be appointed by the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development that is not a national of either Contracting State.

15. Solely for the purposes of the application of this Article and of Article 26 and of the provisions of the domestic laws of the Contracting States related to the exchange of information, confidentiality, and administrative assistance, members of the arbitration panel and a maximum of three staff per member (and prospective arbitrators solely to the extent necessary to verify their ability to fulfil the requirements of arbitrators) shall be considered to be persons or authorities to whom information may be disclosed. Information received by the arbitration panel or prospective arbitrators and information that the competent authorities receive from the arbitration panel shall be considered information that is exchanged under Article 26.

16. The competent authorities of the Contracting States shall ensure that members of the arbitration panel and their staff agree in writing, prior to their acting in an arbitration proceeding, to treat any information relating to the arbitration proceeding consistently with the confidentiality and nondisclosure obligations described in paragraph 2 of Article 26 and under the applicable laws of the Contracting States.

17. For the purposes of this Article and of Article 25, the mutual agreement procedure, as well as the arbitration proceeding, with respect to a case shall terminate if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the Contracting States:

- a) the competent authorities of the Contracting States reach a mutual agreement to resolve the case; or
- b) the person who presented the case withdraws the request for arbitration or the request for a mutual agreement procedure.

18. Except to the extent that the competent authorities of the Contracting States mutually agree on different rules, the following rules shall apply with respect to an arbitration proceeding pursuant to this Article:

- a) After a case is submitted to arbitration, the competent authority of each Contracting State shall submit to the arbitration panel, by a date set by agreement, a proposed resolution which addresses all unresolved issue(s) in the case (taking into account all agreements previously reached in that case between the competent authorities of the Contracting States). The proposed resolution shall be limited to a disposition of specific monetary amounts (for example, of income or expense) or, where specified, the maximum rate of tax charged pursuant to the Convention, for each adjustment or similar issue in the case. In a case in which the competent authorities of the Contracting States have been unable to reach agreement on an issue regarding the conditions for application of a provision of the Convention (hereinafter referred to as a "threshold question"), such as whether an individual is a resident or whether a permanent establishment exists, the competent authorities may submit alternative proposed resolutions with respect to issues the determination of which is contingent on resolution of such threshold questions.
- b) The competent authority of each Contracting State may also submit a supporting position paper for consideration by the arbitration panel. Each competent authority that submits a proposed resolution or supporting position paper shall provide a copy to the other competent authority by the date on which the proposed resolution and supporting position paper were due. Each competent authority may also submit to the arbitration panel, by a date set by agreement, a reply submission with respect to the proposed resolution and supporting position paper submitted by the other competent authority. A copy of any reply submission shall be provided to the other competent authority by the date on which the reply submission was due.
- c) The arbitration panel shall select as its decision one of the proposed resolutions for the case submitted by the competent authorities with respect to each issue and any threshold questions, and shall not include a rationale or any other explanation of the decision. The arbitration decision will be adopted by a simple majority of the panel members. The arbitration panel shall deliver its decision in writing to the competent authorities of the Contracting States. The arbitration decision shall have no precedential value.

19. In an arbitration proceeding under this Article, the fees and expenses of the members of the arbitration panel, as well as any costs incurred in connection with



the arbitration proceedings by the Contracting States, shall be borne by the Contracting States in a manner to be settled by mutual agreement between the competent authorities of the Contracting States. In the absence of such agreement, each Contracting State shall bear its own expenses and those of its appointed panel member. The cost of the chair of the arbitration panel and other expenses associated with the conduct of the arbitration proceedings shall be borne by the Contracting States in equal shares.

20. Any unresolved issue arising from a mutual agreement procedure case otherwise within the scope of the arbitration process provided for in this Article shall not be submitted to arbitration if the issue falls within the scope of a case with respect to which an arbitration panel or similar body has previously been set up in accordance with a bilateral or multilateral convention that provides for mandatory binding arbitration of unresolved issues arising from a mutual agreement procedure case.

21. Nothing in this Article shall affect the fulfilment of wider obligations with respect to the arbitration of unresolved issues arising in the context of a mutual agreement procedure resulting from other conventions to which the Contracting States are or will become parties.”.

### ARTICLE XIII

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 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 XIV

The following Article 26a (Entitlement to benefits) shall be added to the Convention:

##### “Article 26a

##### Entitlement to benefits

1. Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income or property 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 of this Article, 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 property, 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 in the absence of the transaction or arrangement referred to in paragraph 1 of this Article.

3. The competent authority of the Contracting State shall consult with the competent authority of the other Contracting State before denying a benefit under paragraph 1 or 2 of this Article.”.

## ARTICLE XV

1. Paragraph 1 of the Protocol to the Convention shall be deleted and replaced by the following new paragraphs:

### *“1. General*

1. As regards the interpretation of the Convention of 30th October 2000 it is understood that the Commentary on the OECD Model Tax Convention on Income and on Capital represents an authoritative guideline for the interpretation of the Convention.

2. Ad subparagraph j) of paragraph 1 of Article 3

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

a) in Ukraine, any pension fund covered by

(i) The Law of Ukraine «On pension provision» as of 05.11.1991 №1788-XII;

- (ii) The Law of Ukraine «On common obligatory state pension insurance» as of 09.07.2003 № 1058-IV;
- (iii) The Law of Ukraine «On non-state pension provision» as of 09.07.2003 №1057-IV;
- (iv) Tax Code of Ukraine as of 02.12.2010 № 2755-VI;
- (v) The Law of Ukraine «On amendments to some legislative acts of Ukraine regarding pension increase» as of 03.10.2017 № 2148-VIII;

b) in Switzerland, any pension fund covered by

- (i) the Federal Act on old age and survivors' insurance, of 20 December 1946;
- (ii) the Federal Act on disabled persons' insurance of 19 June 1959;
- (iii) the Federal Act on supplementary pensions in respect of old age, survivors' and disabled persons' insurance of 6 October 2006;
- (iv) the Federal Act on income compensation allowances in case of service and in case of maternity of 25 September 1952;
- (v) the Federal Act on old age, survivors' and disabled persons' insurance payable in respect of employment or self-employment of 25 June 1982, including pension funds which offer individual recognised pension plans comparable with occupational pension plans;
- (vi) the Federal Act on Vested Benefits of 17 December 1993;
- (vii) paragraph 6 and paragraph 7 of Article 89a of the Swiss Civil Code of 10 December 1907;
- (viii) paragraph 1 of Article 331 of the Federal Act on the Amendment of the Swiss Civil Code (Part Five: The Code of Obligations) of 30 March 1911.

### 3. *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."

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



3. The existing paragraph 4 of the Protocol to the Convention shall be renumbered as paragraph 7.

4. The following new paragraph 6 shall be added to the Protocol to the Convention:

*“6. Ad Articles 10, 11 and 12*

If in any agreement or convention between Ukraine and a third State which is a member of the Organization for Economic Cooperation and Development, Ukraine agrees to exempt from tax dividends from a qualifying participation or interest or royalties (either generally or in respect of specific categories of dividends or interest or royalties) arising in Ukraine, or to limit the rate of tax on such dividends or interest or royalties (either generally or in respect of specific categories of dividends or interest or royalties) to a rate lower than the rates provided for in subparagraph a of paragraph 2 of Article 10, in paragraph 2 of Article 11 or paragraph 2 of Article 12 of this Convention, such exemption or lower rate shall automatically apply (either generally or in respect of specific categories of dividends or interest or royalties) under this Convention as if such exemption or lower rate has been specified in this Convention, with effect from the date on which those provisions of that agreement or convention become effective. The competent authority of Ukraine shall inform the competent authority of Switzerland without delay that the conditions for the application of this provision have been met.”.

5. The following new paragraph 8 shall be added to the Protocol to the Convention:

*“8. 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 XVI

1. The Contracting States shall notify each other in writing, through diplomatic channels, the completion of the procedures required by the domestic law for the bringing into force of this Protocol.
2. This Protocol shall enter into force on the date of the latter of the notifications referred to in paragraph 1 of this Article. This Protocol shall have effect:
  - a) in respect of taxes withheld at source, on amounts paid or credited to non-residents either on or after the first day of January of the year next following the entry into force of this Protocol.



b) in respect of other taxes for fiscal years beginning on or after the first day of January of the year next following the entry into force of this Protocol.

c) in respect of Article 26 of the Convention, the exchange of information provided for in this Protocol shall be applicable to requests made on or after the date of entry into force of this Protocol to information that relates to fiscal years beginning on or after the first day of January of the year next following the entry into force of this Protocol.

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

Done in duplicate at Davos this 24<sup>th</sup>.1 day of 2019 in the Ukrainian, German 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 Government of Ukraine**



**For the Swiss Federal Council**

