

**PROTOCOL**

**BETWEEN**

**THE SWISS CONFEDERATION**

**AND**

**THE STATE OF KUWAIT**

**AMENDING THE AGREEMENT OF 16 FEBRUARY  
1999 BETWEEN THE SWISS CONFEDERATION AND  
THE STATE OF KUWAIT FOR THE AVOIDANCE OF  
DOUBLE TAXATION WITH RESPECT TO TAXES ON  
INCOME AND ON CAPITAL**

*The Swiss Federal Council  
and  
The Government of the State of Kuwait*

DESIRING to conclude a Protocol amending the Agreement of 16 February 1999 between the Swiss Confederation and the State of Kuwait for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital (hereinafter referred to as "the Agreement"),

HAVE AGREED as follows:

### **Article 1**

1. The title of the Agreement shall be deleted and replaced by the following title:

"Agreement between the Swiss Confederation and the State of Kuwait for the avoidance of double taxation with respect to taxes on income and on capital and the prevention of tax evasion and avoidance"

2. The preamble of the Agreement shall be deleted and replaced by the following preamble:

"The Swiss Federal Council

and

The Government of the State of Kuwait

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

INTENDING to conclude an Agreement 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 Agreement for the indirect benefit of residents of third States),

Have agreed as follows:"

### **Article 2**

Subparagraph a) of paragraph 3 of Article 2 (Taxes Covered) of the Agreement shall be deleted and replaced by the following subparagraph:

"a) in the case of Kuwait:

- (i) the corporate income tax according to Decree No. 3 of 1955 as amended Law No. 2 of 2008;
- (ii) the tax according to Law No. 23 of 1961 of the Neutral Zone; and
- (iii) the tax on listed companies according to Law No. 19 of 2000 of the Supporting National Employees

(hereinafter referred to as "Kuwaiti tax");"

### **Article 3**

1. Subparagraph b) of paragraph 1 of Article 3 (General Definitions) of the Agreement shall be deleted and replaced by the following subparagraph:

"b) 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 j) of paragraph 1 of Article 3 (General Definitions) of the Agreement shall be deleted and replaced by the following clause:

"(ii) in the case of Switzerland, the Head of the Federal Department of Finance or his authorised representative."

### **Article 4**

Subparagraph a) of paragraph 1 of Article 4 (Resident) of the Agreement shall be deleted and replaced by the following new subparagraph:

"a) in the case of Kuwait: an individual – including a Kuwaiti national – who is present in Kuwait for a period or periods totalling in the aggregate at least 183 days in the fiscal year concerned, and a company or an entity which is incorporated in Kuwait; "

### **Article 5**

A new paragraph 2 shall be added to Article 9 (Associated Enterprises) of the Agreement and the existing paragraph shall be numbered paragraph 1:

"2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other."

### **Article 6**

Article 10 (Dividends) of the Agreement shall be deleted and replaced by the following new Article:

#### **"Article 10** Dividends

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Con-

tracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

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 a company (other than a partnership) which is a resident of the other Contracting State which holds directly at least 10 per cent of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a merger or divisive reorganisation, or from a change of legal form, of the company that holds the shares or that pays the dividend).

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

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

6. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

## **Article 7**

Article 11 (Interest) of the Agreement shall be deleted and replaced by the following new Article:

## "Article 11 Interest

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

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner thereof shall be taxable only in that other State to the extent that such interest is paid:

- a) with respect to indebtedness arising as a consequence of the sale on credit of any equipment, merchandise or services;
- b) on any loan of whatever kind granted by a bank;
- c) to the Government of that other State, a political subdivision or local authority thereof or to the central bank of that other State; or
- d) on intercompany loans.

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

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 Article 7 or Article 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 Article shall apply only to the last-

mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement."

## **Article 8**

Article 13 (Capital Gains) of the Agreement shall be deleted and replaced by the following new Article:

### **"Article 13 Capital Gains**

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.
3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State. The provisions of the preceding sentence shall not apply to gains:
  - a) from the alienation of shares quoted on a stock exchange established in either Contracting State or on a stock exchange as may be agreed by the competent authorities of the Contracting States; or
  - b) from the alienation of shares in a company the value of which consist of more than 50 per cent of immovable property, in which the company carries on its business.
5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting State of which the alienator is a resident."

## **Article 9**

Article 18 (Pensions and Annuities) of the Agreement shall be deleted and replaced by the following new Article:

**"Article 18** Pensions and Annuities

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

The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth."

**Article 10**

Article 23 (Elimination of Double Taxation) of the Agreement shall be deleted and replaced by the following new Article:

**"Article 23** Elimination of Double Taxation

1. Where a resident of Kuwait derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in Switzerland, Kuwait may also tax such income or capital but shall give relief for the Swiss taxes paid in accordance with the provisions of its domestic law. Such relief shall consist of a deduction from the taxes levied in Kuwait of the income or capital tax paid in Switzerland but for an amount not exceeding the proportion of the aforesaid Kuwaiti tax which such income or capital bear to the entire income or capital.
2. Where a resident of Switzerland derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Kuwait, Switzerland shall, subject to the provisions of paragraph 3, 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 such gains were taxed in Kuwait.
3. Where a resident of Switzerland derives dividends, interest or royalties which, in accordance with the provisions of Articles 10, 11 and 12, may be taxed in Kuwait, Switzerland shall allow, upon request, a relief to such resident. The relief may consist of:
  - a) a deduction from the tax on the income of that resident of an amount equal to the tax levied in Kuwait in accordance with the provisions of Articles 10, 11 and 12; such deduction shall not, however, exceed that part of the Swiss tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in Kuwait; or
  - b) a lump sum reduction of the Swiss tax; or

- c) a partial exemption of such dividends, interest or royalties from Swiss tax, in any case consisting at least of the deduction of the tax levied in Kuwait from the gross amount of the dividends, interest or royalties.

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

## **Article 11**

Article 24 (Non-discrimination) of the Agreement shall be deleted and replaced by the following new Article:

### **"Article 24** Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description."



## **Article 12**

New paragraphs 5 and 6 shall be added to Article 25 (Mutual Agreement Procedure) of the Agreement:

"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 Agreement, and
- b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within three years from the presentation of the case to the competent authority of the other Contracting State,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests. 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 Contracting 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 13**

1. Articles 26 to 28 of the Agreement shall be renumbered as Articles 28 to 30.
2. The following new Articles 26 and 27 shall be added to the Agreement:

### **"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 Agreement or to the administration or enforcement of the domestic laws concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1.

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

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

#### **Article 27** Entitlement to Benefits

1. Notwithstanding the other provisions of this Agreement, a benefit under this Agreement 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 Agreement.

2. Where a benefit under this Agreement is denied to a person under paragraph 1, the competent authority of the Contracting State that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income or capital, if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person, or to another person, in the absence of the transaction or arrangement referred to in paragraph 1. The competent authority of the Contracting State to which the request has been made will consult with the competent authority of the other State before rejecting a request made under this paragraph by a resident of that other State."

#### **Article 14**

1. The title of the Protocol to the Agreement shall be replaced by the following:

#### **"PROTOCOL**

With respect to the Agreement concluded between the Swiss Confederation and the State of Kuwait for the avoidance of double taxation with respect to taxes on income and on capital and the prevention of tax evasion and avoidance, the undersigned have agreed that the following provisions shall form an integral part of the Agreement."

2. Paragraph 4 of the Protocol to the Agreement shall be renumbered as paragraph 5 and its subparagraphs 1 and 2 shall be renamed to subparagraphs a) and b).

3. The following new paragraph 4 shall be added to the Protocol to the Agreement:

"4. With respect to paragraph 3 of Article 10

It is understood that where the minimum holding period laid down in paragraph 3 of Article 10 was not met at the time of the payment of the dividend and, therefore, the tax stipulated in paragraph 2 of Article 10 was withheld at the moment of the payment, and the condition of the minimum holding period is met subsequently, then the beneficial owner of the dividend shall be entitled to a refund of the tax withheld according to paragraph 2 of Article 10."

4. The following new paragraphs 6 and 7 shall be added to the Protocol to the Agreement:

"6. With respect to Articles 18 and 19

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

7. With respect to 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 15**

1. This Protocol shall enter into force on the date of the receipt of the last written notification through diplomatic channels by which the Contracting States notify each other of the completion of their legal procedures required for its entry into force.
2. The provisions of the Protocol shall have effect:
  - a) in respect of taxes withheld at source on amounts paid or credited on or after the first day of January of the calendar year next following the entry into force of the Protocol;
  - b) in respect of other taxes for taxation years beginning on or after the first day of January of the calendar year next following the entry into force of the Protocol;
  - c) in respect to Article 25 paragraphs 5 and 6, to mutual agreement procedures that are

- (i) pending between the competent authorities of the Contracting States at the entry into force of the Protocol (in such cases the three year period under subparagraph b) begins with the entry into force of this Protocol), or
  - (ii) initiated after that date;
- d) in respect to Article 26, to information that relates to fiscal years beginning on or after the first day of January of the calendar year next following the entry into force of the Protocol.

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

Done at Bern this 6<sup>th</sup> day of November 2019 corresponding to the 9<sup>th</sup> day of Raba'e Alawal 1441 H, in two originals, in the German, Arabic and English languages, all texts being equally authentic. In case of divergency the English text shall prevail.

For the  
Swiss Federal Council:

For the  
Government of the State of Kuwait:

