

No. 26501

**UNION OF SOVIET SOCIALIST REPUBLICS
and
SWITZERLAND**

Agreement on tax questions. Signed at Moscow on 5 September 1986

Authentic texts: Russian and German.

Registered by the Union of Soviet Socialist Republics on 27 March 1989.

**UNION DES RÉPUBLIQUES
SOCIALISTES SOVIÉTIQUES
et
SUISSE**

**Convention relative à des questions fiscales. Signée à Moscou
le 5 septembre 1986**

Textes authentiques : russe et allemand.

*Enregistrée par l' Union des Républiques socialistes soviétiques le 27 mars
1989.*

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE UNION OF SOVIET SOCIALIST REPUBLICS AND THE SWISS CONFEDERATION ON TAX QUESTIONS

The Government of the Union of Soviet Socialist Republics and the Swiss Federal Council,

Desiring to regulate various tax questions so as to develop and promote their economic relations,

In accordance with the provisions of the Final Act of the Conference on European Security and Cooperation of 1 August 1975,²

Have agreed as follows:

Article 1. TAXES COVERED

1. This Agreement shall apply to all taxes on income imposed under the legislation in force in the Contracting States, irrespective of the manner in which they are levied. The existing taxes to which the Agreement shall apply are:

(a) In the case of the Union of Soviet Socialist Republics:

- The tax on income of foreign corporations;
- The tax on income of the population.

(b) In the case of the Swiss Confederation: The federal, cantonal and communal taxes on income (total income, earned income, income from capital, business profits, capital gains and other items of income).

2. The Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Agreement in addition to or in place of the taxes referred to in paragraph 1 above.

Article 2. GENERAL DEFINITIONS

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

(a) The terms “a Contracting State” and “the other Contracting State” shall mean the Union of Soviet Socialist Republics (USSR) or the Swiss Confederation, as the context requires;

(b) The term “person” shall mean individuals, bodies corporate or other independent entities which are treated as bodies corporate for tax purposes; with respect to Switzerland, the term shall also comprise partnerships;

(c) 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 or any other criterion of a similar nature. However, the term does not include any person who is liable to tax in that State only if he derives

¹ Came into force on 14 March 1988, i.e., 60 days after the exchange of the instruments of ratification, in accordance with article 12 (2).

² *International Legal Materials*, vol. 14 (1975), p. 1292 (American Society of International Law).

income from sources therein. Where a person is a resident of both Contracting States, then the competent authorities shall determine by mutual agreement the Contracting State of which that individual shall be deemed to be a resident for the purposes of this Agreement;

(d) The term “international traffic” means any transport by a ship or aircraft operated by a resident of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(e) The term “competent authority” means:

- (i) In the USSR, the Minister of Finance of the USSR or his authorized representative;
- (ii) In Switzerland, the Director of the Federal Tax Administration or his authorized representative.

2. As regards the application of this Agreement by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that State relating to the taxes which are the subject of this Agreement.

Article 3. PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which a resident of a Contracting State carries on, wholly or partly, business in the other Contracting State.

2. A construction site or assembly project constitutes a permanent establishment only if it lasts more than 12 months.

3. Notwithstanding the preceding provisions of this article, the term “permanent establishment” shall be deemed not to include:

(a) Work on an assembly project carried out by a person in the other Contracting State in connection with the delivery of machines or equipment;

(b) Mere supervision of a construction site or assembly project, provided that the person concerned does not himself carry out construction work or deliver or assemble machines or equipment in the other Contracting State;

(c) The use of facilities solely for the purpose of storage or display or delivery of goods or merchandise belonging to the enterprise;

(d) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, delivery or display (the sale of articles displayed at an exhibition is not regarded as constituting a permanent establishment);

(e) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of treatment or processing by another enterprise;

(f) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise for the enterprise;

(g) The maintenance of a fixed place of business solely for the purpose of advertising, collecting or disseminating information for the enterprise, carrying out scientific research or other similar activities of a preparatory or auxiliary character;

(h) The maintenance of a fixed place of business solely for the purpose of collaboration in the conclusion or signature of contracts on behalf of that enterprise;

(i) The maintenance of a fixed place of business solely for the purpose of carrying on any of the activities referred to in paragraphs (a) to (h) above.

4. An enterprise which is a resident of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through an agent other than an agent of an independent status of the kind referred to in paragraph 5. Where an agent has an authority to conclude contracts in the name of the enterprise, this shall constitute a permanent establishment only if he is a permanent representative of the enterprise in the other State and habitually exercises that authority and his activities are not limited to those mentioned in paragraph 3.

5. An enterprise which is a resident of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other 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.

6. The fact that an enterprise which is a resident of a Contracting State controls or is controlled by an enterprise which is a resident of the other Contracting State, or which carries on business in that other Contracting State (whether through a permanent establishment or otherwise), shall not of itself constitute either enterprise a permanent establishment of the other.

Article 4. BUSINESS PROFITS

1. The profits of an enterprise which is a resident of a Contracting State shall be taxable only in the Contracting State in which it carried on business through a permanent establishment situated therein. Only that part of the profits attributable to the activity of that permanent establishment shall, however, be taxable.

2. Subject to the provisions of paragraph 3, where an enterprise which is a resident of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in that other 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.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for an enterprise which is a resident of the other Contracting State.

5. Where a construction site or assembly project constitutes a permanent establishment, only those profits shall be taxable which are attributable to those activities except for profits deriving from the delivery or supply of merchandise on behalf of another permanent establishment of that enterprise or on behalf of a third party.

6. Where profits include items of income which are dealt with separately in other articles of this Agreement, then the provisions of those articles shall not be affected by the provisions of this article.

Article 5. INCOME FROM PERSONAL ACTIVITIES

1. Wages, salaries 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 shall be taxable only in that other State.

2. Notwithstanding the provisions of paragraph 1, wages, salaries and other similar 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 that other Contracting State for a period or periods not exceeding in the aggregate 183 days in the calendar year concerned, and

(b) The remuneration is paid by, or on behalf of, an employer who is not a resident of that other State, and

(c) The remuneration is not borne by a permanent establishment which the employer has in that other State.

3. Notwithstanding the preceding provisions of this article, wages, salaries and other similar remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State in connection with a construction site or assembly project shall be taxable only in the first-mentioned State when the recipient is not present in the other State for more than a total of 365 days in the course of two calendar years.

4. Notwithstanding the preceding provisions of this article, remuneration in respect of an employment exercised aboard a ship or aircraft operating in international traffic shall be taxable only in the Contracting State in which the enterprise operating the ship or aircraft is resident.

5. Notwithstanding the preceding provisions of this article, income derived by a resident of a Contracting State from personal activities exercised in the other Contracting State as a public entertainer, such as a theatre, motion picture, radio or television artist or a musician, or as an athlete, shall be taxable only in that other State. Where the visit of the artist or athlete in that other State is subsidized to a considerable extent out of public funds, paragraphs 1 and 2 shall be applicable.

6. Notwithstanding the preceding provisions of this article, income derived by an individual who is a resident in a Contracting State from an independent activity shall be taxable in accordance with the provisions of article 4.

Article 6. GOVERNMENT SERVICE

1. Notwithstanding the provisions of article 5, remuneration, including pensions, paid directly or indirectly by a Contracting State or a political subdivision or a local authority thereof to an individual who is a national of that State in respect of services rendered to that State or a subdivision or local authority thereof in the discharge of functions of a governmental nature shall be taxable only in that State.

2. The provisions of article 5 shall apply to remuneration or pensions in respect of an employment in connection with any trade or business.

Article 7. PAYMENT TO STUDENTS

Payments which a student, doctoral candidate or business apprentice who is or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 8. ROYALTIES

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

2. The term "royalties" means payments of any kind received as a consideration for the sale, the use of or the right to use any copyright of literary, musical, artistic or scientific work including cinematograph films, or films or tapes used for radio or television broadcasting, any patent, trademark, service mark, design or model, plan, secret formula or process, or programme for electronic data-processing equipment, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience (know-how).

3. The provisions of this article shall also apply when the remuneration is paid as compensation for services rendered and such payments are connected with the sale, use or right to use or with information of the kind referred to in paragraph 2 of this article.

4. The provisions of paragraph 1 of this article shall not apply where a recipient who is 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 and the right or property in respect of which the royalties are paid is effectively connected with that permanent establishment. In such cases the provisions of article 4 shall apply.

Article 9. NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The taxation on a resident of a Contracting State (with the exception of an individual) and on a permanent establishment which a resident of a Contracting State has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on individuals or permanent establishments of a third State in the same circumstances. This provision shall not, however, be construed as obliging the other Contracting State to grant to a resident of the first Contracting State (whether or not he has a permanent establishment in the other Contracting State) the same tax advantages as those enjoyed by residents of a third State because of a special agreement between the other Contracting State and the third State.

3. The provisions of this article shall, notwithstanding the provisions of article 1, apply to taxes of every kind and description.

Article 10. MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, 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.

2. The competent authority shall endeavour, if the objection appears to it to be justified, and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Agreement.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also endeavour to reach agreement concerning the interpretation of a term not defined in this Agreement and may consult together for the elimination of double taxation in cases not provided for by the Agreement.

4. The competent authorities of the Contracting States may communicate with each other through the diplomatic channel for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 11. MISCELLANEOUS PROVISIONS

1. This Agreement shall not affect fiscal privileges under the general rules of international law or under the provisions of special agreements.

2. This Agreement shall not affect the provisions:

(a) Of the Agreement of 17 March 1948¹ between the Union of Soviet Socialist Republics and the Swiss Confederation concerning the commercial representation of the USSR in Switzerland;

(b) Of the exchange of notes of 18 January 1968² between the Soviet Ministry of Foreign Affairs and the Swiss Embassy in the USSR concerning the taxation of maritime or air transport enterprises.

Article 12. ENTRY INTO FORCE

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

2. The Agreement shall enter into force on the sixtieth day after the exchange of the instruments of ratification. Its provisions shall be applicable to all taxes covered by the Agreement that are levied for the fiscal years beginning after 31 December of the year in which the instruments of ratification are exchanged.

Article 13. TERMINATION

This Agreement shall remain in force indefinitely. It may, however, be terminated by either of the Contracting States by written notification to the other Contracting State through the diplomatic channel on or before the thirtieth day of June

¹ United Nations, *Treaty Series*, vol. 217, p. 87.

² *Ibid.*, vol. 1557, No. 1-27064.

in any calendar year. In such event, the Agreement shall cease to have effect in the two Contracting States for the taxable years beginning after 31 December of the year for the end of which the notice of termination has been given.

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

DONE at Moscow on 5 September 1986 in two copies, each in the Russian and German languages, both texts being equally authentic.

For the Government
of the Union of Soviet
Socialist Republics:

[E. SHEVARDNADZE]

For the Swiss Federal Council:

[P. OBER]