

No. 30795

**FINLAND
and
SWITZERLAND**

**Agreement for the avoidance of double taxation with respect
to taxes on income and on capital (with protocol). Signed
at Helsinki on 16 December 1991**

Authentic texts: Finnish, German and English.

Registered by Finland on 4 March 1994.

**FINLANDE
et
SUISSE**

**Convention en vue d'éviter les doubles impositions en
matière d'impôts sur le revenu et sur la fortune (avec
protocole). Signé à Helsinki le 16 décembre 1991**

Textes authentiques : finnois, allemand et anglais.

Enregistré par la Finlande le 4 mars 1994.

AGREEMENT¹ BETWEEN THE REPUBLIC OF FINLAND AND THE SWISS CONFEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Republic of Finland and the Swiss Federal Council,

Desiring to conclude an Agreement for the avoidance of double taxation with respect to taxes on income and on capital,

Have agreed as follows:

Article 1

Personal scope

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

Article 2

Taxes covered

1. This Agreement 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 amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

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

- a) in Finland:
 - (i) the state income and capital tax;
 - (ii) the communal tax;
 - (iii) the church tax; and
 - (iv) the tax withheld at source from non-residents' income;
 (hereinafter referred to as "Finnish tax");
- b) in Switzerland:
 - the federal, cantonal and communal taxes

- (i) on income (total income, earned income, income from capital, industrial and commercial profits, capital gains, and other items of income); and

- (ii) on capital (total property, movable and immovable property, business assets, paid-up capital and reserves, and other items of capital);

(hereinafter referred to as "Swiss tax").

4. 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 existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

5. The Agreement shall not apply to the Federal anticipatory tax withheld in Switzerland at source on prizes in a lottery.

Article 3

General definitions

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

- a) the term "Finland" means the Republic of Finland and, when used in a geographical sense, means the territory of the Republic of Finland, and any area adjacent to the territorial waters of the Republic of Finland within which, under the laws of Finland and in accordance with international law, the rights of Finland with respect to the exploration for and exploitation of the natural resources of the sea bed and its sub-soil and of the superjacent waters may be exercised;

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

- c) the term "person" includes an individual, a company and any other body of persons;

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

¹ Came into force on 26 December 1993, i.e., 30 days after the date of the last of the notifications (26 November 1993) by which the Contracting Parties had informed each other of the completion of the constitutional requirements, in accordance with article 28 (2).

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 "national" means:

(i) any individual possessing the nationality of a Contracting State; and

(ii) any legal person, partnership and association deriving its status as such from the laws in force in a Contracting State;

g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

h) the term "competent authority" means:

(i) in Finland, the Ministry of Finance or its authorised representative;

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

2. As regards the application of the Agreement 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 Agreement applies.

Article 4

Residence

1. For the purposes of this Agreement, 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. The term includes also any partnership which is created under the laws of either Contracting State and which is not treated as a body corporate for tax purposes in either State. However, the term 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.

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

b) if the State in which he has his centre 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 he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

d) if he is a national of both States or of neither of them, 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, the competent authorities of the Contracting States shall settle the question by mutual agreement.

Article 5

Permanent establishment

1. For the purposes of this Agreement, 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 or any other place of extraction of natural resources.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

4. Notwithstanding the preceding provisions of this Article, 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;

c) the maintenance of a stock of goods or merchandise belonging to the 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 or of collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

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.

Article 6

Income from immovable property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. a) The term "immovable property" shall, subject to the provisions of sub-paragraphs b) and c), have the meaning which it has under the law of the Contracting State in which the property in question is situated.

b) The term "immovable property" shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, 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.

c) Ships 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, or use in any other form of immovable property.

4. Where the ownership of shares or other corporate rights in a company entitles the owner of such shares or corporate rights to the sole and indefinite enjoyment of immovable property held by the company, the income from the direct use, letting, or use in any other form of such right to enjoyment may be taxed in the Contracting State in which the immovable property is situated.

5. 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.

Article 7

Business profits

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 Article.

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 Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

Shipping and air transport

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

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

Article 9

Associated enterprises

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 profits on which an enterprise of a Contracting State has been charged to tax in that State are also included in the profits of an enterprise of the other Contracting State and taxed accordingly, and the profits so included are profits which would have accrued to that enterprise of the other State, if the conditions made between the enterprises had been those which would have been made between independent enterprises, then the competent authorities of the Contracting States may consult together with a view to reach an agreement on the adjustments of profits in both Contracting States.

3. A Contracting State shall not change the profits of an enterprise in the circumstances referred to in paragraph 1 after the expiry of the time limits provided in its national laws and, in any case, after six years from the end of the year in which the profits which would be subject to such change would have accrued to an enterprise of that State. This paragraph shall not apply in the case of fraud or wilful default.

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 20 per cent of the capital of the company paying the dividends;

b) 10 per cent of the gross amount of the dividends in all other cases.

3. Notwithstanding the provisions of paragraph 2, as long as according to the laws of Finland a person resident in Finland is entitled to a tax credit in respect of dividends paid by a company resident in Finland,

a) dividends paid by a company which is a resident of Finland to a company (other than a partnership) which is a resident of Switzerland shall be exempt from any tax which is chargeable in Finland on dividends if the recipient is

the beneficial owner of the dividends and holds directly at least 20 per cent of the capital of the company paying the dividends;

b) dividends paid by a company which is a resident of Finland to a resident of Switzerland may in all other cases also be taxed in Finland and according to the laws of Finland, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 5 per cent of the gross amount of the dividends.

4. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of the limitations provided for in paragraphs 2 and 3.

The provisions of 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 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if such resident is the beneficial owner of the interest.

2. 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.

3. The provisions of paragraph 1 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.

4. 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 12

Royalties

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 if such resident is the beneficial owner of the royalties.

2. The term "royalties" as used in this Article 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, and films or tapes for television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

3. The provisions of paragraph 1 shall not apply if 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 Article 7 or Article 14, as the case may be, shall apply.

4. 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 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 13

Capital gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in paragraph 2 of Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains derived by a resident of Finland from the alienation of shares in a company which is a resident of Switzerland and the property of which consists principally of immovable property situated in Switzerland may be taxed in Switzerland.

3. Gains derived by a resident of Switzerland from the alienation of shares or other corporate rights in a company which is a resident of Finland may be taxed in Finland provided that the ownership of such shares or other corporate rights entitles the owner to the sole and

indefinite enjoyment of immovable property (being property which is situated in Finland) held by the company.

4. 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.

5. Gains derived by an enterprise of a Contracting State 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 that State.

6. Gains from the alienation of any property other than that referred to in the preceding paragraphs of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

Independent personal services

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 he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

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.

Article 15

Dependent personal services

1. Subject to the provisions of Articles 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 calendar year concerned, and

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

c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

However, the provisions of paragraph 1 shall apply if actual taxation of the remuneration in the State of which the employee is a resident is not demonstrated.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by a resident of a Contracting State, may be taxed in that State.

Article 16

Directors' fees

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 any other similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17

Artists and sportsmen

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, 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 a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15,

be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. The provisions of paragraph 2 shall not apply if it is established that neither the entertainer or sportsman nor persons related thereto, participate directly or indirectly in the profits of the person referred to in that paragraph.

Article 18

Pensions

1. Subject to the provisions of paragraph 2 of Article 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.

2. Notwithstanding the provisions of paragraph 1, and subject to the provisions of paragraph 2 of article 19, pensions paid and other payments made under the Finnish social security legislation may be taxed in Finland.

Article 19

Government service

1. a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority or a statutory body thereof to an individual in respect of services rendered to that State or subdivision or authority or body shall be taxable only in that State.

b) However, such remuneration shall be taxable only in the Contracting State of which the individual is a resident if the services are rendered in that State and the individual:

(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 or a statutory body thereof to an individual in respect of services rendered to that State or subdivision or authority or body shall be taxable only in that State.

b) However, such pension shall be taxable only in the Contracting State of which the individual is a resident if he is a national of that State.

3. The provisions of Articles 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 statutory body thereof.

Article 20

Students

Payments which a student or business, technical, agricultural or forestry 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 21

Other income

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

Article 22

Capital

1. Capital represented by immovable property referred to in paragraph 2 of Article 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 shares or other corporate rights referred to in paragraph 4 of Article 6 and owned by a resident of a Contracting State may be taxed in the Contracting State in which the immovable property held by the company is situated.

3. 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.

4. Capital represented by ships and aircraft operated in international traffic by a resident of a Contracting State, and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in that State.

5. Movable property which is subject to a right of usufruct shall be taxable only in the Contracting State of which the usufructuary is a resident.

6. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 23

Elimination of double taxation

1. In Finland double taxation shall be eliminated as follows:

a) Where a resident of Finland derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in Switzerland, Finland shall, subject to the provisions of sub-paragraph b), allow

(i) as a deduction from the tax on income of that person, an amount equal to the tax on income paid in Switzerland;

(ii) as a deduction from the tax on capital of that person, an amount equal to the tax on capital paid in Switzerland.

Such deduction in either case shall not, however, exceed that part of the tax on income or on capital, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in Switzerland.

b) Dividends paid by a company which is a resident of Switzerland to a company which is a resident of Finland and controls directly at least 10 per cent of the voting power in the company paying the dividends shall be exempt from Finnish tax.

c) Notwithstanding any other provision of this Agreement, an individual who is a resident of Switzerland and under Finnish taxation law with respect to the Finnish taxes referred to in Article 2 also is regarded as resident in Finland may be taxed in Finland. However, Finland shall allow any Swiss tax paid on the income or the capital as a deduction from Finnish tax in accordance with the provisions of sub-paragraph a). The provisions of this sub-paragraph shall apply only to nationals of Finland and for a period not exceeding three years from the end of the year in which such person left Finland.

d) Where a resident of Switzerland derives income, or owns capital, which, in accordance with the provisions of paragraph 4 of Article 6 or paragraph 2 of Article 18, or paragraph 2 of Article 22, may be taxed in Finland, Finland shall allow

(i) as a deduction from the tax on income of that person, an amount equal to the tax on income paid in Switzerland;

(ii) as a deduction from the tax on capital of that person, an amount equal to the tax on capital paid in Switzerland.

Such deduction in either case shall not, however, exceed that part of the tax on income or on capital, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in Switzerland.

2. In Switzerland double taxation shall be eliminated as follows:

a) Where a resident of Switzerland derives income or owns capital which, in accordance with the provisions of the Agreement, may be taxed in Finland, Switzerland shall, subject to the provisions of sub-paragraphs b) and c), exempt such income or capital from tax

b) Where a resident of Switzerland derives dividends which, in accordance with the provisions of Article 10, may be taxed in Finland, Switzerland shall allow, upon request, a relief to such resident. The relief may consist of

(i) a deduction from the tax on the income of that resident of an amount equal to the tax levied in Finland in accordance with the provisions of Article 10; such deduction shall not, however, exceed that part of the Swiss tax, as computed before the deduction is given, which is appropriate to such dividends; or

(ii) a lump sum reduction of the Swiss tax; or

(iii) a partial exemption of such dividends from Swiss tax, in any case consisting at least of the deduction of the tax levied in Finland from the gross amount of the dividends.

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

c) Where a resident of Switzerland derives income, or owns capital, which, in accordance with the provisions of paragraph 4 of Article 6 or paragraph 2 of Article 18, or paragraph 2 of Article 22, may be taxed in Finland, such income or capital shall not be exempted from Swiss tax.

d) A company which is a resident of Switzerland and which derives dividends from a company which is a resident of Finland shall be entitled, for the purposes of Swiss tax with respect to such dividends, to the same relief which would be granted to the company if the company paying the dividends were a resident of Switzerland.

3. Where in accordance with any provision of the Agreement income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.

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 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 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 4 of Article 11, or paragraph 4 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 25

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 or, if his case comes under paragraph 1 of Article 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 Agreement.

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 the Agreement. In the event the competent authorities reach an agreement, taxes shall be imposed, and refund or credit of taxes shall be allowed by the Contracting States in accordance with such 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 the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.

Article 26

Exchange of information

1. The competent authorities of the Contracting States shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of this Agreement in relation to the taxes which are the subject of the Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of the Agreement. No information as aforesaid shall be exchanged which would disclose any trade, business, banking, industrial or professional secret or trade process.

2. In no case shall the provisions of this Article be construed as imposing upon either of the Contracting States the obligation to carry out administrative measures at variance with the regulations and practice of either Contracting State or which would be contrary to its sovereignty, security or public policy (ordre public) or to supply particulars which are not procurable under its own laws or those of the State making application.

Article 27

Members of diplomatic missions and consular posts

1. Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

2. The Agreement shall not apply to international organisations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income or on capital.

Article 28

Entry into force

1. The Governments of the Contracting States shall notify each other that the constitutional requirements for the entry into force of this Agreement have been complied with.

2. The Agreement shall enter into force thirty days after the date of the later of the notifications referred to in paragraph 1 and its provisions shall have effect in both States:

a) in respect of taxes withheld at source, on income derived on or after 1 January in the calendar year next following the year in which the Agreement enters into force;

b) in respect of other taxes on income, and taxes on capital, for taxes chargeable for any tax year beginning on or after 1 January in the calendar year next following the year in which the Agreement enters into force.

3. Notwithstanding the provisions of paragraph 2, the provisions of the Agreement shall have effect in respect of Finnish tax withheld at source pursuant to paragraph 3 of Article 10, on dividends paid for any accounting period of

the company which makes the distribution ending on or after 1 January 1990.

4. The Agreement between the Republic of Finland and the Swiss Confederation for the avoidance of double taxation with respect to taxes on income and on capital, signed at Bern on 27 December 1956,¹ (hereinafter referred to as "the 1956 Agreement"), shall cease to have effect with respect to taxes to which this Agreement applies in accordance with the provisions of paragraph 2. The 1956 Agreement shall terminate on the date next following the last date on which it has effect in accordance with the foregoing provision of this paragraph.

Article 29

Termination

This Agreement shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year. In such event, the Agreement shall cease to have effect in both States:

a) in respect of taxes withheld at source, on income derived on or after 1 January in the calendar year next following the year in which the notice is given;

b) in respect of other taxes on income, and taxes on capital, for taxes chargeable for any tax year beginning on or after 1 January in the calendar year next following the year in which the notice is given.

In witness whereof the undersigned, duly authorised thereto, have signed this Agreement.

Done in duplicate at Helsinki this 16th day of December 1991, in the Finnish, German and English languages, all three texts being equally authentic. In the case of divergence of interpretation the English text shall prevail.

For the Government
of the Republic of Finland:

IIRO VIINANEN

For the Swiss Federal
Council:

OTHMAR UHL

¹ United Nations, *Treaty Series*, vol. 277, p. 7.

PROTOCOL

At the signing today of the Agreement between the Republic of Finland and the Swiss Confederation for the avoidance of double taxation with respect to taxes on income and on capital (hereinafter referred to as "the Agreement"), the undersigned have agreed upon the following provisions which shall form an integral part of the Agreement:

1. With reference to Article 4, paragraph 3

In determining by mutual agreement the status of a person other than an individual which is a resident of both Contracting States, consideration shall, *inter alia*, be given to the rule contained in paragraph 3 of Article 4 of the OECD model double taxation convention on income and on capital, adopted in 1977.

2. With reference to Article 10, paragraph 3

If in any agreement for the avoidance of double taxation concluded by Finland after the date of signature of the Agreement with a third State, being a member of the Organisation for Economic Co-operation and Development, Finland agrees to grant without the condition of reciprocity full or partial tax credit in respect of dividends paid by a company which is a resident of Finland to a resident of that third State, the Government of Finland shall without undue delay inform the Swiss Federal Council

and shall enter into negotiations with the Swiss Federal Council with a view to providing the same treatment for residents of Switzerland as that provided for residents of the third State.

3. With reference to Article 22

Where an individual is a resident of a Contracting State for part of a year only, and is a resident of the other Contracting State for the rest of the year, tax on capital for that year may, in accordance with the provisions of Article 22, be imposed in each State on the basis of the residence of such individual but the tax so charged in each State shall not exceed an amount equal to such proportion of the tax on capital for the whole year as the period (expressed in whole calendar months) during which the individual was a resident of the State which imposes the tax bears to the period of twelve months.

In witness whereof the undersigned, duly authorised thereto, have signed this protocol.

Done in duplicate at Helsinki this 16th day of December 1991, in the Finnish, German and English languages, all three texts being equally authentic. In the case of divergence of interpretation the English text shall prevail.

For the Government
of the Republic of Finland:

IIRO VIINANEN

For the Swiss Federal
Council:

OTHMAR UHL
