No. 31399

MEXICO
and
SWITZERLAND

Convention for the avoidance of double taxation with respect to taxes on income (with protocol). Signed at Mexico City on 3 August 1993

Authentic texts: Spanish and French.

Registered by Mexico on 29 November 1994.

MEXIQUE
et
SUISSE

Convention en vue d'éviter les doubles impositions en matière d'impôts sur le revenu (avec protocole) . Signée à Mexico le 3 août 1993

Textes authentiques : espagnol et français.

Enregistrée par le Mexique le 29 novembre 1994.

[TRANSLATION — TRADUCTION]

CONVENTION[1] BETWEEN THE GOVERNMENT OF THE UNITED MEXICAN STATES AND THE SWISS FEDERAL COUNCIL FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME

The Government of the United Mexican States and the Swiss Federal Council,

Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income, hereinafter referred to as "the Convention",

Have agreed as follows:

Article 1

PERSONAL SCOPE

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

Article 2

TAXES COVERED

1. This Convention shall apply to taxes on income 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 all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.

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

(*a*) In Mexico:

The income tax (hereinafter referred to as "Mexican tax");

(*b*) In Switzerland:

The Federal, cantonal and communal taxes on income (total income, earned income, income from capital, industrial and commercial profits, capital gains and other items of income) (hereinafter referred to as "Swiss tax").

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of changes which have been made in their respective taxation laws.

[1] Came into force on 8 September 1994, the date on which the Contracting Parties notified each other of the completion of the required procedures, in accordance with article 26.

Article 3

GENERAL DEFINITIONS

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

(*a*) The terms "a Contracting State" and "the other Contracting State" mean Mexico or Switzerland, as the context requires.

(*b*) The term "Mexico" means the United Mexican States.

(*c*) The term "Switzerland" means the Swiss Confederation.

(*d*) The term "person" includes an individual, a company and any other body of persons.

(*e*) The term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes.

(*f*) 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.

(*g*) The term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State.

(*h*) The term "competent authority" means:

(i) In the case of Mexico, the Ministry of Finance and Public Credit;

(ii) In the case of Switzerland, the Director of the Federal Tax Administration or his authorized representative;

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

Article 4

RESIDENT

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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 neither of the States or if, under the provisions of Swiss law, he is a national of both States, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

(*a*) A place of management;

(*b*) A branch;

(*c*) An office;

(*d*) A factory;

(*e*) A workshop;

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

3. The term "permanent establishment" likewise encompasses a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six 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 purposes of publicity, information, scientific research, loan placement or any other activity of a preparatory or auxiliary character;

(*f*) The maintenance of a fixed place of business solely for the purpose of the combined exercise of the activities mentioned in subparagraphs (*a*) to (*e*), provided

that the combined overall activity of the fixed place of business 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 7 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 on behalf of 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. Notwithstanding the provisions of this article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business 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 and that, in their commercial or financial relations with that enterprise, no conditions are made or imposed which differ from those which would generally be made with independent agents.

8. 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. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, 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; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also apply to income derived from the direct use, letting, storage or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

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 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 or has carried 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 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 which would be deductible if the permanent establishment were a separate entity bearing those expenses, whether they were incurred 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 and 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 Convention, then the provisions of those articles shall not be affected by the provisions of this article.

Article 8

SHIPPING AND AIR TRANSPORT

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the

home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool 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 taxed 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 the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then the competent authorities of the Contracting States may consult each other in order to reach agreement on adjustments to the profits in the two Contracting States.

3. A Contracting State shall not rewrite the profits of an enterprise in the cases specified in paragraph 1 after the expiry of the time-limits envisaged in its national legislation and, in any event, after five years have elapsed from the end of the year during which the profits which were rewritten had been accrued by an enterprise of that State. This paragraph shall not apply in the case of fraud, fault or negligence.

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 of the dividends is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;

(*b*) 15 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this 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.

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

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

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 be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed:

(*a*) 10 per cent of the gross amount of the interest after the first five years of implementation of the Convention, paid to a banking institution;

(*b*) 15 per cent of the gross amount of the interest in all other cases.

3. Notwithstanding the provisions of paragraph 2, the interest referred to in paragraph 1 may be taxed only in the Contracting State of which the recipient of the interest is a resident, if that person is the beneficial owner and if the interest is paid:

(*a*) On a loan of at least three years' duration granted by a Contracting State, one of its political subdivisions or local authorities or a public financing institution the purpose of which is to promote exports through the granting of loans on preferential terms;

(*b*) On a loan of at least three years' duration guaranteed or secured, on preferential terms, in accordance with the provisions of a Contracting State regulating export guarantees;

(*c*) In respect of a debenture, bond or similar title of the Government of a Contracting State or of one of its political subdivisions or local authorities.

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.

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 personal services from a fixed base situated therein, with which the debt-claim in respect of which the interest is paid is effectively connected. In such cases 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, a legal entity under public law 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 Contracting 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 paid, having regard to the debt-claim for which it is paid, exceeds, for any reason, 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 Convention.

Article 12

ROYALTIES

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. 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, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right

to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 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 them. In such cases the provisions of article 7 or article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority, a legal entity under public law or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

6. Where by reason of a special relationship between the payer and the beneficial owner of the royalties or between both of them and some other person, the amount of the royalties, having regard to the service for which they are paid, exceeds, for any reason, 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 Convention.

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 shares, stocks or other rights in a company or other legal entity, the property of which consists directly or indirectly principally of immovable property situated in a Contracting State or of rights relating to such immovable property may be taxed in that State.

4. 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.

5. Gains from the alienation of any property other than that referred to in the preceding paragraphs shall be taxable only in the Contracting State of which the alienator is a resident, with the exception of the gains to which article 12 applies.

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 except in the following circumstances, when such income may also be taxed in the other Contracting State:

(*a*) If he has a fixed base regularly available to him for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or

(*b*) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any continuous 12-month period; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

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 any 12-month period; 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.

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 may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16

DIRECTORS' FEES

Directors' fees, stipends and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or, in the case of Mexico, in his capacity as an administrator or commissioner, of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17

ENTERTAINERS AND ATHLETES

1. Notwithstanding the provisions of articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. The provisions of paragraph 2 shall not apply if it is determined that neither the entertainer nor the athlete, nor the persons associated with the entertainer or the athlete, share, directly or indirectly, in the profits of the person referred to in that paragraph.

Article 18

PENSIONS

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.

Article 19

GOVERNMENT SERVICE

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

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

(i) Is a national of that State; or

(ii) Did not become a resident of that State solely for the purpose of rendering the services.

2. (*a*) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(*b*) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other 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 thereof.

Article 20

STUDENTS

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

Article 21

ELIMINATION OF DOUBLE TAXATION

1. In the case of Mexico, double taxation shall be avoided as follows:

(*a*) Residents of Mexico may credit against the Mexican tax for which they are liable the tax paid in Switzerland up to an amount not exceeding the Mexican tax on the same income;

(*b*) Under the conditions envisaged by Mexican law, companies which are resident in Mexico may credit against the Mexican tax derived from the receipt of dividends the tax paid in Switzerland on income for which the company resident in Switzerland paid the dividends.

2. In the case of Switzerland, double taxation shall be avoided as follows:

(*a*) Where a resident of Switzerland derives income as dealt with in this Convention which, in accordance with the provisions of the Convention, may be taxed in Mexico, Switzerland shall, subject to the provisions of subparagraphs (*b*), (*c*) and (*d*) exempt such income from tax but may, in calculating tax on the remaining income of that person, apply the rate which would have been applicable if the exempted income had not been so exempted; however, such exemption shall not apply to the gains envisaged in paragraph 3 of article 13 until the actual tax levied on such gains in Mexico has been determined.

(*b*) Where a resident of Switzerland derives dividends, interest on royalties which, in accordance with the provisions of articles 10, 11 and 12, and may be taxed in Mexico, Switzerland shall allow, upon request, a relief to such person. The relief may consist of:

(i) A deduction for the tax on the income of that person of an amount equal to the tax levied in Mexico in accordance with the provisions of articles 10, 11 and 12;

such deduction shall not, however, exceed that part of the Swiss income tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in Mexico, or

(ii) A lump sum reduction of the Swiss tax, or

(iii) 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 Mexico 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 Confederation for the avoidance of double taxation.

(*c*) Insofar as Mexico, in application of its domestic legislation, does not impose a tax at source on dividends, Switzerland shall take into account, for the purposes of the relief envisaged in paragraph 2 (*b*) of this article, an amount equal to 10 per cent of the gross amount of the dividends.

(*d*) A company which is a resident of Switzerland and which derives dividends from a company which is a resident of Mexico 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.

Article 22

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 term "nationals" means:

(*a*) All individuals possessing the nationality of a Contracting State;

(*b*) All legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State.

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

4. 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.

5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other

Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

6. The term "taxation" refers in this article to the taxes covered by the Convention, and the Mexican tax on assets.

Article 23

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 Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident. The case must be presented within two years from the first notification of the action resulting taxation not in accordance with the provisions of the Convention.

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 Convention.

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 Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it is felt that such agreement may be facilitated through personal contacts, such exchanges of views may take place within a commission consisting of representatives of the competent authorities of the Contracting States.

5. The competent authorities of the Contracting States may determine the modalities for the implementation of the Convention and, in particular, the formalities to be completed by the residents of a Contracting State to obtain, in the other Contracting State, the tax reductions or exemptions and other fiscal benefits envisaged in the Convention. These formalities may include the submission of a form certifying residence, indicating, in particular, the nature and amount or the value of the income in question and including certification by the fiscal authorities of the first State.

Article 24

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States, shall, upon request, exchange such information as is necessary for carrying out the provisions of paragraph 2 of article 9, articles 10, 11 and 12, and article 23. Any information received by a Contracting State shall be treated as secret and shall be disclosed only to persons or authorities responsible for the implementation of the aforementioned provisions of articles 9, 10, 11, 12 and 23.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State; 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; or to supply information which would disclose any trade, business, industrial or professional secret or trade process, the disclosure of which would be contrary to public policy *(ordre public)*.

Article 25

DIPLOMATIC AGENTS AND CONSULAR OFFICERS

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

2. Notwithstanding the provisions of article 4, any individual who is a member of a diplomatic mission, a consular post or a permanent delegation of a Contracting State which is situated in the other Contracting State or in a third State shall be considered a resident of the sending State, provided that:

(*a*) In accordance with international law, he is not liable to tax in the sending State in respect of income from sources outside that State, and

(*b*) He is subject in the sending State to the same obligations in respect of taxes on his entire income as residents of that State.

3. This Convention shall not apply to international organizations, to organs or officials thereof and to persons who are members of a diplomatic mission, a consular post or a permanent delegation of a third State, being present in one of the Contracting States and not treated in either Contracting State as residents in respect of taxes on income.

Article 26

ENTRY INTO FORCE

This Convention shall enter into force on the date on which the Contracting States notify each other, by means of an exchange of notes through the diplomatic channel that the last of the measures required for the entry into force of the Convention in Mexico and in Switzerland, as the case may be, has been met, and, from that date, the Convention shall have effect:

(*a*) In respect of taxes withheld at source, on income which is taxable or paid after 1 January of the year following the entry into force of the Convention;

(*b*) In respect of other taxes imposed, for the fiscal years beginning on 1 January of the year following the entry into force of the Convention.

Article 27

TERMINATION

This Convention shall remain in force until it is terminated by one of the Contracting States. Either Contracting State may terminate the Convention by giving

notice through the diplomatic channel at least six months before the end of any calendar year. In such event, the Convention shall cease to have effect:

(*a*) In respect of taxes withheld at source, on income which is taxable or paid after 31 December of the year in which the Convention is terminated;

(*b*) In respect of other taxes, for the fiscal years ending after 31 December of the year in which the Convention is terminated.

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

DONE at Mexico City, on 3 August 1993, in duplicate, in the Spanish and French languages, both texts being equally authentic.

For the Government
of the United Mexican States:

PEDRO ASPE ARMELLA
Minister of Finance
and Public Credit

For the Swiss Federal Council:

GERARD FONJALLAZ
Ambassador

PROTOCOL

The Government of the United Mexican States and the Swiss Federal Council have agreed that, at the time of signing the Convention between the two States for the avoidance of double taxation with respect to taxes on income, the following provisions shall form an integral part of the Convention.

1. With regard to article 2:

It is understood that this Convention shall apply to any taxes on income as referred to in paragraph 2 of this article which are introduced by the states of the United Mexican States.

2. With regard to article 5:

In respect of paragraph 3, it is understood that the two Contracting States shall refer to the principles mentioned in paragraphs 17 and 18 of the commentaries on article 5 of the 1977 OECD Model Convention.

3. With regard to article 7:

(*a*) In respect of paragraphs 1 and 2, when an enterprise of one of the Contracting States has a permanent establishment in the other Contracting State, the profits of that permanent establishment shall be determined not on the basis of the total profits of the enterprise but only on the basis of the proportion of the total earnings which are attributable to the actual activity carried out by the permanent establishment, in accordance with paragraph 4 of the commentaries on article 7 of the 1977 OECD Model Convention.

(*b*) In respect of paragraph 1, when a company which is a resident of a Contracting State has a permanent establishment in the other Contracting State and alienates property to persons in that other State which is of an identical or similar nature to property alienated through that permanent establishment, the profits derived from those alienations shall be attributable to that permanent establishment. However, the profits derived from such alienations shall not be attributable to that permanent establishment when those alienations have been carried out for a purpose other than to obtain the benefit of the provisions of the Convention.

(*c*) In respect of paragraph 3, it is understood that the two Contracting States shall refer to the principles mentioned in paragraphs 17 and 18 of the commentaries on article 7 of the 1977 OECD Model Convention.

4. With regard to article 8:

(*a*) In respect of paragraph 1, it is understood that the profits derived from the leasing of a fully equipped ship or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise engaged in the international operation of that ship or aircraft is situated.

The profits derived from the leasing of an empty ship or aircraft which constitute an occasional source of income for that enterprise shall be taxable only in the Contracting State in which the place of effective management is situated.

(*b*) In respect of paragraph 1, it is understood that additional or auxiliary activities carried out by a shipping or air transport enterprise shall be taxable in accordance with the principles mentioned in paragraphs 7 to 12 of the commentary on article 8 of the 1977 OECD Model Convention. However, any additional or auxiliary profits derived from the operation of hotels or a land transportation activity by a

shipping or air transport enterprise shall not be included within the profits envisaged in article 8, paragraph 1.

5. With regard to article 9:

In respect of paragraph 2, it is understood that, in the case of fraud, fault or negligence, the competent authorities shall not be obliged to consult each other in order to make an adjustment to the profits in the two Contracting States.

6. With regard to articles 11 and 12:

In respect of paragraph 6 of article 11 and paragraph 5 of article 12, it is understood that the application of those paragraphs shall extend to the hypothesis mentioned in paragraph 25, subparagraph (*c*), of the commentary on the 1977 OECD Model Convention concerning article 11.

7. With regard to article 12:

(*a*) In respect of paragraph 3, the term "royalties" used in this article also refers to the profits derived from the alienation of rights or property in so far as the amounts derived from such alienation are paid on the basis of the return to the person acquiring such rights or property.

(*b*) In respect of paragraph 3, the payments received for technical or technical assistance services, including scientific, geological or technical analyses or studies, for engineering work, including plans and projects, or for advisory or monitoring services, shall not be regarded as payments for information concerning experience gained in the industrial, commercial or scientific fields, but as income to which the provisions of article 7 or article 14 apply, as the case may be, provided that such remuneration is not paid for information consisting of the communication of commercial, industrial or scientific experience ("know-how").

8. With regard to article 17:

It is understood that the income referred to shall also include incidental income consisting of payments associated with the professional reputation of that resident which are linked with an activity carried out in the other State and derive from that other State.

9. With regard to article 21:

Notwithstanding paragraph 2 (*b*) of article 21, in respect of paragraph 2 (*a*) of article 11, it is understood that during the first five years of the implementation of the Convention, when a resident of Switzerland receives interest which, in accordance with the aforementioned provision, may be taxed in Mexico, Switzerland shall, upon request, allow a relief for that resident. Such relief shall consist of:

(*a*) A deduction of 5 per cent of the gross amount of the interest in question, and

(*b*) A credit against the Swiss tax on the income of that resident, calculated in accordance with the relief mentioned in paragraph (*a*), of 10 per cent of the gross amount of the interest; this credit shall be determined, however, in accordance with the general principles of relief referred to in paragraph 2 (*b*) of article 21.

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

DONE at Mexico City, on 3 August 1993, in duplicate, in the Spanish and French languages, both texts being equally authentic.

For the Government
of the United Mexican States:

PEDRO ASPE ARMELLA
Minister of Finance
and Public Credit

For the Swiss Federal Council:

GERARD FONJALLAZ
Ambassador