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Federal Act on International Withholding Tax (IWTA)

of 15 June 2012 (Status as of 1 January 2016)

The Federal Assembly of the Swiss Confederation,

based on Article 173 paragraph 2 of the Federal Constitution¹, and
having examined the Federal Council Dispatch of 18 April 2012²,
decrees:

Section 1: General Provisions

Art. 1 Subject matter

¹ This Act governs the implementation of agreements on cooperation in the area of taxation, in particular:

- a. the tax regularisation of relevant assets held with Swiss paying agents;
- b. the levying of a final withholding tax on capital income and disclosure of such capital income;
- c. the levying of a final withholding tax on inheritances and disclosure of such inheritances;
- d. measures to safeguard the agreement's purpose;
- e. penalties for failure to comply with the applicable agreement and with this Act;
- f. procedures.

² It applies to the agreements set out in the Annex. Switzerland may enter into agreements with any country, particularly those with which it has signed an investment protection agreement.

³ It is subject to the derogations of individual applicable agreements.

AS 2013 27

¹ SR 101

² BBl 2012 4943

Art. 2 Definitions

¹ For the purposes of this Act:

- a. *capital income* is income and gains on movable capital assets that are taxable under the applicable agreement;
- b. the *partner state* is the contracting state with which Switzerland has entered into an agreement;
- c. a *one-off payment* is one of two options available for tax regularisation of an existing business relationship with a Swiss paying agent, consisting of a one-off lump-sum tax levy;
- d. the *contracting party* is the holder of an account or deposit with a Swiss paying agent containing relevant assets that fall under the scope of the applicable agreement and of which a relevant person is the beneficial owner;
- e. an *authorised person* is a person under the applicable agreement who is entitled to choose between final withholding tax or disclosure in the case of an inheritance, or a person who is legally or contractually authorised to represent that person;
- f. a *tax finality payment* is a supplementary amount levied under the applicable agreement in addition to the retention under the Agreement on the Taxation of Savings between Switzerland and the EU³ (“Agreement on the Taxation of Savings”).

² The terms used in this Act are to be understood in accordance with the respective applicable agreement. This concerns in particular the following terms:

- a. Swiss paying agent;
- b. relevant person;
- c. appointed date;
- d. competent authority;
- e. relevant assets;
- f. account or deposit.

Art. 3 Registration and de-registration as a Swiss paying agent

¹ Those who qualify as a Swiss paying agent under an agreement and hold relevant assets of a relevant person shall register of their own accord with the Swiss Federal Tax Administration (FTA).

² The registration of Swiss paying agents shall include:

- a. their name (company name) and place of domicile or residence. Legal entities or companies without legal personality that are based abroad

³ Agreement of 26 October 2004 between the Swiss Confederation and the European Community providing for measures equivalent to those laid down in Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments (SR **0.641.926.81**).

according to their articles and sole proprietors resident abroad shall state their name (company name), their principal place of business and the address of their managers in Switzerland;

- b. the nature of their business;
- c. the date of commencement of business.

³ Any person who no longer qualifies as a Swiss paying agent shall inform the FTA for de-registration.

Section 2: Tax Regularisation of Relevant Assets

Art. 4 One-off payments

¹ Swiss paying agents shall levy one-off payments in accordance with the applicable agreement.

² Where a relevant person has established a business relationship with a Swiss paying agent between appointed date 2 and appointed date 3 and opted for the one-off payment, the Swiss paying agent levies the one-off payment in accordance with the applicable agreement on appointed date 4 at the earliest but no later than 12 months after appointed date 3. Where the previous paying agent fails to submit the required information within 12 months following appointed date 3 and where the relevant person or other contracting party has not initiated civil proceedings against the previous paying agent, the new Swiss paying agent shall proceed in the same manner as if the relevant person had not complied with his or her duties.

³ The relevant person or other contracting party may object in writing to the certificate produced by the Swiss paying agent regarding the one-off payment within 30 days of notification. The Swiss paying agent and the relevant person or other contracting party shall endeavour to come to a mutually acceptable solution within the terms of the applicable agreement. Within 60 days of the written objection being submitted, the Swiss paying agent shall either produce a new certificate or confirm the validity of the original certificate.

⁴ A certificate is considered approved if the relevant person or other contracting party does not apply in writing to the FTA for a ruling within 30 days of notification of the new certificate or confirmation of validity of the original certificate. An appeal against the FTA's ruling is governed by the general provisions on the administration of federal justice.

Art. 5 Transfer to the FTA

¹ Swiss paying agents shall transfer the one-off payments levied to the FTA by the deadlines set out in the applicable agreement.

² They shall submit the final statement to the FTA no later than 14 months after appointed date 3.

Art. 6 Disclosure

¹ Where a relevant person or other contracting party has given his or her express authorisation, the Swiss paying agent shall disclose the information set out in the applicable agreement to the FTA by the deadlines set out in the agreement.

² Such disclosure shall be made without authorisation if so provided for in the applicable agreement.

³ Where a relevant person has established a business relationship with a Swiss paying agent between appointed date 2 and appointed date 3 and opted for voluntary disclosure, the Swiss paying agent shall disclose the information in accordance with the applicable agreement on appointed date 4 at the earliest but no later than 12 months after appointed date 3. Where the previous paying agent fails to submit the required information within 12 months of appointed date 3 and where the relevant person or other contracting party has not initiated civil proceedings against the previous paying agent, the new Swiss paying agent shall proceed in the same manner as if the relevant person had not complied with his or her duties.

Art. 7 Transfer to partner states

The FTA shall transfer the one-off payments received and report the disclosures to the competent authorities of the partner states by the deadlines set out in the applicable agreement.

Art. 8 Statutory limitation

¹ The right to require the Swiss paying agent to transfer a one-off payment or report a disclosure shall expire five years after the end of the calendar year in which the one-off payment was to be transferred or the disclosure reported.

² The statutory limitation period shall be interrupted whenever a Swiss paying agent is notified of any official action pertaining to the enforceability of the one-off payment or disclosure. Once a statutory limitation period has been interrupted, a new limitation period shall begin to run.

³ The statutory limitation period shall expire no later than 15 years after the end of the calendar year in which the one-off payment was to be transferred or the disclosure reported.

Art. 9 Subsequent identification of a relevant person

¹ Where a relevant person is subsequently identified as such by the Swiss paying agent, the Swiss paying agent shall immediately notify this person or other contracting party in writing.

² The relevant person or other contracting party may send the FTA a written request for tax regularisation of the relevant person's relevant assets in accordance with the applicable agreement within three months of such notification being made.

³ The request shall include:

- a. the option chosen for tax regularisation in accordance with the agreement;

- b. details on the availability of information needed for tax regularisation.

Art. 10 Swiss paying agents' duty to cooperate

Where the competent authority of the partner state has submitted a request to the FTA, the Swiss paying agent shall:

- a. cooperate in verifying the authenticity of a certificate;
- b. provide the FTA with further information for the identification of a relevant person who has been reported to the competent authority of the partner state.

Art. 11 Refund of expense allowance

¹ Where the relevant person obtains a refund for a wrongly levied one-off payment from the competent authority of the partner state, the relevant person is entitled to claim a refund of the expense allowance deducted where such has been agreed with the partner state and the competent authority of the partner state has not refunded this to the relevant person.

² Requests for a refund of the expense allowance shall be submitted to the FTA in writing within six months after the refund decision by the partner state.

Section 3: Levying of Final Withholding Tax

Art. 12 Principles

¹ Swiss paying agents levy a final withholding tax on capital income in accordance with the applicable agreement.

² Where a Swiss paying agent becomes aware of the death of a relevant person, it shall freeze the relevant assets of which the relevant person was the beneficial owner and levy a final withholding tax in accordance with the applicable agreement.

Art. 13 Freezing of relevant assets in inheritance cases

¹ The authorised person or other person with a legitimate interest may object in writing to the Swiss paying agent's decision to freeze the relevant assets. The Swiss paying agent and the authorised person or other person shall endeavour to come to a mutually acceptable solution within the terms of the applicable agreement. Within 60 days of this written objection being submitted, the Swiss paying agent shall contact the authorised person or other person in writing to either confirm the freezing of the relevant assets or inform him or her of the cancellation of the freezing.

² The authorised person or other person may apply in writing to the FTA for a ruling within 30 days of the freezing of relevant assets being confirmed. An appeal against the FTA's ruling is governed by the general provisions on the administration of federal justice.