

No. 49099. Poland and Switzerland

CONVENTION BETWEEN THE REPUBLIC OF POLAND AND THE SWISS CONFEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL. BERN, 2 SEPTEMBER 1991 [*United Nations, Treaty Series*, vol. 2791, I-49099.]

PROTOCOL BETWEEN THE REPUBLIC OF POLAND AND THE SWISS CONFEDERATION AMENDING THE CONVENTION BETWEEN THE REPUBLIC OF POLAND AND THE SWISS CONFEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL AND THE PROTOCOL, SIGNED AT BERNE ON 2ND SEPTEMBER 1991. WARSAW, 20 APRIL 2010

Entry into force: 17 October 2011 by notification, in accordance with article XII

Authentic texts: English, German and Polish

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N° 49099. Pologne et Suisse

CONVENTION ENTRE LA RÉPUBLIQUE DE POLOGNE ET LA CONFÉDÉRATION SUISSE EN VUE D'ÉVITER LES DOUBLES IMPOSITIONS EN MATIÈRE D'IMPÔTS SUR LE REVENU ET SUR LA FORTUNE. BERNE, 2 SEPTEMBRE 1991 [*Nations Unies, Recueil des Traités*, vol. 2791, I-49099.]

PROTOCOLE ENTRE LA CONFÉDÉRATION SUISSE ET LA RÉPUBLIQUE DE POLOGNE MODIFIANT LA CONVENTION ENTRE LA CONFÉDÉRATION SUISSE ET LA RÉPUBLIQUE DE POLOGNE EN VUE D'ÉVITER LES DOUBLES IMPOSITIONS EN MATIÈRE D'IMPÔTS SUR LE REVENU ET SUR LA FORTUNE AINSI QUE LE PROTOCOLE, SIGNÉS À BERNE LE 2 SEPTEMBRE 1991. VARSOVIE, 20 AVRIL 2010

Entrée en vigueur : 17 octobre 2011 par notification, conformément à l'article XII

Textes authentiques : anglais, allemand et polonais

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[ENGLISH TEXT – TEXTE ANGLAIS]

P R O T O C O L

BETWEEN

THE REPUBLIC OF POLAND

AND

THE SWISS CONFEDERATION

**AMENDING THE CONVENTION BETWEEN THE REPUBLIC OF POLAND
AND THE SWISS CONFEDERATION FOR THE AVOIDANCE OF DOUBLE
TAXATION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL
AND THE PROTOCOL, SIGNED AT BERNE ON 2ND SEPTEMBER 1991**

The Government of the Republic of Poland

and

The Swiss Federal Council,

desiring to conclude a Protocol to amend the Convention between the Republic of Poland and the Swiss Confederation for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital, signed at Berne on 2nd September 1991 (hereinafter referred to as “the Convention”) and the Protocol signed at Berne on 2nd September 1991 (hereinafter referred to as “the Protocol to the Convention”),

Have agreed as follows:

ARTICLE I

Sub-paragraph a) of paragraph 3 of Article 2 (Taxes covered) shall be deleted and replaced by the following sub-paragraph:

“a) in Poland:

- (i) the corporate income tax;
- (ii) the personal income tax;

(hereinafter referred to as “Polish tax”);”.

ARTICLE II

Paragraph 1 of Article 4 (Resident) shall be deleted and replaced by the following paragraph:

“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, and also includes that State and any political subdivision or local authority thereof. This term, however, 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.”.

ARTICLE III

1. Paragraph 2 of Article 10 (Dividends) of the Convention shall be deleted and replaced by the following paragraph:

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

the beneficial owner of the dividends is a resident of the other Contracting State the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.”.

2. The following paragraphs 2a and 2b shall be added to Article 10 (Dividends) of the Convention:

“2a. Notwithstanding the provisions of paragraph 2, dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State shall be taxable only in that other State if the beneficial owner is

a) a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends on the date the dividends are paid and has done so or will have done so for an uninterrupted 24-month period in which that date falls; or

b) a pension fund or other similar institution providing pension schemes in which individuals may participate in order to secure retirement benefits, where such pension fund or other similar institution is established, recognized for tax purposes and controlled in accordance with the laws of that other State.

2b. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of the limitations provided for in paragraphs 2 and 2a.

These paragraphs shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.”.

ARTICLE IV

1. Paragraph 2 of Article 11 (Interest) of the Convention shall be deleted and replaced by the following paragraph:

“2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the interest.”.

2. The following paragraph 2a shall be added to Article 11 (Interest) of the Convention:

“2a. Notwithstanding the provisions of paragraph 2, interest paid by a company which is a resident of a Contracting State to a resident of the other Contracting State shall be taxable only in that other State if the beneficial owner is a company (other than a partnership) associated with the company paying the interest.”.

3. Paragraph 5 of Article 11 (Interest) of the Convention shall be deleted and replaced by the following paragraph:

“5. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.”.

ARTICLE V

1. Paragraph 2 of Article 12 (Royalties) of the Convention shall be deleted and replaced by the following paragraph:

“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 5 per cent of the gross amount of the royalties.”.

2. The following paragraph 2a shall be added to Article 12 (Royalties) of the Convention:

“2a. Notwithstanding the provisions of paragraph 2, royalties paid by a company which is a resident of a Contracting State to a resident of the other Contracting State shall be taxable only in that other State if the beneficial owner is a company (other than a partnership) associated with the company paying the royalties.”.