

**Convention between the Republic of Korea and Switzerland
for the Avoidance of Double Taxation
with Respect to Taxes on Income**

Signed at Berne 12 February, 1980

Entered into force 22 April, 1981

The Government of the Republic of Korea and the Swiss Federal Council,
Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on
income.

Have agreed as follows:

Article 1. **【Personal Scope】** [1981.04.22]

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

Article 2. **【Taxes Covered】** [1981.04.22]

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 and
taxes on the total amounts of wages or salaries paid by enterprises.

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

(a) in Korea : the income tax, the corporation tax, and the inhabitant tax (hereinafter referred to
as "Korean 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.

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

Article 3. **【General Definitions】** [1981.04.22]

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

(a) the term "Korea" means the territory of the Republic of Korea including any area adjacent to the territorial sea of the Republic of Korea which, in accordance with international law, has been or may hereafter be designated under the laws of the Republic of Korea as an area within which the sovereign rights of the Republic of Korea with respect to the sea-bed and sub-soil and their natural resources may be exercised;

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

(c) the terms "a Contracting State" and "the other Contracting State" mean Korea or Switzerland, as the context requires ;

(d) the term "tax" means Korean tax or Swiss tax, as the context requires;

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

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

(g) 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;

(h) 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.

(i) the term "competent authority" means:

(i) in Korea: the Minister of Finance or his authorized representative;

(ii) in Switzerland : the Director of the Federal Tax Administration or his authorized representative;

(j) the term "nationals" means :

(i) all individuals possessing the nationality of a Contracting State;

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

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】** [1981.04.22]

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 head or main office, 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 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, then it shall be deemed to be a resident of the State in which its place of effective management is situated. In case of doubts the competent authorities of the Contracting States shall settle the question by mutual agreement.

Article 5. **【Permanent Establishment】** [1981.04.22]

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

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

4. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it carries on supervisory activities in that other State for more than six months in connection with a building site or construction or installation or assembly project which is being undertaken in that other State.

5. 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 subparagraphs 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;

6. 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 for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 5 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.

7. 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.

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** [1981.04.22]

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, boats 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. 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 professional services or other activities of an independent character.

Article 7. **Business Profits** [1981.04.22]

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

Article 8. **【Shipping and Air Transport】** [1981.04.22]

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

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

Article 9. **【Associated Enterprises】** [1981.04.22]

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 differs 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.

Article 10. **【Dividends】** [1981.04.22]

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) 10 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 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 provision 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 and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 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 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】** [1981.04.22]

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 also 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 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2,

(a) interest arising in Korea and derived by a resident of Switzerland with respect to debt-claims guaranteed or insured or indirectly financed by Switzerland or any institution fully owned by Switzerland shall be exempt from Korean tax; and

(b) interest arising in Switzerland and derived by the Export-Import Bank of Korea or a resident of Korea with respect to debt-claims guaranteed or insured or indirectly financed by the Government of Korea, the Bank of Korea, the Export-Import Bank of Korea or any institution fully owned by Korea shall be exempt from Swiss tax.

4. The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the laws of the State in which the income arises.

5. The provisions of paragraphs 1 and 2 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 and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 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 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment 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, 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 lastmentioned 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】** [1981.04.22]

1. Royalties 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 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 scientific work, 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 and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 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 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 in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

6. 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 Convention.

Article 13. **【Capital Gains】** [1981.04.22]

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, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State. However, gains from the alienation of ships or aircraft operated in international traffic and movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State of which the enterprise is a resident.

3. Gains from the alienation of any property other than that referred to in paragraphs 1 and 2 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14. **【Personal Services】** [1981.04.22]

1. Subject to the provisions of Articles 15,17,18,19 and 20 salaries, wages and other similar remuneration in respect of an employment as well as income in respect of professional services or other activities of an independent character, derived by a resident of a Contracting State, shall be taxable only in that State, unless the employment, services or activities are exercised or performed in the other Contracting State. If the employment, services or activities are so exercised or performed, such remuneration or income as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration or income derived by a resident of a Contracting State in respect of an employment, services or activities exercised or performed 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 fiscal year concerned, and

(b)the remuneration or income is paid by, or on behalf of, a person who is not a resident of the other State, and

(c)the remuneration or income is not borne by a permanent establishment which that person has in the other State.

3. Notwithstanding the provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated in

international traffic shall be taxable only in that State.

Article 15. **【Directors' Fees】** [1981.04.22]

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

Article 16. **【Artistes and Athletes】** [1981.04.22]

1. Notwithstanding the provisions of Article 14, 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 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 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 and 14, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to remuneration or profits, salaries, wages and similar income derived from activities performed in a Contracting State by entertainers or athletes if their visit to that State is substantially supported from the public funds of the other Contracting State, a political subdivision or a local authority thereof.

Article 17. **【Pensions】** [1981.04.22]

Subject to the provisions of paragraph 1 of Article 18, 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 18. **【Government Service】** [1981.04.22]

1. Remuneration, including pensions, paid by Contracting State or a political subdivision or a local authority thereof or by an entity created and organised by a special law of such State to a national of that State in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

2. The provisions of Articles 14, 15, 16 and 17 shall apply to remuneration and pensions in respect of services rendered in connection with any business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 19. **【Students】** [1981.04.22]

1. 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.

2. An individual 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 for the purpose of study, research or training or of acquiring technical, professional or business experience, shall be exempt from tax in that State for a period or periods not exceeding in the aggregate twelve months on remuneration in respect of an employment in such State provided that such employment is directly related to his studies, research, training or acquiring of experience and that the remuneration from that employment does not exceed 18,000 Swiss francs or the equivalent thereof in Korean currency at the official rate of exchange.

Article 20. **【Professors and Teachers】** [1981.04.22]

An individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who at the invitation of the first-mentioned State or an university, college, school or other similar recognised educational institution in that State, visits that State for a period not exceeding two years solely for the purpose of teaching or research or both at such educational institution shall be exempt from tax in that State on his remuneration for such teaching or research.

Article 21. **【Other Income】** [1981.04.22]

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention 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, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

Article 22. **【Elimination of Double Taxation】** [1981.04.22]

1. Subject to the provisions of Korean tax law regarding the allowance as a credit against Korean

tax of tax payable in any country other than Korea(which shall not affect the general principle hereof), the Swiss tax payable under the laws of Switzerland and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within Switzerland shall be allowed as a credit against Korean tax payable in respect of that income.

2. Where a resident of Switzerland derives income which, in accordance with the provisions of this Convention, may be taxed in Korea, Switzerland shall, subject to the provisions of paragraphs 3 and 4, exempt such income from tax but may, in calculating tax on the remaining income of that resident, apply the rate of tax which would have been applicable if the exempted income had not been so exempted.

3. Where a resident of Switzerland derives dividends, interest or royalties which, in accordance with the provisions of Articles 10, 11 and 12, may be taxed in Korea, Switzerland shall allow, upon request, a relief to such resident. The relief may consist of

(a) a deduction from the Swiss tax on the income of that resident of an amount equal to the tax levied in Korea in accordance with the provisions of Articles 10,11 and 12; such deduction shall not, however exceed that part of the swiss tax, as computed before the deduction is given, which is attributable to such items of income which may be taxed in Korea; or

(b) a lump sum reduction of the Swiss tax determined by standardized formula which have regard to the general principles of the relief referred to in subparagraph (a) above; or

(c) 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 Korea 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 Swiss Confederation for the avoidance of double taxation.

4. Where a resident of Switzerland derives interest or royalties which, in accordance with the provisions of the Foreign Capital Inducement Law of Korea or any law of similar character, are exempt from Korean tax or taxed at a rate lower than the rate provided for in Article 11, paragraph 2. or Article 12, paragraph 2, respectively, Switzerland shall allow, upon request, a relief to such resident of an amount equal to 10 per cent of the gross amount of the interest or royalties. The provisions of paragraph 3 of this Article shall apply accordingly.

5. A company which is a resident of Switzerland and which derives dividends from a company which is a resident of Korea 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 23. **【Non-Discrimination】** [1981.04.22]

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 own residents.

3. Except where the provisions 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.

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 that 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 24. **【Mutual Agreement Procedure】** [1981.04.22]

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 or, if his case comes under paragraph 1 of Article 23, 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 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 the 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. They may also consult together for the elimination of double taxation in cases not provided for in 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.

Article 25. **【Diplomatic Agents and Consular Officers】** [1981.04.22]

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. In so far as, on account of fiscal privileges granted to diplomatic agents or consular officers under the general rules of international law or under the provisions of special international treaties, income is not subject to tax in the receiving State, the right to tax shall be reserved to the sending State.

3. For the purposes of the Convention, persons who are members of a diplomatic or consular mission of a Contracting State in the other Contracting State or in a third State and who are nationals of the sending State shall be deemed to be residents of the sending State if they are submitted therein to the same obligations in respect of taxes on income as are residents of that State.

4. The Convention shall not apply to International Organizations, to organs or officials thereof and to persons who are members of a diplomatic or consular 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.

Article 26. **【Entry into Force】** [1981.04.22]

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

2. The Convention shall enter into force on the thirtieth day after the date of exchange of the instruments of ratification and its provisions shall have effect.

(a) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after 1 January 1979; and

(b)in reject of other taxes for taxation years beginning on or after 1 January 1979.

Article 27. **【Termination】** [1981.04.22]

This Convention shall remain in force indefinitely but either of the Contracting States may, on or before the thirtieth day of June in any calendar year beginning after the expiration of a period of five years from the date on which the instruments of ratification have been exchanged, give to the other Contracting State, through diplomatic channels, written notice of termination. In such event, the Convention shall cease to have effect :

(a)in respect of tax with held at the source on amounts paid or credited to non-residents on or after the first day of January in the calendar year next following that in which the notice is given; and

(b)in respect of other taxes for fiscal years beginning on or after the first day of January in the calendar year next following that in which the notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention.

Done in duplicate at Borne, this twelfth day of February, 1980 in the Korean, German and English languages, all texts being equally authentic and, in case there is any divergency of interpretation between the Korean and German texts, the English text shall prevail.

THE REPUBLIC OF KOREA COUNCIL
FOR THE GOVERNMENT OF FOR THE SWISS FEDERAL

[1981.04.22]

PROTOCOL

The Government of the Republic of Korea and The Swiss Federal Council

Have Agreed at the Signing at Borne on 12, February 1980 of the Convention between the two States for the avoidance of double taxation with respect to taxes on income upon the following provisions which shall form an integral part of the said Convention.

1.In respect of subparagraph a) of paragraph 3 of Article 2 of the Convention, it is understood that the Convention shall apply to the Korean defense tax where charged by reference to the income tax or the corporation tax.

2.In respect of Article 12, it is understood that the Convention shall not apply to payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary or

artistic work (including cinematograph films and films or tapes for radio or television broadcasting).

3. In respect of paragraph 2, of Articles 10, 11 and 12. it is understood that where a resident of Switzerland derives dividends, interest or royalties which, in accordance with the provisions of the Foreign Capital Inducement Law of Korea or any law of similar character, are exempt from Korean tax or taxed at a rate lower than the respective rate provided in the said Articles, the exemption from, or the reduction of, Korean tax under the said laws shall not be precluded by the provisions of the said Articles. In respect of interest and royalties, paragraph 4 of Article 22 shall apply.

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA
FOR THE GOVERNMENT OF THE SWISS FEDERAL

PROTOCOL
AMENDING THE CONVENTION BETWEEN
THE REPUBLIC OF KOREA AND SWITZERLAND FOR
THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO
TAXES ON INCOME,
SIGNED AT BERNE ON FEBRUARY 12, 1980

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

Desiring to conclude a Protocol to amend the Convention between the Republic of Korea and Switzerland for the Avoidance of Double Taxation with respect to Taxes on Income, signed at Berne on February 12, 1980 (hereinafter referred to as the “Convention”),

Have agreed as follows:

Article I

Subparagraph (a) of paragraph 3 of Article 2 (Taxes Covered) of the Convention shall be deleted and replaced by the following:

“(a) In Korea:

the income tax, the corporation tax, the local income tax and the special tax for rural development
(hereinafter referred to as “Korean tax”);”

Article II

The following new paragraph 4 shall be added to Article 4 (Resident) of the Convention:

“4. Where, pursuant to any provisions of this Convention, a Contracting State reduces the rate of tax on, or exempts from tax, income of a resident of the other Contracting State and under the laws in force in that other Contracting State the resident is subjected to tax by that other Contracting State only on that part of such income which is remitted to or received in that other Contracting State, then the reduction or exemption shall apply only to so much of such income as is remitted to or received in that other Contracting State.”

Article III

The existing paragraph of Article 9 (Associated Enterprises) of the Convention shall be numbered paragraph 1 and the following new paragraph 2 shall be added:

“2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State 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 that other State, if it agrees that the adjustment made by the first-mentioned State is justified both in principle and as regards the amount, shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.”

Article IV

Subparagraph (a) of paragraph 2 of Article 10 (Dividends) of the Convention shall be deleted and replaced by the following:

“(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 10 per cent of the capital of the company paying the dividends;”

Article V

The paragraphs 2 and 3 of Article 11 (Interest) of the Convention shall be deleted and replaced by the following:

“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 recipient is the beneficial owner of the interest the tax so charged shall not exceed:

- (a) 5 per cent of the gross amount of the interest if the interest is paid to a bank;
- (b) 10 per cent of the gross amount of the interest in other cases.

3. Notwithstanding the provisions of paragraph 2,

- (a) interest arising in a Contracting State and derived in respect of a loan, debt-claim or credit that is owed to, or made, provided, guaranteed or insured by the other Contracting State or a political subdivision, local authority or export financing agency thereof, shall be exempt from tax in the first-mentioned State;
- (b) interest arising in a Contracting State and paid to the Central Bank of the other Contracting State shall be exempt from tax in the first-mentioned State;
- (c) interest paid in connection with the sale on credit of any industrial, commercial or scientific equipment, or paid in connection with the sale on credit of any merchandise by one enterprise to another enterprise shall be taxable only in the Contracting State of which the recipient is a resident if such recipient is the beneficial owner of the interest.”

Article VI

The paragraphs 2 and 3 of Article 12 (Royalties) of the Convention shall be deleted and replaced by the following:

“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.

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 information concerning industrial, commercial or scientific experience.”

Article VII

1. The following new paragraph 3 shall be added to Article 13 (Capital Gains) of the Convention:

“3. Gains derived by a resident of a Contracting State from the alienation of shares of a company deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State. However, this paragraph does not apply to gains derived from the alienation of shares:

- (a) quoted on a stock exchange established in and recognised by a Contracting State or on any other stock exchange as may be agreed between the competent authorities of the Contracting States; or
- (b) where the gains are derived in the course of a corporate reorganisation, amalgamation, division or similar transaction.”

2. The existing paragraph 3 shall be renumbered as paragraph 4 and the reference to “paragraphs 1 and 2” shall be replaced by “paragraphs 1, 2 and 3”.

Article VIII

1. Article 14 (Personal Services) of the Convention shall be deleted and replaced by the following Article 14:

“Article 14
Independent Personal Services

1. Income derived by an individual who is 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. For the purposes of this Convention, where an individual who is a resident of a Contracting State is physically present in the other Contracting State for a period or periods exceeding in the aggregate 183 days in the fiscal year concerned, he shall be deemed to have a fixed base regularly available to him in that other State and the income that is derived from his activities that are performed in that other State shall be 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.”

2. The following new Article 15 shall be inserted immediately after Article 14 of the Convention:

“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 fiscal 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.

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

3. The Articles 15, 16, 17, 18 and 19 of the Convention shall become Articles 16, 17, 18, 19 and 20.

Article IX

Article 19 (Students) of the Convention shall be deleted and replaced by the following:

“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 X

Article 20 (Professors and Teachers) of the Convention shall be deleted.

Article XI

The following new paragraph 3 shall be added to Article 21 (Other Income) of the Convention:

“3. Where, by reason of a special relationship between the person referred to in paragraph 1 and some other person, or between both of them and some third person, the amount of the income referred to in paragraph 1 exceeds the amount (if any) which would have been agreed upon between them in the absence of such a relationship, the provisions of this Article shall apply only to the last mentioned amount. In such a case, the excess part of the income shall remain taxable according to the laws of each Contracting State, due regard being had to the other applicable provisions of this Convention.”

Article XII

1. Paragraph 1 of Article 22 (Elimination of Double Taxation) of the Convention shall be deleted and replaced by the following:

“1. Subject to the provisions of Korean tax law regarding the allowance as a credit against Korean tax of tax payable in any country other than Korea (which shall not affect the general principle hereof):

- (a) the Swiss tax payable (excluding, in the case of a dividend, tax payable in respect of profits out of which the dividend is paid) under the laws of Switzerland and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within Switzerland shall be allowed as a credit against Korean tax payable in respect of that income. The credit shall not, however, exceed that portion of Korean tax which the income from sources within Switzerland bears to the entire income subject to Korean tax.
- (b) In the case of a dividend paid by a company which is a resident of Switzerland to a company which is a resident of Korea and which owns not less than 10 per cent of the shares of the company paying the dividend, the

credit shall take into account (in addition to any Swiss tax for which credit may be allowed under the provisions of subparagraph (a) of this paragraph) the Swiss tax payable by the company paying the dividend in respect of the profits out of which such dividend is paid.”

2. Paragraph 2 of Article 22 (Elimination of Double Taxation) of the Convention shall be deleted and replaced by the following:

“2. Where a resident of Switzerland derives income which, in accordance with the provisions of this Convention, may be taxed in Korea, Switzerland shall, subject to the provisions of paragraph 3, exempt such income from tax but may, in calculating tax on the remaining income of that resident, apply the rate of tax which would have been applicable if the exempted income had not been so exempted. However, such exemption shall apply to gains referred to in paragraph 3 of Article 13 only if actual taxation of such gains in Korea is demonstrated.”

3. Paragraph 4 shall be deleted.

4. Paragraph 5 shall be renumbered as paragraph 4.

Article XIII

1. The following new Article 25 shall be inserted immediately after Article 24 (Mutual Agreement Procedure) of the Convention:

“Article 25

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning

taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the requested State authorizes such use.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) 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;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic use.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. In order to obtain such information, the tax authorities of the requested Contracting State, if necessary to comply with its obligations under this paragraph, shall have the power to enforce the disclosure of information covered by this paragraph, notwithstanding paragraph 3 or any contrary provisions in its domestic laws.”

2. The Articles 25, 26 and 27 of the Convention shall become Articles 26, 27 and 28.

Article XIV

The paragraphs 1, 2 and 3 of the Protocol to the Convention shall be deleted and replaced by the following:

“1. In respect of Article 24:

If at any time after the date of signature of this Protocol, Korea includes a provision on arbitration in any of its double taxation conventions, Korea shall inform Switzerland in writing and shall enter into negotiations with Switzerland with a view to including a provision on arbitration in the present Convention for the avoidance of double taxation with respect to taxes on income.

2. In respect of Article 25:

- (a) It is understood that an exchange of information will only be requested once the requesting Contracting State has exhausted its normal procedures under domestic law to obtain the information.
- (b) It is understood that the tax authorities of the requesting State shall provide the following information to the tax authorities of the requested State when making a request for information under Article 25 of the Convention:

- (i) the name of the person(s) under examination or investigation and, if available, other particulars facilitating the identification of that person(s), such as address, date of birth, marital status, tax identification number;
 - (ii) the period of time for which the information is requested;
 - (iii) a statement of the information sought including its nature and the form in which the requesting State wishes to receive the information from the requested State;
 - (iv) the tax purpose for which the information is sought;
 - (v) the name and, to the extent known, the address of any person believed to be in possession of the requested information.
- (c) It is understood that the administrative assistance provided for in Article 25 does not include measures aimed only at the simple collection of pieces of evidence (“fishing expeditions”). While paragraph (b) contains important procedural requirements that are intended to ensure that fishing expeditions do not occur, subparagraphs (i) through (v) nevertheless need to be interpreted in order not to frustrate effective exchange of information.
- (d) It is understood that Article 25 of the Convention shall not commit the Contracting States to exchange information on an automatic or a spontaneous basis. The Contracting States expect to provide information to one another for carrying out the provision of the Convention.
- (e) It is understood that in case of an exchange of information, the administrative procedural rules regarding taxpayers’ rights provided for in the requested Contracting State remain applicable before the information is transmitted to the requesting Contracting State. It is further understood that this provision aims at guaranteeing the taxpayer a fair procedure and not at preventing or unduly delaying the exchange of information process.”

Article XV

1. The Protocol shall be ratified and the instruments of ratification shall be exchanged as soon as possible.

2. The Protocol shall enter into force on the fifteenth day after the date of exchange of instruments of ratification, and its provisions shall have effect:

- (a) in respect of taxes withheld at source, on amounts paid or credited on or after the first day of January of the year following the entry into force of this Protocol;
- (b) in respect of other taxes, for taxation years beginning on or after the first day of January of the year following the entry into force of this Protocol; and
- (c) in respect of Article XIII of this Protocol, to requests made on or after the date of entry into force of this Protocol regarding information that relates to taxable periods beginning on or after the first day of January next following the date of signature of this Protocol.

IN WITNESS WHEREOF, the undersigned, duly authorized to that effect, have signed this Protocol.

Done in duplicate at Seoul on this 28th day of December, in the Korean, German and English languages, all texts being equally authoritative. In the case of any divergence of interpretation between the Korean and the German texts, the English text shall prevail.

FOR THE GOVERNMENT OF
THE REPUBLIC OF KOREA

FOR THE SWISS FEDERAL COUNCIL

MUTUAL AGREEMENT regarding the mode of application of subparagraph b of paragraph 3 of Article 13 of the Korea-Switzerland Tax Treaty

1. The competent authorities of the Republic of Korea and Switzerland have reached the following mutual agreement regarding the mode of application of subparagraph b of paragraph 3 of Article 13 of the Convention between the Republic of Korea and Switzerland for the avoidance of double taxation with Protocol amending the Convention signed on 28 December 2010.
2. Regarding the purpose and the interpretation of subparagraph b of paragraph 3 of Article 13, the following is understood: Based on paragraph 3 of Article 13, gains from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property may be taxed in the State where the immovable property is located Subparagraph b of that paragraph does not preclude the taxing right of that State but keeps that State from taxing such gains derived in the course of a corporate reorganisation, amalgamation, division or similar transaction. However, if such shares are subsequently alienated in transactions not falling within the sense of the said subparagraph b, the State where the immovable property is located shall be able to exercise its taxing right.
3. the alienation of shares of a company shall be considered to take place in the course of a corporate reorganisation, amalgamation, division or similar transaction in the sense of subparagraph b of paragraph 3 of Article 13 if the transferor and the transferee of the shares are companies that form part of the same group. the form of their remuneration is irrelevant; in particular, the proceeds from the alienation may also be credited or paid to the transferor. The transferor and the transferee shall be considered to be companies being part of the same group if, directly or indirectly by voting rights or otherwise, the transferor controls the transferee or the transferee controls the transferor or a company controls the transferor and the transferee.
4. In respect of the State where the immovable property is situated, it is understood that for the purpose of determining the amount of the gain of any subsequent alienation of shares by the transferee other than an alienation falling under paragraph 3 of this mutual agreement or in the case of in Switzerland, the transferee takes the initial cost of the shares of the company from the transferor
5. This mutual agreement shall enter into force at the same time as the Protocol amending the Convention enters into force.

Done in duplicate at Paris this 25 day of January 2011 in the English language.

For the Republic of Korea:

For Switzerland:

Chang-yong Moon

Jurg Giraudi