

# Taxation (Savings Income)

**2004-17**

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## TAXATION (SAVINGS INCOME) (SWITZERLAND) REGULATIONS 2006

**Subsidiary  
2006/119**

Subsidiary Legislation made under s. 14 of the Taxation (Savings Income) Act 2004 as read with s. 23 of the Interpretation and General Clauses Act.

## TAXATION (SAVINGS INCOME) (SWITZERLAND) REGULATIONS 2006

**(LN. 2006/119)**

**9.11.2006**

Amending enactments	Relevant current provisions	Commencement date
None		

### **EU Legislation/International Agreements involved:**

Directive 2003/48/EC  
Decision 2004/911/EC  
Decision 2004/912/EC

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### **ARRANGEMENT OF REGULATIONS.**

Regulation

1. Title.
3. Interpretation.
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### **SCHEDULE TEXT OF AGREEMENT**

**2004-17**

## **Taxation (Savings Income)**

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*In exercise of the powers conferred on me by section 14 of the Taxation (Savings Income) Act 2004 as read with section 23 of the Interpretation and General Clauses Act and in order to implement in Gibraltar–*

- (a) *Council Decision 2004/912/EC of 25 October 2004 on the conclusion of the Agreement in the form of an Exchange of Letters between the European Community and the Swiss Confederation on the date of application of the Agreement between the European Community and the Swiss Confederation 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; and*
- (b) *Council Decision 2004/911/EC of 2 June 2004 on the signing and conclusion of the Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments and the accompanying Memorandum of Understanding,*

*I have made the following Regulations–*

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**Title.**

1. These Regulations may be cited as the Taxation (Savings Income) (Switzerland) Regulations 2006.

**Interpretation.**

3.(1) In these Regulations and unless the context otherwise requires—

“Agreement” means the Agreement between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments and the accompanying Memorandum of Understanding as set out in the Schedule;

“competent authority” without further, is to be construed in accordance with regulation 3.

(2) Terms used in these Regulations but not defined are to be construed in accordance with the Agreement.

**Competent authority.**

4. The competent authority for the purposes of these Regulations and of the Agreement is the Chief Secretary.

**Exchange of information.**

5.(1) The competent authorities shall exchange information on conduct constituting—

- (a) tax fraud; or
- (b) offences with the same level of wrongfulness as is the case for tax fraud,

for income to which section 7 of the Taxation (Savings Income) Act 2004 applies.

(2) In response to a duly justified request, the competent authority shall provide information with respect to matters that the Swiss competent authority is investigating, or may investigate, on an administrative, civil or criminal basis.

(3) Without prejudice to the scope of the exchange of information as defined in this regulation, information shall be exchanged in accordance

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with the procedures laid down in the Agreed Arrangements referred to paragraph (z) of Annex I to the Agreement and shall be treated as confidential in the manner provided therein.

(4) In determining whether information may be provided in response to a request, the competent authority shall apply the statute of limitations applicable under the laws of Switzerland instead of the provisions of the Limitation Act.

(5) The competent authority—

- (a) shall provide information where the Swiss competent authority has a reasonable suspicion that the conduct would constitute tax fraud or the like;
- (b) may request information where its suspicion of tax fraud or offences with the same level of wrongfulness as is the case for tax fraud is based on—
  - (i) documents, whether authenticated or not, and including but not limited to business records, books of account, or bank account information;
  - (ii) testimonial information from the taxpayer;
  - (iii) information obtained from an informant or other third person that has been independently corroborated or otherwise is likely to be credible; or
  - (iv) circumstantial evidence.

(6) The competent authority may enter into bilateral negotiations with the Swiss competent authority in order to define individual categories of cases falling under sub-regulation (1)(b).

**Consultation.**

6.(1) If any disagreement arises between the Swiss competent authority and the competent authority as to the interpretation or application of the Agreement, they shall endeavour to resolve this by mutual agreement.

(2) Where sub-regulation (1) applies, both parties shall immediately notify the Commission of the European Communities and the competent authorities of the other Member States of the results of their consultations.

SCHEDULE

Regulation 3(1)

TEXT OF AGREEMENT

**AGREEMENT between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments**

THE EUROPEAN COMMUNITY, hereinafter referred to as 'Community', and THE SWISS CONFEDERATION, hereinafter referred to as 'Switzerland', or as the 'Contracting Parties', HAVE AGREED TO CONCLUDE THE FOLLOWING AGREEMENT:

*Article 1*

**Retention by Swiss paying agents.**

1. Interest payments which are made to beneficial owners within the meaning of Article 4 who are residents of a Member State of the European Union, hereinafter referred to as 'Member State', by a paying agent established on the territory of Switzerland, shall, subject to paragraph 2 and Article 2 below, be subject to a retention from the amount of the interest payment. The rate of retention shall be 15 % during the first three years from the date of application of this Agreement, 20 % for the subsequent three years and 35 % thereafter.

2. Interest payments made on debt-claims issued by debtors who are residents of Switzerland or pertaining to permanent establishments of non-residents located in Switzerland shall be excluded from the retention. For the purposes of this Agreement, the term 'permanent establishment' shall have the meaning that it has under the relevant double taxation convention between Switzerland and the State of residence of the debtor. In the absence of such a convention, the term 'permanent establishment' means a fixed place of business through which the business of a debtor is wholly or partly carried on.

3. However, in case Switzerland reduces the rate of its anticipatory tax on Swiss source interest payments to individuals resident in Member States below 35 %, it shall levy a retention on such interest payments. The rate of such retention shall be the difference between the rate of retention provided for in paragraph 1 and the new rate of anticipatory tax. However, it shall not exceed the rate provided for in paragraph 1. If Switzerland reduces the scope of application of its anticipatory tax law on interest payments to individuals resident in Member States, any interest payments thus excluded

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from anticipatory tax shall become subject to retention at the rates provided for in paragraph 1.

4. Paragraph 2 shall not apply to interest paid by Swiss investment funds which at the time of the entry into force of this Agreement or at a later date are exempted from Swiss anticipatory tax on their payments to individuals who are residents of a Member State.

5. Switzerland shall take the necessary measures to ensure that the tasks required for the implementation of this Agreement are carried out by paying agents established within the territory of Switzerland and specifically provide for provisions on procedures and penalties.

*Article 2***Voluntary disclosure.**

1. Switzerland shall provide for a procedure which allows the beneficial owner as defined in Article 4 to avoid the retention specified in Article 1 by expressly authorising his or her paying agent in Switzerland to report the interest payments to the competent authority of that State. Such authorisation shall cover all interest payments made to the beneficial owner by that paying agent.

2. The minimum amount of information to be reported by the paying agent in case of express authorisation by the beneficial owner shall consist of:

- (a) the identity and residence of the beneficial owner established in accordance with Article 5;
- (b) the name and address of the paying agent;
- (c) the account number of the beneficial owner or, where there is none, identification of the debt-claim giving rise to the interest; and L 385/30 EN Official Journal of the European Union 29.12.2004
- (d) the amount of the interest payment calculated in accordance with Article 3.

3. The Swiss competent authority shall communicate the information referred to in paragraph 2 to the competent authority of the Member State of residence of the beneficial owner. Such communications shall be automatic and shall take place at least once a year, within six months following the end of the tax year in Switzerland, for all interest payments made during that year.

4. Where the beneficial owner opts for this voluntary disclosure procedure or otherwise declares his or her interest income obtained from a Swiss

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paying agent to the tax authorities in his or her Member State of residence, the interest income concerned shall be subject to taxation in that Member State at the same rates as those applied to similar income arising in that State.

*Article 3*

**Basis of assessment for retention.**

1. The paying agent shall withhold the retention in accordance with Article 1(1) as follows:

- (a) in the case of an interest payment within the meaning of Article 7(1)(a): on the gross amount of interest paid or credited;
- (b) in the case of an interest payment within the meaning of Article 7(1)(b) or (d): on the amount of interest or revenue referred to in those subparagraphs;
- (c) in the case of an interest payment within the meaning of Article 7(1)(c): on the amount of interest referred to in that subparagraph.

2. For the purposes of paragraph 1, the retention shall be deducted on a pro rata basis for the period during which the beneficial owner holds a debtclaim. If the paying agent is unable to determine the period on the basis of the information made available to him or her, the paying agent shall consider

the beneficial owner to have been in possession of the debtclaim for the entire period of its existence, unless the latter provides evidence of the date of acquisition.

3. Taxes and retentions other than the retention provided for in this Agreement on the same payment of interest shall be credited against the amount of the retention calculated in accordance with this Article.

4. Paragraphs 1, 2 and 3 are without prejudice to Article 1(2).

*Article 4*

**Definition of beneficial owner.**

1. For the purposes of this Agreement 'beneficial owner' shall mean any individual who receives an interest payment or any individual for whom an interest payment is secured, unless such individual provides evidence that the interest payment was not received or secured for his or her own benefit. An individual is not deemed to be the beneficial owner when he or she:

- (a) acts as a paying agent within the meaning of Article 6; or

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- (b) acts on behalf of a legal person, an investment fund or a comparable or equivalent body for common investments in securities; or
- (c) acts on behalf of another individual who is the beneficial owner and who discloses to the paying agent his or her identity and State of residence.

2. Where a paying agent has information suggesting that the individual who receives an interest payment or for whom an interest payment is secured may not be the beneficial owner, that agent shall take reasonable steps to establish the identity of the beneficial owner. If the paying agent is unable to identify the beneficial owner, that agent shall treat the individual in question as the beneficial owner.

*Article 5***Identity and residence of beneficial owners.**

In order to establish the identity and residence of the beneficial owner as defined in Article 4, the paying agent shall keep a record of the name, first name, address and residence details in accordance with the Swiss legal provisions against money laundering. For contractual relations entered into, or transactions carried out in the absence of contractual relations, on or after 1 January 2004, for individuals presenting a passport or official identity card issued by a Member State who declare themselves to be resident in a State other than a Member State or Switzerland, residence shall be established by means of a tax residence certificate issued by the competent authority of the State in which the individual claims to be resident. Failing the presentation of such a certificate, the Member State which issued the passport or other official identity document shall be considered the State of residence. 29.12.2004 EN Official Journal of the European Union L 385/31

*Article 6***Definition of paying agent.**

For the purposes of this Agreement, 'paying agent' in Switzerland shall mean banks under Swiss banking law, securities dealers under the Federal Law on Stock Exchanges and Security Trading, natural and legal persons resident or established in Switzerland, partnerships and permanent establishments of foreign companies, which even occasionally, accept, hold, invest or transfer assets of third parties or merely pay interest or secure the payment of interest in the course of their business.

*Article 7***Definition of interest payment.**

1. For the purposes of this Agreement 'interest payment' shall mean:

- (a) interest paid, or credited to an account, relating to debtclaims of every kind including interest paid on fiduciary deposits by



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Swiss paying agents for the benefit of beneficial owners as defined in Article 4, 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, but excluding interest from loans between private individuals not acting in the course of their business. Penalty charges for late payment shall not be regarded as interest payments;

- (b) interest accrued or capitalised at the sale, refund or redemption of the debt-claims referred to in (a);
- (c) income deriving from interest payments either directly or through an entity referred to in Article 4(2) of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, hereinafter referred to as the 'Directive', distributed by:
  - (i) undertakings for collective investment domiciled in a Member State,
  - (ii) entities domiciled in a Member State, which exercise the option under Article 4(3) of the Directive and which inform the paying agent of this fact,
  - (iii) undertakings for collective investment established outside the territory of the Contracting Parties,
  - (iv) Swiss investment funds which at the time of the entry into force of this Agreement or at a later date are exempted from Swiss anticipatory tax on their payments to individuals who are residents of a Member State.
- (d) income realised upon the sale, refund or redemption of shares or units in the following undertakings and entities, if they invest directly or indirectly via other undertakings for collective investment or entities referred to below more than 40 % of their assets in debt-claims as referred to in (a):
  - (i) undertakings for collective investment domiciled in a Member State,
  - (ii) entities domiciled in a Member State, which exercise the option under Article 4(3) of the Directive and which inform the paying agent of this fact,

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- (iii) undertakings for collective investment established outside the territory of the Contracting Parties,
- (iv) Swiss investment funds which at the time of the entry into force of this Agreement or at a later date are exempted from Swiss anticipatory tax on their payments to individuals who are residents of a Member State.

2. As regards subparagraph 1(c), when a paying agent has no information concerning the proportion of the income which derives from interest payments, the total amount of the income shall be considered an interest payment.

3. As regards subparagraph 1(d), when a paying agent has no information concerning the percentage of the assets invested in debt-claims or in shares or units as defined in that subparagraph, that percentage shall be considered to be above 40 %. Where that agent cannot determine the amount of income realised by the beneficial owner, the income shall be deemed to correspond to the proceeds of the sale, refund or redemption of the shares or units.

4. Income relating to undertakings or entities which have invested up to 15% of their assets in debt-claims within the meaning of subparagraph 1(a) shall not be considered an interest payment in accordance with subparagraph 1(c) and (d).

5. The percentage referred to in subparagraph 1(d) and paragraph 3 shall, as from 1 January 2011, be 25 %.

6. The percentages referred to in subparagraph 1(d) and paragraph 4 shall be determined by reference to the investment policy as laid down in the fund rules or instruments of incorporation of the undertakings or entities concerned and, failing such rules, by reference to the actual composition of the assets of the undertakings or entities concerned.

L 385/32 EN Official Journal of the European Union 29.12.2004

*Article 8***Revenue sharing.**

1. Switzerland shall keep 25 % of the revenue generated by the retention under this Agreement and transfer 75 % of the revenue to the Member State of residence of the beneficial owner.

2. Such transfers shall take place for each year in one instalment per Member State at the latest within a period of six months following the end of the tax year in Switzerland.

*Article 9***Elimination of double taxation.**

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1. If interest received by a beneficial owner has been subject to retention by a paying agent in Switzerland, the Member State of residence for tax purposes of the beneficial owner shall grant him or her a tax credit equal to the amount of the retention. Where this amount exceeds the amount of tax due on the total amount of interest subject to retention in accordance with its national law, the Member State of residence for tax purposes shall repay the excess amount of tax withheld to the beneficial owner.

2. If interest received by a beneficial owner has been subject to taxes and retentions other than as provided for in this Agreement and the Member State of residence for tax purposes grants a tax credit for such taxes and retentions in accordance with its national law or double taxation conventions, such other taxes and retentions shall be credited before the procedure in paragraph 1 is applied. The Member State of residence for tax purposes shall accept certificates issued by Swiss paying agents as proper evidence of the tax or retention on the understanding that the competent authority of the Member State of residence for tax purposes will be able to obtain from the Swiss competent authority verification of the information contained in the certificates issued by Swiss paying agents.

3. The Member State of residence for tax purposes of the beneficial owner may replace the tax credit mechanism referred to in paragraphs 1 and 2 by a refund of the retention referred to in Article 1.

### *Article 10*

#### **Exchange of information.**

1. The competent authorities of Switzerland and any Member State shall exchange information on conduct constituting tax fraud under the laws of the requested State, or the like for income covered by this Agreement. 'The like' includes only offences with the same level of wrongfulness as is the case for tax fraud under the laws of the requested State. In response to a duly justified request, the requested State shall provide information with respect to matters that the requesting State is investigating, or may investigate, on an administrative, civil or criminal basis. Without prejudice to the scope of the exchange of information as defined in this paragraph, information shall be exchanged in accordance with the procedures laid down in the double taxation conventions between Switzerland and the Member States and shall be treated as confidential in the manner provided therein.

2. In determining whether information may be provided in response to a request, the requested State shall apply the statute of limitations applicable under the laws of the requesting State instead of the statute of limitations of the requested State.

3. The requested State shall provide information where the requesting State has a reasonable suspicion that the conduct would constitute tax fraud or the

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like. The requesting State's suspicion of tax fraud or the like may be based on:

- (a) Documents, whether authenticated or not, and including but not limited to business records, books of account, or bank account information;
- (b) Testimonial information from the taxpayer;
- (c) Information obtained from an informant or other third person that has been independently corroborated or otherwise is likely to be credible; or
- (d) Circumstantial evidence.

4. Switzerland shall enter into bilateral negotiations with each of the Member States in order to define individual categories of cases falling under 'the like' in accordance with the procedure of taxation applied by those States.

*Article 11***Competent authorities.**

For the purposes of this Agreement the competent authorities shall mean those authorities listed in Annex I.

*Article 12***Consultation.**

If any disagreement arises between the Swiss competent authority and one or more of the other competent authorities referred to in Article 11 as to the interpretation or application of this Agreement, they shall endeavour to resolve this by mutual agreement. They shall immediately notify the Commission of the European Communities and the competent authorities of the other Member States of the results of their consultations. In relation to issues of interpretation the Commission may take part in consultations at the request of any of the competent authorities.

29.12.2004 EN Official Journal of the European Union L 385/33

*Article 13***Review.**

1. The Contracting Parties shall consult each other at least every three years or at the request of either Contracting Party with a view to examining and – if deemed necessary by the Contracting Parties – improving the technical functioning of this Agreement and assessing international developments. The consultations shall be held within one month of the request or as soon as possible in urgent cases.

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2. On the basis of such an assessment, the Contracting Parties may consult each other in order to examine whether changes to this Agreement are necessary taking into account international developments.

3. As soon as sufficient experience of the full implementation of Article 1(1) is available, the Contracting Parties shall consult each other in order to examine whether changes to this Agreement are necessary taking into account international developments.

4. For the purposes of the consultations referred to in paragraphs 1, 2 and 3, each Contracting Party shall inform the other Contracting Party of possible developments which could affect the proper functioning of this Agreement. This shall also include any relevant agreement between one of the Contracting Parties and a third State.

### *Article 14*

#### **Relationship to bilateral double taxation conventions.**

The provisions of the double taxation conventions between Switzerland and the Member States shall not prevent the levying of the retention for which this Agreement provides.

### *Article 15*

#### **Dividends, interest and royalty payments between Companies.**

1. Without prejudice to the application of domestic or agreement-based provisions for the prevention of fraud or abuse in Switzerland and in Member States, dividends paid by subsidiary companies to parent companies shall not be subject to taxation in the source State where:

- the parent company has a direct minimum holding of 25 % of the capital of such a subsidiary for at least two years, and,
- one company is resident for tax purposes in a Member State and the other company is resident for tax purposes in Switzerland, and,
- under any double tax agreements with any third States neither company is resident for tax purposes in that third State, and,
- both companies are subject to corporation tax without being exempted and both adopt the form of a limited company (i).

However, Estonia may, for as long as it charges income tax on distributed profits without taxing undistributed profits, and at the latest until 31 December 2008, continue to apply that tax to profits distributed by Estonian subsidiary companies to their parent companies established in Switzerland.

2. Without prejudice to the application of domestic or agreement-based provisions for the prevention of fraud or abuse in Switzerland and in Member States, interest and royalty payments made between associated companies or their permanent establishments shall not be subject to taxation in the source State, where:

- such companies are affiliated by a direct minimum holding of 25 % for at least two years or are both held by a third company which has directly a

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minimum holding of 25 % both in the capital of the first company and in the capital of the second company for at least two years, and;

— where a company is resident for tax purposes or a permanent establishment is located in a Member State and the other company is resident for tax purposes or other permanent establishment situated in Switzerland, and;

— under any double tax agreements with any third States none of the companies is resident for tax purposes in that third State and none of the permanent establishments is situated in that third State, and;

— all companies are subject to corporation tax without being exempted in particular on interest and royalty payments and each adopts the form of a limited company <sup>(1)</sup>.

However, where Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States provides for a transitional period as regards a given Member State, that State shall only ensure provision of the above arrangements on interest and royalty payments after the expiry of that period.

L 385/34 EN Official Journal of the European Union 29.12.2004

(1) With regard to Switzerland, the term 'limited company' covers:

— société anonyme/Aktiengesellschaft/società anonima;

— société à responsabilité limitée/Gesellschaft mit beschränkter Haftung/società a responsabilità limitata;

— société en commandite par actions/Kommanditaktiengesellschaft/società in accomandita per azioni.

3. Existing double taxation agreements between Switzerland and the Member States which provide for a more favourable taxation treatment of dividends, interest and royalty payments at the time of adoption of this Agreement shall remain unaffected.

#### *Article 16*

#### **Transitional provisions for negotiable debt securities <sup>(1)</sup>.**

1. From the date of application of this Agreement for as long as at least one Member State also applies similar provisions and until 31 December 2010 at the latest, domestic and international bonds and other negotiable debt securities which have been first issued before 1 March 2001 or for which the original issuing prospectuses have been approved before that date by the competent authorities of the issuing State shall not be considered as debt-claims within the meaning of Article 7(1)(a), provided that no further issues of such negotiable debt securities are made on or after 1 March 2002. However, for as long as at least one Member State also applies similar provisions, the provisions of this Article shall continue to apply beyond 31 December 2010 in respect of such negotiable debt securities:

— which contain gross-up and early redemption clauses, and

— where the paying agent, as defined in Article 6, is established in Switzerland, and

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— where that paying agent pays interest directly to, or secures the payment of interest for the immediate benefit of, a beneficial owner resident in a Member State. If and when all Member States cease to apply similar provisions, the provisions of this Article shall continue to apply only in respect of those negotiable securities:

— which contain gross-up and early redemption clauses, and

— where the issuer's paying agent is established in Switzerland, and

— where that paying agent pays interest directly to, or secures the payment of interest for the immediate benefit of, a beneficial owner resident in a Member State. If a further issue is made on or after 1 March 2002 of an aforementioned negotiable debt security issued by a Government or a related entity acting as a public authority or whose role is recognised by an international Treaty (listed in Annex II to this Agreement), the entire issue of such a security, consisting of the original issue and any further issue shall be considered a debt-claim within the meaning of Article 7(1)(a). If a further issue is made on or after 1 March 2002 of an aforementioned negotiable debt security issued by any other issuer not covered by the fourth subparagraph, such further issue shall be considered a debt-claim within the meaning of Article 7(1)(a).

2. This Article does not prevent Switzerland and the Member States from continuing to levy a tax on revenues deriving from the negotiable debt securities referred to in paragraph 1 in accordance with their national law.

### *Article 17*

#### **Signing, entry into force and duration of validity.**

1. This Agreement requires ratification or approval by the Contracting Parties in accordance with their own procedures. The Contracting Parties shall notify each other of the completion of these procedures. The Agreement shall enter into force on the first day of the second month following the last notification.

2. Subject to the fulfilment of the constitutional requirements of Switzerland and the requirements of Community law concerning entering into international agreements, and without prejudice to Article 18, Switzerland and where applicable the Community shall effectively implement and apply this Agreement from 1 January 2005 and notify each other thereof.

3. This Agreement shall remain in force until terminated by a Contracting Party.

4. Either Contracting Party may terminate this Agreement by giving notice to the other. In such a case, the Agreement shall cease to have effect 12 months after the serving of notice.

### *Article 18*

#### **Application and suspension of application.**

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1. The application of this Agreement shall be conditional on the adoption and implementation by the dependent or associated territories of the Member States mentioned in the report of the Council (Economic and Financial Affairs) to the European Council of Santa Maria da Feira of 19 and 20 June 2000, as well as by the United States of America, Andorra, Liechtenstein, Monaco and San Marino, respectively, of measures which conform with or are equivalent to those contained in the Directive or in this Agreement, with the exception of Article 15 of this Agreement, and providing for the same dates of implementation.

29.12.2004 <sup>EN</sup> Official Journal of the European Union L 385/35 (1) As in the Directive, these transitional provisions also apply to negotiable debt securities held through investment funds.

2. The Contracting Parties shall decide, by common accord, at least six months before the date referred to in Article 17(2), whether the condition set out in paragraph 1 will be met having regard to the dates of entry into force of the relevant measures in the third States and dependent or associated territories concerned. If the Contracting Parties do not decide that the condition will be met, they shall, by common accord, adopt a new date for the purposes of Article 17(2).

3. Notwithstanding paragraphs 1 and 2, Article 15 shall apply in respect of Spain with effect from the entry into force of a bilateral agreement between Spain and Switzerland on the exchange of information on request in administrative, civil or criminal cases of tax fraud, as defined in the laws of the requested State, or the like, with respect to items of income not subject to this Agreement but covered by a convention or an agreement between Spain and Switzerland on the elimination of double taxation on income and capital.

4. The application of this Agreement or parts thereof may be suspended by either Contracting Party with immediate effect through notification to the other should the Directive or part of the Directive cease to be applicable either temporarily or permanently in accordance with Community law or in the event that a Member State should suspend the application of its implementing legislation.

5. Either Contracting Party may suspend the application of this Agreement through notification to the other in the event that one of the third States or territories referred to in paragraph 1 should subsequently cease to apply the measures referred to in that paragraph. Suspension of application shall take place no earlier than two months after notification. Application of this Agreement shall resume as soon as the measures are reinstated.

*Article 19*

**Claims and final settlement.**



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1. Should this Agreement be terminated or its application be suspended either in full or in part, the claims of individuals in accordance with Article 9 shall remain unaffected.

2. Switzerland shall, in such case, establish a final account by the end of the period of applicability of this Agreement and make a final payment to the Member States.

### *Article 20*

#### **Territorial scope.**

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and, on the other hand, to the territory of Switzerland.

### *Article 21*

#### **Annexes.**

1. The Annexes shall form an integral part of this Agreement.

2. The list of competent authorities in Annex I may be amended simply by notification of the other Contracting Party by Switzerland for the authority referred to in (a) therein and by the Community for the other authorities. The list of related entities in Annex II may be amended by mutual agreement.

### *Article 22*

#### **Languages.**

1. This Agreement is drawn up in duplicate in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Polish, Portuguese, Slovak, Slovenian, Spanish and Swedish languages, each of these language versions being equally authentic.

2. The Maltese language version shall be authenticated by the Contracting Parties on the basis of an exchange of letters. It shall also be authentic, in the same way as for the languages referred to in paragraph 1.

L 385/36 EN Official Journal of the European Union 29.12.2004

EN FE DE LO CUAL, los plenipotenciarios abajo firmantes suscriben el presente Acuerdo.  
NA DŮKAZ ČEHOŽ připojili níže podepsaní zplnomocnění zástupci k této smlouvě své podpisy.

TIL BEKRÆFTELSE HERAF har undertegnede befuldmægtigede underskrevet denne aftale.

ZU URKUND DESSEN haben die unterzeichneten Bevollmächtigten ihre Unterschriften unter dieses Abkommen gesetzt.

SELLE KINNITUSEKS on täievolilised esindajad käesolevale lepingule alla kirjutanud.

ΣΕ ΠΙΣΤΩΣΗ ΤΩΝ ΑΝΩΤΕΡΩ, οι υπογράφωντες πληρεξούσιοι έθεσαν την υπογραφή τους κάτω από την παρούσα συμφωνία.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have hereunto set their hands.

EN FOI DE QUOI, les plénipotentiaires soussignés ont apposé leurs signatures au bas du présent accord.

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IN FEDE DI CHE, i plenipotenziari sottoscritti hanno apposto la propria firma in calce al presente accordo.

TO APLIECINOT, attiecīgi pilnvarotas personas ir parakstījušas šo nolīgumu.

TAI PALIUDYDAMI, šį Susitarimą pasirašė toliau nurodyti įgaliotieji atstovai.

FENTIEK HITELÉÜL e megállapodást az alulírott meghatalmazottak alább kézjegyükkel látták el.

B'XIEHDA TA' DAN, il-Plenipotenzjari hawn taħt iffirmati ffirmaw dan il-Ftehim.

TEN BLIJKE WAARVAN de ondergetekende gevolmachtigden hun handtekening onder deze overeenkomst hebben

geplaatst.

W DOWÓD CZEGO, niżej podpisani pełnomocnicy złożyli swoje podpisy.

EM FÉ DO QUE, os plenipotenciários abaixo assinados apuserem as suas assinaturas no final do presente Acordo.

NA DÔKAZ ČOHO dolupodpísaní splnomocnení zástupcovia podpísali túto dohodu.

V POTRDITEV TEGA so spodaj podpisani pooblaščenici podpisali ta sporazum.

TÄMÄN VAKUUDEKSI allamainitut täysivaltaiset edustajat ovat allekirjoittaneet tämän sopimuksen.

TILL BEVIS HÄRPÅ har undertecknade befullmäktigade undertecknat detta avtal.

Hecho en Luxemburgo, el veintiseis de octubre del dos mil cuatro.

V Lucemburku dne dvacátého šestého října dva tisíce čtyři.

Udfærdiget i Luxembourg den seksogtyvende oktober to tusind og fire.

Geschehen zu Luxemburg am sechszwanzigsten Oktober zweitausendundvier.

Kahe tuhande neljanda aasta oktoobrikuu kahekümme kuuendal päeval Luxembourgis.

Έγινε στο Λουξεμβούργο, στις είκοσι έξι Οκτωβρίου δύο χιλιάδες τέσσερα.

Done at Luxembourg on the twenty-sixth day of October in the year two thousand and four.

Fait à Luxembourg, le vingt-six octobre deux mille quatre.

Fatto a Lussemburgo, addì ventisei ottobre duemilaquattro.

Luksemburgā, divi tūkstoši ceturtais gada divdesmit sestais oktobrī.

Priimta du tūkstančiai ketvirtą metų spalio dvidešimt šeštą dieną Liuksemburge.

Kelt Luxembourgban, a kettőezer negyedik év október huszonhatodik napján.

Magħmula fil-Lussemburgu fis-sitta u għoxrin jum ta' Ottubru tas-sena elfejn u erbgħa.

Gedaan te Luxemburg, de zesentwintigste oktober tweeduizendvier.

Sporządzone w Luksemburgu w dniu dwudziestym szóstym października roku dwutysięcznego czwartego.

Feito em Luxemburgo, em vinte e seis de Outubro de dois mil e quatro.

V Luxemburgu dvadsiateho šiesteho oktobra dvetisícštyri.

V Luxembourggu, dne šestindvajsetega oktobra leta dva tisoč štiri.

Tehty Luxemburgissa kahdentenäkymmenentenäkuudentena päivänä lokakuuta vuonna kaksituhattaneljä.

Som skedde i Luxemburg den tjugosjätte oktober tjugohundrafyra.

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Por la Comunidad Europea

Za Evropské společenství

For Det Europæiske Fællesskab

Für die Europäische Gemeinschaft

Euroopa Ühenduse nimel

Για την Ευρωπαϊκή Κοινότητα

For the European Community

Pour la Communauté européenne

Per la Comunità europea

Eiropas Kopienas vārdā

Europos bendrijos vardu

az Európai Közösség részéről

Għall-Komunità Ewropea

Voor de Europese Gemeenschap

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W imieniu Wspólnoty Europejskiej  
Pela Comunidade Europeia  
Za Európske spoločenstvo  
za Evropsko skupnost  
Euroopan yhteisön puolesta  
På Europeiska gemenskapens vägnar  
Für die Schweizerische Eidgenossenschaft  
Pour la Confédération suisse  
Per la Confederazione svizzera  
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**ANNEX I****LIST OF COMPETENT AUTHORITIES**

The following are 'competent authorities' for the purposes of this Agreement:

- (a) in Switzerland: Le Directeur de l'Administration fédérale des contributions/Der Direktor der Eidgenössischen Steuerverwaltung/  
il direttore dell'Amministrazione federale delle contribuzioni or his proxy or agent,
- (b) in the Kingdom of Belgium: De Minister van Financiën/Le Ministre des Finances or an authorised representative,
- (c) in the Czech Republic: Ministr financí or an authorised representative,
- (d) in the Kingdom of Denmark: Skatteministeren or an authorised representative,
- (e) in the Federal Republic of Germany: Der Bundesminister der Finanzen or an authorised representative,
- (f) in Estonia: Rahandusminister or an authorised representative,
- (g) in the Hellenic Republic: Ο Υπουργός των Οικονομικών or an authorised representative,
- (h) in the Kingdom of Spain: El Ministro de Hacienda or an authorised representative,
- (i) in the French Republic: Le Ministre chargé du budget or an authorised representative,
- (j) in Ireland: The Revenue Commissioners or their authorised representative,
- (k) in the Italian Republic: Il Capo del Dipartimento per le Politiche Fiscali or an authorised representative,
- (l) in Cyprus: Υπουργός Οικονομικών or an authorised representative,
- (m) in Latvia: Finanšu ministrs or an authorised representative,
- (n) in Lithuania: Finansų ministras or an authorised representative,
- (o) in the Grand Duchy of Luxembourg: Le Ministre des Finances or an authorised representative; however for the purposes of Article 10 the competent authority shall be 'le Procureur Général d'État luxembourgeois',
- (p) in Hungary: A pénzügyminiszter or an authorised representative,
- (q) in Malta: Il-Ministru responsabbli għall-Finanzi or an authorised representative,
- (r) in the Kingdom of the Netherlands: De Minister van Financiën or an authorised representative,
- (s) in the Republic of Austria: Der Bundesminister für Finanzen or an authorised representative,
- (t) in Poland: Minister Finansów or an authorised representative,
- (u) in the Portuguese Republic: O Ministro das Finanças or an authorised representative,
- (v) in Slovenia: Minister za finance or an authorised representative,
- (w) in Slovakia: Minister financí or an authorised representative,
- (x) in the Republic of Finland: Valtiovarainministeriö/Finansministeriet or an authorised representative,
- (y) in the Kingdom of Sweden: Finansdepartementet or an authorised representative,
- (z) in the United Kingdom of Great Britain and Northern Ireland and in the European territories for whose external relations the United Kingdom is responsible: the Commissioners of Inland Revenue or their authorised representative and the competent authority in Gibraltar, which the United Kingdom will designate in accordance with the Agreed Arrangements relating to Gibraltar authorities in the context of EU and EC instruments and related treaties notified to the Member States and institutions of the

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European Union of 19 April 2000, a copy of which shall be notified to Switzerland by the Secretary General of the Council of the European Union, and which shall apply to this Agreement.

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#### *ANNEX II*

#### **LIST OF RELATED ENTITIES**

For the purposes of Article 16 of this Agreement, the following entities will be considered to be a '*related entity acting as a public authority or whose role is recognised by an international treaty*':

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### ENTITIES WITHIN THE EUROPEAN UNION:

**Belgium**

Vlaams Gewest (Flemish Region)  
Région wallonne (Walloon Region)  
Région bruxelloise/Brussels Gewest (Brussels Region)  
Communauté française (French Community)  
Vlaamse Gemeenschap (Flemish Community)  
Deutschsprachige Gemeinschaft (German-speaking Community)

**Spain**

Xunta de Galicia (Regional Executive of Galicia)  
Junta de Andalucía (Regional Executive of Andalusia)  
Junta de Extremadura (Regional Executive of Extremadura)  
Junta de Castilla-La Mancha (Regional Executive of Castilla-La Mancha)  
Junta de Castilla-León (Regional Executive of Castilla-León)  
Gobierno Foral de Navarra (Regional Government of Navarre)  
Govern de les Illes Balears (Government of the Balearic Islands)  
Generalitat de Catalunya (Autonomous Government of Catalonia)  
Generalitat de Valencia (Autonomous Government of Valencia)  
Diputación General de Aragón (Regional Council of Aragón)  
Gobierno de las Islas Canarias (Government of the Canary Islands)  
Gobierno de Murcia (Government of Murcia)  
Gobierno de Madrid (Government of Madrid)  
Gobierno de la Comunidad Autónoma del País Vasco/Euzkadi (Government of the Autonomous Community of the Basque Country)  
Diputación Foral de Guipúzcoa (Regional Council of Guipúzcoa)  
Diputación Foral de Vizcaya/Bizkaia (Regional Council of Vizcaya)  
Diputación Foral de Alava (Regional Council of Alava)  
Ayuntamiento de Madrid (City Council of Madrid)  
Ayuntamiento de Barcelona (City Council of Barcelona)  
Cabildo Insular de Gran Canaria (Island Council of Gran Canaria)  
Cabildo Insular de Tenerife (Island Council of Tenerife)  
Instituto de Crédito Oficial (Public Credit Institution)  
Instituto Catalán de Finanzas (Finance Institution of Catalonia)  
Instituto Valenciano de Finanzas (Finance Institution of Valencia)

**Greece**

Οργανισμός Τηλεπικοινωνιών Ελλάδος (National Telecommunications Organisation)  
Οργανισμός Σιδηροδρόμων Ελλάδος (National Railways Organisation)  
Δημόσια Επιχείρηση Ηλεκτρισμού (Public Electricity Company)  
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**France**

La Caisse d'amortissement de la dette sociale (CADES) (Social Debt Redemption Fund)  
L'Agence française de développement (AFD) (French Development Agency)  
Réseau Ferré de France (RFF) (French Rail Network)  
Caisse Nationale des Autoroutes (CNA) (National Motorways Fund)  
Assistance publique Hôpitaux de Paris (APHP) (Paris Hospitals Public Assistance)  
Charbonnages de France (CDF) (French Coal Board)  
Entreprise minière et chimique (EMC) (Mining and Chemicals Company)

**Italy**

Regions  
Provinces  
Municipalities  
Cassa Depositi e Prestiti (Deposits and Loans Fund)

**Latvia**

Pašvaldības (Local governments)

**Poland**

gminy (communes)  
powiaty (districts)  
województwa (provinces)  
związki gmin (associations of communes)  
związki powiatów (association of districts)  
związki województw (association of provinces)  
miasto stołeczne Warszawa (capital city of Warsaw)  
Agencja Restrukturyzacji i Modernizacji Rolnictwa (Agency for Restructuring and Modernisation of Agriculture)  
Agencja Nieruchomości Rolnych (Agricultural Property Agency)

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**Portugal**

Região Autónoma da Madeira (Autonomous Region of Madeira)

Região Autónoma dos Açores (Autonomous Region of Azores)

Municipalities

**Slovakia**

mestá a obce (municipalities)

Železnice Slovenskej republiky (Slovak Railway Company)

Štátny fond cestného hospodárstva (State Road Management Fund)

Slovenské elektrárne (Slovak Power Plants)

Vodohospodárska výstavba (Water Economy Building Company)

**INTERNATIONAL ENTITIES:**

European Bank for Reconstruction and Development European Investment Bank

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Asian Development Bank

African Development Bank

World Bank/IBRD/IMF

International Finance Corporation

Inter-American Development Bank

Council of Europe Social Development Fund

Euratom

European Community

Corporación Andina de Fomento (CAF) (Andean Development Corporation)

Eurofima

European Coal and Steel Community

Nordic Investment Bank

Caribbean Development Bank

The provisions of Article 16 are without prejudice to any international obligations that the Contracting Parties may have entered into with respect to the above mentioned international entities.

**ENTITIES IN THIRD STATES:**

The entities that meet the following criteria:

1. The entity is clearly considered to be a public entity according to the national criteria.
2. Such public entity is a non market producer which administers and finances a group of activities, principally providing non market goods and services, intended for the benefit of the community and which are effectively controlled by general government.
3. Such public entity is a large and regular issuer of debt.
4. The State concerned is able to guarantee that such public entity will not exercise early redemption in the event of gross up clauses.

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