

法規名稱：EXCHANGE OF NOTES BETWEEN DELEGATION CULTURELLE ET ECONOMIQUE DE TAIPEI AND TRADE OFFICE OF SWISS INDUSTRIES ON AMENDMENT TO THE AGREEMENT CONCERNING THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF EVASION WITH RESPECT TO TAXES ON INCOME

簽訂日期：民國 100 年 07 月 14 日

生效日期：民國 100 年 12 月 13 日

Taipei, 13 July 2011

Dear Mr. Hsieh

I refer to the Agreement signed on 8 October 2007 between the Trade Office of Swiss Industries, Taipei, and the Taipei Cultural and Economic Delegation in Switzerland for the Avoidance of Double Taxation with respect to Taxes on Income (the “ Agreement ” ).

I propose to amend the Agreement as follows:

#### Article I

Paragraph 4 of Article 13 of the Agreement shall be deleted and replaced by the following:

- “4. Gains derived by a resident of a territory from the alienation of shares - other than shares which are quoted on a stock exchange as may be agreed by the territories - or other corporate rights in a company the assets of which consist directly or indirectly for more than 50 per cent of immovable property referred to in Article 6 and situated in the other territory may be taxed in that other territory. The provisions of the preceding sentence shall not apply if:
- a) the person who derives the gains owns less than 5 per cent of the shares or other corporate rights in the company prior to the alienation; or
  - b) the gains are derived in the course of a corporate reorganisation, amalgamation, division or similar

- transaction; or
- c) the immovable property is used by a company for its own business. ”

## Article II

Article 25 of the Agreement shall be deleted and replaced by the following:

### “Article 25

#### Exchange of Information

1. The competent authorities of the territories shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1.
2. Any information received under paragraph 1 by a territory shall be treated as secret in the same manner as information obtained under the domestic laws of that territory 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, or the determination of appeals in relation to the taxes referred to in paragraph 1. 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.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a territory the obligation:
  - a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other territory;
  - 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 territory;

- 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 territory in accordance with this Article, the other territory shall use its information gathering measures to obtain the requested information, even though that other territory 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 territory to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a territory 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 territory, 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. ”

#### Article III

Paragraph 2 c) of Article 27 of the Agreement shall be deleted and replaced by the following:

“c) in respect of Article 25 for information that relates to taxation years beginning on or after the first day of January following the year of the entry into force of the Agreement.”

#### Article IV

The reference to “ paragraph 1 b) of Article 2 ” in the

paragraphs 5 and 6 of the Protocol shall be deleted and replaced by the reference to “ paragraph 3 b) of Article 2 ” .

#### Article V

Paragraph 8 of the Protocol shall be deleted and replaced by the following:

“8. ad Article 25

- a) It is understood that an exchange of information will only be requested once the requesting territory has exhausted all regular sources of information available under the internal taxation procedure.
- b) It is understood that the tax authorities of the requesting territory shall provide the following information to the tax authorities of the requested territory when making a request for information under Article 25 of the Agreement:
  - (i) the identity of the person under examination or investigation;
  - (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 territory wishes to receive the information from the requested territory;
  - (iv) the tax purpose for which the information is sought;
  - (v) to the extent known, the name and address of any person believed to be in possession of the requested information.

The purpose of referring to information that may be foreseeably relevant is intended to provide for exchange of information in tax matters to the widest possible extent without allowing the territories to engage in “ fishing expeditions ” or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. While this subparagraph contains important procedural requirements that are intended to ensure that fishing expeditions do not occur, clauses (i) through (v)

nevertheless need to be interpreted with a view not to frustrate effective exchange of information.

- c) It is further understood that Article 25 of the Agreement shall not commit the territories to exchange information on an automatic or a spontaneous basis.
- d) It is understood that in case of an exchange of information, the administrative procedural rules regarding taxpayers' rights provided for in the requested territory remain applicable before the information is transmitted to the requesting territory. 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 VI

Paragraph 9 of the Protocol shall be deleted.

If the above proposal is acceptable to the Taipei Cultural and Economic Delegation in Switzerland, I further propose that this letter and your reply reflecting such acceptance shall constitute an agreement between the Taipei Cultural and Economic Delegation in Switzerland and the Trade Office of Swiss Industries, Taipei, to amend the Agreement, which shall enter into force on the date of entry into force of the Agreement.

Yours sincerely,

Jost Feer  
Trade Office of Swiss Industries,  
Taipei

Mr. Fadah Hsieh  
Taipei Cultural and Economic  
Delegation in Switzerland

Berne, July 14, 2011

Dear Mr. Feer

I acknowledge receipt of your letter of [date], which reads as follows:

“Dear Mr. Hsieh

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2. Any information received under paragraph 1 by a territory shall be treated as secret in the same manner as information obtained under the domestic laws of that territory 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, or the determination of appeals in relation to the taxes referred to in paragraph 1. 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.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a territory the obligation:
  - a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other territory;
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  - 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 territory in accordance with

this Article, the other territory shall use its information gathering measures to obtain the requested information, even though that other territory 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 territory to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a territory 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 territory, 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. ”

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an automatic or a spontaneous basis.

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I inform you about the acceptance of the Taipei Cultural and Economic Delegation in Switzerland with the above proposal.

Yours sincerely,

Fadah Hsieh  
Taipei Cultural and Economic  
Delegation in Switzerland

Mr. Jost Feer  
Trade Office of Swiss Industries,  
Taipei