

MEMORANDUM TO PARLIAMENT

BY

HON. MINISTER FOR FINANCE

ON THE PROTOCOL

AMENDING THE CONVENTION

BETWEEN

THE REPUBLIC OF GHANA

AND

THE SWISS CONFEDERATION

**FOR THE AVOIDANCE OF DOUBLE TAXATION AND
THE PREVENTION OF FISCAL EVASION WITH
RESPECT TO TAXES ON INCOME AND ON CAPITAL
GAINS**

1st FEBRUARY, 2018

1. PARLIAMENT DECISION REQUIRED

Honourable Members are respectfully invited to consider and ratify the Protocol between the Republic of Ghana and the Swiss Confederation amending the Convention of 23rd July, 2008 between the Republic of Ghana and the Swiss Confederation for the Avoidance of Double Taxation with respect to taxes on Income, Capital and Capital Gains and its Protocol.

2. BACKGROUND INFORMATION

Ghana and Switzerland signed a Convention for the Avoidance of Double Taxation with respect to taxes on Income, Capital and Capital Gains in 2008. Following ratification by Parliament, the Convention came into force in 2010 and has been operational between the countries since then.

The Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out. The Peer Review Group (PRG) conducts phases of reviews to ensure that member countries are compliant with the multilateral standards. Although Ghana was not yet a member of the Global Forum, Ghana was identified in 2008 as a jurisdiction that was relevant to the Global Forum's work. Therefore, in 2009, a Phase 1 Peer Review of Ghana's Exchange of Information procedures, laws and agreement was conducted by the Global Forum. It was determined that some of Ghana's Tax conventions including the Convention between Ghana and Switzerland did not meet the global standard of transparency and exchange of information.

A recommendation was therefore made by the Global Forum Peer Review group that Ghana should take steps to bring all its exchange of information agreements to the international standards. Similarly, Switzerland was also requested by the Global Forum Peer Review Group to bring its conventions to the international standard of transparency.

In line with the recommendations, discussions between Ghana's Tax negotiation team and its Swiss counterparts went on for about a year resulting in the initialing and signing of a draft Protocol amending Article 27 (Exchange of Information) to bring that provision to the international standard of transparency.

The Protocol was signed in Accra, Ghana on 22nd May, 2014.

3. JUSTIFICATION FOR GOVERNMENT ACTION

The issues that led to the review of Ghana-Switzerland's Protocol are as follows:

- a) The new Protocol is basically on Article 27 of the Ghana- Switzerland Avoidance of Double Taxation Convention which deals with Exchange of Information. In the Convention, the provisions on Article 27 were not elaborate enough to promote effective exchange of information. Article 27 of the Convention was also not up to international standards as set out in Article 26 of the OECD Model Taxation Convention.
- b) Particularly, Ghana's Convention with Switzerland is not up to the standard due to the then domestic law limitations in Switzerland's ability to access bank information for exchange of information purpose. The Convention expressly provided that bank information cannot be exchanged.
- c) The Convention provides for exchange of information that is "necessary" for carrying out the provisions of the agreement, but also incorporates additional language, noting that it applies to "such information (that the laws of contracting states can obtain through normal administrative practice)". The bracketed text is not in line with the standards as it limits the exchange of information article to information which can be obtained in the normal course of administration. Thus, if it is not "normal" for one of the parties to obtain certain information, the information might not be provided to the other Contracting State.
- d) Another issue with the Convention is that, the provisions for the exchange of information for the carrying out of the provisions of the agreement, is only applicable provided one of the persons concerned is resident in one of the Contracting States. This has been modified by the Protocol.

4. CABINET DECISION

Cabinet at its Twentieth meeting held on Thursday, 9th November, 2017, approved for the consideration and ratification of the Protocol the Republic of Ghana and the Swiss Confederation amending the convention between the two countries for the Avoidance of Double Taxation with respect taxes on Income, Capital and Capital Gains by Parliament.

5. FINANCIAL IMPACT

The Protocol does not have any financial implications on Ghana.

6. COMMUNICATIONS

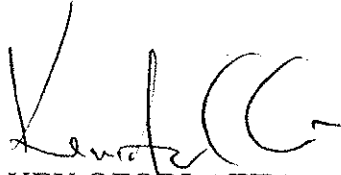
The Ministry of Finance and the Ghana Revenue Authority will organize sensitization workshops and hold Stakeholder meetings on the Protocol.

7. RECOMMENDATIONS

On the basis of the above, Honourable Members are respectfully requested to consider and ratify the Protocol between the Republic of Ghana and the Swiss Confederation amending the Convention of 23rd July, 2008 between the Republic of Ghana and the Swiss Confederation for the Avoidance of Double Taxation with respect to taxes on Income, Capital and Capital Gains and its Protocol.

Kindly find attached, a copy of the Protocol for ease of reference.

Respectfully, submitted for the consideration and ratification by Honourable Members.


KEN OFORI-ATTA
MINISTER FOR FINANCE

PROTOCOL

BETWEEN THE REPUBLIC OF GHANA AND THE SWISS CONFEDERATION
AMENDING THE CONVENTION OF 23 JULY 2008 BETWEEN THE REPUBLIC OF
GHANA AND THE SWISS CONFEDERATION FOR THE AVOIDANCE OF DOUBLE
TAXATION WITH RESPECT TO TAXES ON INCOME, ON CAPITAL AND ON
CAPITAL GAINS AND ITS PROTOCOL

The Government of the Republic of Ghana

and

The Swiss Federal Council

Desiring to conclude a Protocol to amend the Convention of 23 July 2008 between the Republic of Ghana and the Swiss Confederation for the Avoidance of Double Taxation with respect to taxes on income, on capital and on capital gains (hereinafter referred to as “the Convention”) and its Protocol (hereinafter referred to as “the Protocol”),

Have agreed as follows:

ARTICLE I

Article 27 (Exchange of information) of the Convention shall be replaced by the following Article:

“Article 27

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, 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. 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 supplying State authorises 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 interest in such information.

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.”

ARTICLE II

The following new paragraph 5 is inserted, after paragraph 4, into the Protocol:

- “5. ad Article 27
- a) It is understood that an exchange of information will only be requested once the requesting Contracting State has exhausted all regular sources of information available under the internal taxation procedure.
 - 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 27:
 - (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 State wishes to receive the information from the requested State;
 - (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.
 - c) It is understood that the reference to “foreseeable relevance” is intended to provide for exchange of information in tax matters to the widest possible extent and, at the same time, to clarify that the Contracting States are not at liberty to engage in “fishing expeditions” or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. While subparagraph b) contains important procedural requirements that are intended to ensure that fishing expeditions do not occur, clauses (i) through (v) of subparagraph b) nevertheless are not to be interpreted in a way to frustrate effective exchange of information.
 - d) It is understood that Article 27 does not require the Contracting States to exchange information on an automatic or a spontaneous basis.
 - 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. It is further understood that these provisions aim at guaranteeing the taxpayer a fair procedure and not at preventing or unduly delaying the exchange of information process.”

ARTICLE III

1. Each Contracting State shall notify to the other, through diplomatic channels, the completion of the procedures required by its law for the bringing into force of this Protocol. The Protocol shall enter into force on the date on which the later of those notifications has been received.
2. The provisions of the Protocol shall be applicable to requests for exchange of information made on or after the date of entry into force of this Protocol to information that relates to fiscal years beginning on or after the first day of January of the year next following the entry into force of this Protocol.

In witness whereof the undersigned, duly authorized thereto, have signed this Protocol.

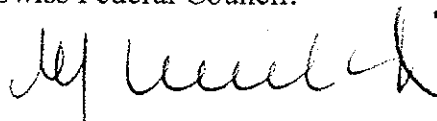
Done in duplicate at ACCRA this 22 day of MAY 2014 in the French and English languages, all texts being equally authentic.

For the
Government of the Republic of Ghana:



Hon. Cassiel Ato Forson
Deputy Minister for Finance

For the
Swiss Federal Council:



Marie-Gabrielle Ineichen-Fleisch
State Secretary for Economic Affairs

CONFIDENTIAL

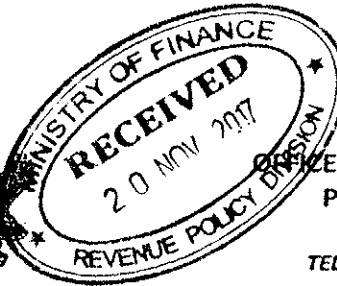
In case of reply the
number and date of this
letter should be quoted.

MY Ref. No OPCA.3/3/131117

YOUR Ref. No.....



REPUBLIC OF GHANA



OFFICE OF THE PRESIDENT
P.O. BOX 1627
ACCRA
TEL: 0302-201000/2

13th November, 2017

GHANA-SWITZERLAND AVOIDANCE OF DOUBLE TAXATION CONVENTION:
PROTOCOL AMENDING ARTICLE 27 (EXCHANGE OF INFORMATION)

Cabinet at its Twentieth meeting held on Thursday, 9th November, 2017 discussed the report presented by the Cabinet Committee on Economic Matters on the above Memorandum submitted by the Minister for Finance.

2. The Memorandum requested Cabinet to approve the adoption of the Protocol between the Republic of Ghana and the Swiss Confederation amending the Convention of 23rd July, 2008 between the two countries for the Avoidance of Double Taxation with respect to taxes on Income, Capital and Capital Gains and its Protocol.

3. Cabinet approved the Memorandum and recommended same for consideration by Parliament.

4. I should be grateful if you could take requisite action on the decision by Cabinet.

MERCY DEBRAH-KARIKARI
SECRETARY TO THE CABINET

THE HON. MINISTER FOR FINANCE

cc: Chief of Staff
Secretary to the President
Secretary to the Vice President
Chairperson, Cabinet Committee on
Economic Matters