



Swiss-American Chamber of Commerce

Swiss-U.S. Income Tax Treaty

Convention Between the United States of America and Switzerland
for the Avoidance of Double Taxation With Respect to Taxes on Income

Signed on October 2, 1996.

Update 2010

Important

At the time this publication is going to print, the 2009 Protocol amending the Convention between the Swiss Confederation and the United States of America for the Avoidance of Double Taxation with Respect to Taxes on Income, signed at Washington on October 2, 1996, has been ratified by the Swiss Parliament, but is still awaiting approval by the U.S. Senate.



Table of Contents

Article 1 Personal Scope (Persönlicher Geltungsbereich)	
1. Treaty Text	1
2. U.S. Treasury Department Technical Explanations	2
3. Comments from the Swiss-American Chamber of Commerce	5
4. Sources of Law	7
5. Domestic Provisions Applicable in the Absence of Treaty Provisions	7
Article 2 Taxes Covered (Unter das Abkommen fallende Steuern)	
1. Texts	9
1.1 Treaty Text	9
1.2 Protocol	10
2. U.S. Treasury Department Technical Explanations	10
3. Comments from the Swiss-American Chamber of Commerce	12
4. Sources of Law	15

Article 3 General Definitions (Allgemeine Begriffsbestimmungen)	
1. Treaty Text	17
2. U.S. Treasury Department Technical Explanations	19
3. Comments from the Swiss American Chamber of Commerce	23
4. Sources of Law	26
Article 4 Resident (Ansässige Person)	
1. Texts	27
1.1 Treaty Text	27
1.2 Protocol.....	30
1.3 Memorandum of Understanding	30
2. U.S. Treasury Department Technical Explanations	32
3. Comments from the Swiss-American Chamber of Commerce	39
4. Sources of Law	44
5. Domestic Provisions Applicable in the Absence of Treaty Provisions	44
Article 5 Permanent Establishment (Betriebsstätte)	
1. Treaty Text	45
2. U.S. Treasury Department Technical Explanations	48
3. Comments from the Swiss-American Chamber of Commerce	53
4. Sources of Law	54
Article 6 Income from Real Property (Einkünfte aus unbeweglichem Vermögen)	
1. Treaty Text	55
2. U.S. Treasury Department Technical Explanations	56
3. Comments from the Swiss-American Chamber of Commerce	58
4. Sources of Law	59
5. Domestic Provisions Applicable in the Absence of Treaty Provisions	60
Article 7 Business Profits (Unternehmensgewinne)	
1. Texts	63
1.1 Treaty Text	63
1.2 Protocol.....	65
1.3 Memorandum of Understanding	66
2. U.S. Treasury Department Technical Explanations	66
3. Comments from the Swiss-American Chamber of Commerce	72
4. Sources of Law	76
5. Domestic Provisions Applicable in the Absence of Treaty Provisions	76
Article 8 Shipping and Air Transport (Seeschifffahrt und Luftfahrt)	
1. Treaty Text	78
2. U.S. Treasury Department Technical Explanations	78
3. Comments from the Swiss-American Chamber of Commerce	82
4. Sources of Law	83
5. Domestic Provisions Applicable in the Absence of Treaty Provisions	84
Article 9 Associated Enterprises (Verbundene Unternehmen)	
1. Treaty Text	88
2. U.S. Treasury Department Technical Explanations	89
3. Comments from the Swiss-American Chamber of Commerce	92

4. Sources of Law	94
5. Domestic Provisions Applicable in the Absence of Treaty Provisions	95
Article 10 Dividends (Dividenden)	
1. Texts	98
1.1 Treaty Text	98
1.2 Protocol	102
2. U.S. Treasury Department Technical Explanations	103
3. Comments from the Swiss-American Chamber of Commerce	110
4. Sources of Law	113
5. Domestic Provisions Applicable in the Absence of Treaty Protection	113
Article 11 Interest (Zinsen)	
1. Texts	114
1.1 Treaty Text	114
1.2 Protocol	116
2. U.S. Treasury Department Technical Explanations	116
3. Comments from the Swiss-American Chamber of Commerce	121
4. Sources of Law	124
5. Domestic Provisions Applicable in the Absence of Treaty Provisions	124
Article 12 Royalties (Lizenzgebühren)	
1. Treaty Text	128
2. U.S. Treasury Department Technical Explanations	129
3. Comments from the Swiss-American Chamber of Commerce	133
4. Sources of Law	138
5. Domestic Provisions Applicable in the Absence of Treaty Provisions	138
Article 13 Gains (Gewinne aus der Veräußerung von Vermögen)	
1. Treaty Text	139
2. U.S. Treasury Department Technical Explanations	141
3. Comments from the Swiss-American Chamber of Commerce	147
4. Sources of Law	150
5. Domestic Provisions Applicable in the Absence of Treaty Provisions	151
Article 14 Independent Personal Services (Selbständige Arbeit)	
1. Treaty Text	153
2. U.S. Treasury Department Technical Explanations	153
3. Comments from the Swiss-American Chamber of Commerce	157
4. Sources of Law	161
5. Domestic Provisions Applicable in the Absence of Treaty Provisions	16
Article 15 Dependent Personal Services (Unselbständige Arbeit)	
1. Texts	162
1.1 Treaty Text	162
1.2 Memorandum of Understanding	163
2. U.S. Treasury Department Technical Explanations	164
3. Comments from the Swiss American Chamber of Commerce	167
4. Sources of Law	171
5. Domestic Provisions Applicable in the Absence of Treaty Provisions	171

Article 16 Directors' Fees (Aufsichtsrats- und Verwaltungsratsvergütungen)	
1. Treaty Text	172
2. Technical Explanations (U.S. Treasury Department)	172
3. Comments from the Swiss-American Chamber of Commerce	173
4. Sources of Law	174
5. Domestic Provisions Applicable in the Absence of Treaty Provisions	175
Article 17 Artistes and Sportsmen (Künstler und Sportler)	
1. Texts	176
1.1 Treaty Text	176
1.2 Memorandum of Understanding	177
2. U.S. Treasury Department Technical Explanations	177
3. Comments from the Swiss-American Chamber of Commerce	182
4. Sources of Law	185
5. Domestic Provisions Applicable in the Absence of Treaty Provisions	185
Article 18 Pensions and Annuities (Ruhegehälter und Renten)	
1. Treaty Text	186
2. U.S. Treasury Department Technical Explanations	186
3. Comments from the Swiss-American Chamber of Commerce	188
4. Sources of Law	189
5. Domestic Provisions Applicable in the Absence of Treaty Provisions	190
Article 19 Government Services and Social Security (Öffentlicher Dienst und Sozialversicherung)	
1. Texts	191
1.1 Treaty Text	191
1.2 Protocol	192
2. U.S. Treasury Department Technical Explanations	193
3. Comments from the Swiss-American Chamber of Commerce	196
4. Sources of Law	199
5. Domestic provisions applicable in the absence of Treaty Provisions	199
Article 20 Students and Trainees (Studenten und Lehrlinge)	
1. Treaty Text	200
2. U.S. Treasury Department Technical Explanations	200
3. Comments from the Swiss-American Chamber of Commerce	202
4. Sources of Law	203
5. Domestic Provisions Applicable in the Absence of Treaty Provisions	203
Article 21 Other Income (Übrige Einkünfte)	
1. Treaty Text	204
2. U.S. Treasury Department Technical Explanations	205
3. Comments from the Swiss-American Chamber of Commerce	208
4. Sources of Law	209
Article 22 Limitation on Benefits (Einschränkung von Abkommensvorteilen)	
1. Texts	210

1.1 Treaty Text	210
1.2 Protocol.....	217
1.3 Memorandum of Understanding	220
2. U.S. Treasury Department Technical Explanations	238
3. Comments from the Swiss-American Chamber of Commerce	259
4. Sources of Law.....	289
5. Overview.....	289
Article 23 Relief from Double Taxation (Vermeidung der Doppelbesteuerung)	
1. Treaty Text	291
2. U.S. Treasury Department Technical Explanations	295
3. Comments from the Swiss-American Chamber of Commerce	301
4. Sources of Law	308
Article 24 Non-discrimination (Gleichbehandlung)	
1. Texts	309
1.1 Treaty Text.....	309
1.2 Protocol.....	311
2. U.S. Treasury Department Technical Explanations	311
3. Comments from the Swiss-American Chamber of Commerce	319
4. Sources of Law	319
Article 25 Mutual Agreement Procedure (Verständigungsverfahren)	
1. Treaty Text	320
2. U.S. Treasury Department Technical Explanations	325
3. Text of the Swiss Note setting out the Arbitration Process	330
4. Comments from the Swiss-American Chamber of Commerce	335
5. Sources of Law	340
6. Domestic Tax Provisions Applicable in the Absence of Treaty Protection	340
Article 26 Exchange of Information (Informationsaustausch)	
1. Texts	341
1.2 Protocol.....	343
1.3 Swiss Note	346
2. U.S. Treasury Department Technical Explanations	355
3. Swiss Ordinance on the Administrative Assistance according to the Double Taxation Treaties of October 1, 2010.....	355
4. Comments from the Swiss-American Chamber of Commerce	356
5. Sources of Law	361
6. old Texts.....	362
6.1 Treaty Text.....	362
6.2 Protocol.....	363
6.3 Memorandum of Understanding signed on October 2, 1996	365
6.4 Mutual Agreement of January 23, 2003, Regarding the Administration of Article 26 (Exchange of Information) of the Swiss-U.S. Income Tax Convention of October 2, 1996	366
7. U.S. Treasury Department Technical Explanations	388
8. 2004 Comments from the Swiss-American Chamber of Commerce	393
9. Sources of Law	403

Article 27 Members of Diplomatic Missions and Consular Posts

(Mitglieder von diplomatischen Missionen und konsularischen Vertretungen)

1. Treaty Text	404
2. U.S. Treasury Department Technical Explanations	405
3. Comments from the Swiss-American Chamber of Commerce	407
4. Sources of Law	408
Article 28 Miscellaneous (Verschiedenes)	
1. Treaty Text	409
2. U.S. Treasury Department Technical Explanations	412
3. Comments from the Swiss-American Chamber of Commerce	417
Article 29 Entry into Force (Inkrafttreten)	
1. Treaty Text	419
2. U.S. Treasury Department Technical Explanations	420
3. Comments from the Swiss-American Chamber of Commerce	423
4. Sources of Law	424
Article 30 Termination (Kündigung)	
1. Treaty Text	425
2. U.S. Treasury Department Technical Explanations	426
3. Comments from the Swiss-American Chamber of Commerce	427
4. Sources of Law	427
Ordinance Governing the Income Tax Treaty between Switzerland and the United States	428
Verordnung zum schweizerisch-amerikanischen Doppelbesteuerungsabkommen vom 2. Oktober 1996	446
Ordinance on the Administrative Assistance according to the Double Taxation Conventions of October 1, 2010	459
Verordnung über die Amtshilfe nach Doppelbesteuerungsabkommen (ADV)	467
Trends and Latest Developments	473
Interaction Between Treaty Provisions and Qualified Intermediary Arrangements	484
1. Introduction to the revised US withholding tax regulations	484
2. The Qualified Intermediary System	488
3. Analysis of certain issues of importance to QIs	492
4. The QI's reporting obligations and the QI audit	508
5. QI Renewal	511
6. Announcement 2008-98: Proposed Amendments to Qualified Intermediary Withholding Agreement and to Audit Guidance for External Auditor of Qualified Intermediaries	512
7. Outlook: FATCA	513
8. The QI system and the Swiss Ordinance Governing the Income Tax Treaty between Switzerland and the United States of October 2, 1996	515
Frequently Used Forms	518