

TRADE OFFICE OF SWISS INDUSTRIES

瑞 士 商 務 辦 事 處

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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

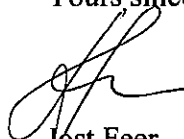
this provision aims at guaranteeing the taxpayer a fair procedure and not at preventing or unduly delaying the exchange of information process.”

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

臺北, [日期]

謝先生，您好

茲就瑞士商務辦事處與駐瑞士臺北文化經濟代表團於 2007 年 10 月 8 日簽署之「避免所得稅雙重課稅協定」(以下稱「本協定」)，提出本協定修訂條文如下：

第 I 條

本協定第十三條第四項應予刪除，並以下列條文取代：

「四、一方領域居住者轉讓公司股份（該股份於雙方領域同意之證券交易所掛牌者除外）或其他公司權利，且該公司之資產超過百分之五十係直接或間接由位於他方領域內合於第六條所稱不動產所構成，其轉讓利得，他方領域得予課稅。但下列情形之一者不適用前段規定：

- (一)該取得利得之人於轉讓前持有該公司股份或其他公司權利未達百分之五。
- (二)因公司重組、合併、分割或類似交易而取得之利得。
- (三)公司從事營業所使用之不動產。」

第 II 條

本協定第二十五條應予刪除，並以下列條文取代：

「第二十五條

資訊交換

- 一、雙方領域之主管機關於不違反本協定之範圍內，應相互交換所有可能有助於實施本協定之規定或為本協定適用租稅有關國內法之行政或執行之資訊。資訊交換不以第一條規定之範圍為限。
- 二、一方領域依前項規定取得之任何資訊，應按其依該領域國內法規定取得之資訊同以密件處理，且僅能揭露予與前項所述租稅之核定、徵收、執行、起訴或上訴之裁定有關人員或機關（包括法院及行政部門）。上開人員或機關僅得為前述目的而使用該資訊，但得於公開法庭之訴訟程序或司法判決中揭露之。
- 三、前二項規定不得解釋為一方領域有下列義務：
 - (一)執行與一方或他方領域之法律及行政慣例不一致之行政措施。

(二)提供依一方或他方領域之法律規定或正常行政程序無法獲得之資訊。

(三)提供可能洩露任何貿易、營業、工業、商業或專業秘密或交易方法之資訊，或其揭露將有違公共政策(公序)之資訊。

四、一方領域依據本條規定所要求提供之資訊，他方領域雖基於本身課稅目的無需此等資訊，亦應利用其資訊蒐集措施以獲得該等資訊。前述義務應受前項規定之限制，但不得解釋為他方領域得僅因該等資訊無國內利益而引用前項規定不提供是項資訊。

五、第三項之規定無論在任何情況下均不得解釋為准許一方領域，僅因資訊為銀行、其他金融機構、被委任人或具代理或受託身分之人所持有、或涉及一人所有權利益為由，而拒絕提供資訊。受請求領域之稅捐機關為符合本項規定之義務，應具有取得並提供本項所涵蓋資訊之執行能力，不受第三項或其國內法規規定之限制。」

第 III 條

本協定第二十七條第二項第三款應予刪除，並以下列條文取代：

「(三)第二十五條，為其課稅年度始日於本協定生效日所屬年度之次年一月一日以後之資訊。」

第 IV 條

議定書第五項及第六項參照「第二條第一項第二款」應修訂為參照「第二條第三項第二款」。

第 V 條

議定書第八項應予刪除，並以下列條文取代：

「八、附加於第二十五條

(一)提出請求領域已依其國內租稅程序查盡所有一般可得資訊來源後，始得請求資訊交換。

(二)提出請求領域之稅捐機關依本協定第二十五條請求資訊交換時，應提供下列資訊予受請求領域之稅捐機關：

1. 受查核或調查之人之身分。
2. 所請求資訊之期間。

3. 所請求資訊內容之描述，包括提出請求領域期自受請求領域收到之資訊性質及格式。
4. 請求該等資訊之租稅目的。
5. 已知持有所請求資訊之人之姓名及地址。

所稱可能有助於之資訊，其意旨係為提供最大可能範圍之租稅資訊交換，但不允許雙方領域從事探索性調查或請求與特定納稅義務人之課稅事項無關之資訊。本款包括確保不發生探索性調查之重要程序規定，但有關第一目至第五目之解釋，不得妨礙有效資訊交換之進行。

- (三) 本協定第二十五條規定並未使雙方領域承諾執行自動資訊交換或自發性資訊交換。
- (四) 進行資訊交換時，受請求領域傳送資訊予提出請求領域前，應適用受請求領域有關納稅義務人權利之行政程序規定。本項規定係保障納稅義務人享有公正之行政程序，而非用於妨礙或延遲資訊交換。」

第 VI 條

議定書第九項應予刪除。

駐瑞士臺北文化經濟代表團如接受以上提議，謹建議本信函與您接受此提議之復函，構成駐瑞士臺北文化經濟代表團與瑞士商務辦事處同意修訂本協定之協議，並自本協定生效日起生效。

瑞士商務辦事處
費爾

駐瑞士臺北文化經濟代表團
謝發達先生

Received on
July 14th at 09⁰⁰
H. H. H. H.
President of STIG

台北文化經濟代表團
Délégation
culturelle et économique
de Taipei

Bern, July 14, 2011

Dear Mr. Feer

I acknowledge receipt of your letter of 14 July 2011, which reads as follows:

"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").

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- 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:

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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;
 - 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;
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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."

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

費爾先生您好,

[日期]來函敬悉，內容如下：

「謝先生，您好

茲就瑞士商務辦事處與駐瑞士臺北文化經濟代表團於 2007 年 10 月 8 日簽署之『避免所得稅雙重課稅協定』（以下稱『本協定』），提出本協定修訂條文如下：

第 I 條

本協定第十三條第四項應予刪除，並以下列條文取代：

『四、一方領域居住者轉讓公司股份（該股份於雙方領域同意之證券交易所掛牌者除外）或其他公司權利，且該公司之資產超過百分之五十係直接或間接由位於他方領域內合於第六條所稱不動產所構成，其轉讓利得，他方領域得予課稅。但下列情形之一者不適用前段規定：

（一）該取得利得之人於轉讓前持有該公司股份或其他公司權利未達百分之五。

（二）因公司重組、合併、分割或類似交易而取得之利得。

（三）公司從事營業所使用之不動產。』

第 II 條

本協定第二十五條應予刪除，並以下列條文取代：

『第二十五條

資訊交換

一、雙方領域之主管機關於不違反本協定之範圍內，應相互交換所有可能有助於實施本協定之規定或為本協定適用租稅有關國內法之行政或執行之資訊。資訊交換不以第一條規定之範圍為限。

二、一方領域依前項規定取得之任何資訊，應按其依該領域國內法規定取得之資訊同以密件處理，且僅能揭露予與前項所述租稅之核定、徵收、執行、起訴或上訴之裁定有關人員或機關（包括法院及行政部門）。上開人員或機關僅得為前述目的而使用該資訊，但得於公開法庭之訴訟程序或司法判決中揭露之。

三、前二項規定不得解釋為一方領域有下列義務：

- (一)執行與一方或他方領域之法律及行政慣例不一致之行政措施。
- (二)提供依一方或他方領域之法律規定或正常行政程序無法獲得之資訊。
- (三)提供可能洩露任何貿易、營業、工業、商業或專業秘密或交易方法之資訊，或其揭露將有違公共政策(公序)之資訊。

四、一方領域依據本條規定所要求提供之資訊，他方領域雖基於本身課稅目的無需此等資訊，亦應利用其資訊蒐集措施以獲得該等資訊。前述義務應受前項規定之限制，但不得解釋為他方領域得僅因該等資訊無國內利益而引用前項規定不提供是項資訊。

五、第三項之規定無論在任何情況下均不得解釋為准許一方領域，僅因資訊為銀行、其他金融機構、被委任人或具代理或受託身分之人所持有、或涉及一人所有權利益為由，而拒絕提供資訊。受請求領域之稅捐機關為符合本項規定之義務，應具有取得並提供本項所涵蓋資訊之執行能力，不受第三項或其國內法規定之限制。』

第 III 條

本協定第二十七條第二項第三款應予刪除，並以下列條文取代：

『(三)第二十五條，為其課稅年度始日於本協定生效日所屬年度之次年一月一日以後之資訊。』

第 IV 條

議定書第五項及第六項參照『第二條第一項第二款』應修訂為參照『第二條第三項第二款』。

第 V 條

議定書第八項應予刪除，並以下列條文取代：

『八、附加於第二十五條

- (一)提出請求領域已依其國內租稅程序查盡所有一般可得資訊來源後，始得請求資訊交換。

(二)提出請求領域之稅捐機關依本協定第二十五條請求資訊交換時，應提供下列資訊予受請求領域之稅捐機關：

1. 受查核或調查之人之身分。
2. 所請求資訊之期間。
3. 所請求資訊內容之描述，包括提出請求領域期自受請求領域收到之資訊性質及格式。
4. 請求該等資訊之租稅目的。
5. 已知持有所請求資訊之人之姓名及地址。

所稱可能有助於之資訊，其意旨係為提供最大可能範圍之租稅資訊交換，但不允許雙方領域從事探索性調查或請求與特定納稅義務人之課稅事項無關之資訊。本款包括確保不發生探索性調查之重要程序規定，但有關第一目至第五目之解釋，不得妨礙有效資訊交換之進行。

(三)本協定第二十五條規定並未使雙方領域承諾執行自動資訊交換或自發性資訊交換。

(四)進行資訊交換時，受請求領域傳送資訊予提出請求領域前，應適用受請求領域有關納稅義務人權利之行政程序規定。本項規定係保障納稅義務人享有公正之行政程序，而非用於妨礙或延遲資訊交換。』

第 VI 條

議定書第九項應予刪除。

駐瑞士臺北文化經濟代表團如接受以上提議，謹建議本信函與您接受此提議之復函，構成駐瑞士臺北文化經濟代表團與瑞士商務辦事處同意修訂本協定之協議，並自本協定生效日起生效。」

特此告知駐瑞士臺北文化經濟代表團接受以上提議。

瑞士商務辦事處
費爾先生

駐瑞士臺北文化經濟代表團
謝發達