

No. 3330

**CANADA
and
FRANCE**

Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income. Signed at Paris, on 16 March 1951

Codicil to the above-mentioned Agreement. Signed at Ottawa, on 6 October 1951

Exchange of notes regarding the entry into force of the above-mentioned Agreement. Ottawa, 28 May 1953

Official texts: English and French.

Registered by Canada on 30 April 1956.

**CANADA
et
FRANCE**

Convention tendant à éviter les doubles impositions et à prévenir l'évasion fiscale en ce qui concerne les impôts sur le revenu. Signée à Paris, le 16 mars 1951

Avenant à la Convention susmentionnée. Signé à Ottawa, le 6 octobre 1951

Échange de notes relatif à l'entrée en vigueur de la Convention susmentionnée. Ottawa, 28 mai 1953

Textes officiels anglais et français.

Enregistrés par le Canada le 30 avril 1956.

No. 3330. AGREEMENT¹ BETWEEN CANADA AND FRANCE
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION WITH
RESPECT TO TAXES ON INCOME. SIGNED AT PARIS,
ON 16 MARCH 1951

The Government of Canada and the Government of the French Republic, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income have agreed as follows :

Article 1

I. The taxes which are subject to this Agreement are :

a) in Canada :

Income taxes, including surtaxes, which are imposed by the Government of Canada;

b) in France :

1. The tax on the income of physical persons (proportional tax and progressive surtax);
2. The tax on companies.

II. This Agreement shall also apply to any other taxes of a substantially similar character imposed by either contracting Government, subsequent to the signing of this Agreement or in whatever territory to which the present Agreement is extended under Article 21.

Article 2

For the purposes of this Agreement :

I. The term "France" when it is used in the geographical sense, will mean only "Metropolitan" France excluding Algeria, the overseas departments and other territories of the French Union.

II. The expression "one of the territories" and the "other territory" means France or Canada, as the case may be.

III. The term "tax" means French taxes or Canadian taxes, as the case may be.

¹ Came into force on 1 January 1952, the date agreed upon by the two Governments in the exchange of notes of 28 May 1953, in accordance with article 22.

IV. The term "person" means :

- a) any physical person;
- b) any unincorporated body of physical persons;
- c) any body corporate.

V. The term "company" means any body having a legal personality.

VI. The expression "permanent establishment" means offices, branches, factories or other fixed places or business where an enterprise exercises the whole or part of its activity. When an enterprise of one of the contracting States does business in the other State through an agency established there, it shall not be considered that this enterprise has a permanent establishment in the latter State, unless the agent is authorized to negotiate and conclude contracts or has on hand a stock of merchandise from which he regularly fills orders which he receives.

It is understood that :

(i) The fact that an enterprise established in one of the two contracting States has business relations with the other country through a commission agent or broker, or through a subsidiary, does not mean that this enterprise has a permanent establishment in the latter State.

(ii) The fact that an enterprise of one of the two States maintains in the other State, even in the form of permanent installations, places of business restricted to the purchase of merchandise destined to furnish one or several sales or processing establishments, which this enterprise operates in the former State, shall not be interpreted to mean that the enterprise has a permanent establishment in the other State.

(iii) With respect to insurance enterprises, the fact of having in one of the two contracting States a representative accepted by the Authorities of that State or authorized to give receipts for premiums, is considered to constitute a permanent establishment.

VII. The fiscal domicile of physical persons is the place of normal residence, by which is understood the permanent home, or in the default thereof, the principal place of sojourn. That of legal persons, or of groups of physical persons not having a legal personality, is the place where the effective management is exercised.

VIII. The expression "industrial and commercial profits" includes particularly the profits of insurance companies, banks and other financial enterprises.

Subject to the provisions of this Agreement there shall be taxed separately or together with the industrial and commercial profits in conformity with the laws of each of the two contracting States :

- a) The income from real property;
- b) interests or dividends;
- c) Royalties for the use of or the rights to use patents, copyrights, secret processes and formulas, trademarks and other similar rights.

IX. When it is stated in the provisions of Articles 3, 4, 8, 10, 11 paragraph II, 12, 13 paragraphs I and III, 14 of this Agreement that income is taxable in one of the two contracting States, the statement must be understood to mean that the right is reserved to that State to tax the said income in a normal fashion according to its own legislation, the other State being required to take the measures provided by Article 16 of this Agreement.

X. The expression “competent authority” or “competent authorities” means in the case of France, the Minister of Finance and of Economic Affairs or his duly authorized representative, and in the case of Canada, the Minister of National Revenue or his duly authorized representative.

XI. Any expression which is not defined in this Agreement shall have for each contracting State, unless the context otherwise requires, the same meaning which it has under the laws of that State with respect to the taxes referred to in the said Agreement.

Article 3

Income from real property, including profits from agricultural undertakings, shall be taxable in the State where such property is situated.

Article 4

I. The income from industrial, mining, commercial, financial and insurance enterprises is taxable by the State in the territory of which there is a permanent establishment.

II. When an enterprise has permanent establishments in both contracting States, each State shall tax the income derived from the activity of the permanent establishment situated in its territory.

III. This taxable income shall not exceed the amount of the industrial, mining, commercial or financial profits realized by the permanent establishment, including, if necessary, the profits or advantages derived indirectly from this establishment by way of increase or reduction in the purchase or sale price or by any other means. A portion of the general head office expenses of the enterprise is to be taken into account in computing the profit or loss of the different permanent establishments.

IV. It is understood between the competent authorities of the contracting States that, if necessary, they will draft rules of allocation, failing proper accounting to show distinctly and exactly the profits of the permanent establishments in the respective territories.

Article 5

I. When a Canadian enterprise, by reason of its participation in the management or capital of a French enterprise, makes or imposes on the latter, in their commercial or financial relations, conditions different from those which would be made with a third enterprise, any profits which should normally have appeared in the financial statement of the French enterprise, but which have been in this manner, diverted to the Canadian enterprise, are, subject to the measures of appeal applicable in the case of the taxation of industrial and commercial profits, included in the taxable profits of the French enterprise.

The same principle applies *mutatis mutandis*, when profits are diverted from a Canadian enterprise to a French enterprise.

II. An enterprise is considered to participate in the management or capital of another enterprise, particularly when the same persons participate directly or indirectly in the management of capital of both enterprises.

Article 6

I. Notwithstanding Article 4 of this Agreement the profits of aerial navigation or maritime enterprises having the seat of effective management in one of the two contracting States are exempt from tax in the other contracting State.

II. The exemption provided in paragraph I is limited to the profits derived from the operation of ships and aircraft. Likewise, is subject with respect to enterprises having the seat of effective management in France, to the condition that the aircraft and ships are registered in this country, and with respect to enterprises having the seat of effective management in Canada, to the condition that the aircraft are registered in this country or that the ships are registered in the said country or in the United Kingdom.

Article 7

I. A company having its fiscal domicile in Canada shall only be subject in France to the proportional tax on income derived from securities under the conditions envisaged in Articles 109, paragraph 2 and 1674 of the *Code français des Impôts* if it has a permanent establishment in France in the sense of Article 2, paragraph VI. In any event the taxable income shall not exceed the amount of

profits or earnings realized by the permanent establishment in France, determined in accordance with the provisions of Article 2, paragraph VIII, and 4 of this Agreement.

II. A company having its fiscal domicile in Canada shall not be subject in France to the proportional tax in income derived from securities by reason of its participation in the management or capital of a company having its fiscal domicile in France, or by reason of any other relations with this company; but the profits distributed by this latter company and subject to the proportional tax on income derived from securities, will, if necessary, be increased, for the purpose of establishing the basis of the tax, by all the profits or advantages which the former company may have received indirectly from the latter company in the circumstances provided by Article 5 above.

Article 8

I. The income derived from securities (Governments bonds, analogous stocks and shares, interests in limited partnerships, shares in civil companies and companies with limited liability, bonds and other evidences of indebtedness, loans, deposits, deposit accounts, current accounts, guarantees) the revenue from trusts and royalties (*redevances*) or fractions of royalties derived from the operation of oil fields and natural gas, are taxable by the State in the territory of which the debtor has his domicile, when the general legislation of this State authorizes the collection of a tax on this income by deduction at the source.

II. If the debtor has in both States permanent establishment within the meaning of Article 2, paragraph II, and if one of these establishments borrows or receives a deposit or guarantee in the course of its particular activity, the interest is taxable in that one of the two States in the territory of which this establishment is situated.

III. The tax deducted at the source under this Article will be credited under the conditions provided by Article 16 against the tax payable in the State of domicile of the creditor.

Article 9

I. Remuneration paid in the form of salaries, wages, fees, pay and pensions by a public person of one of the two contracting States for administrative or military service present or past, is taxable exclusively by the State of the debtor.

Nevertheless, with respect to salaries, wages, fees and pay, taxation by the State of the debtor is subject to the condition that the recipient does not ordinarily reside in the other State, or resides in the latter State, solely for the purpose of fulfilling the duties of his office. When this condition is not fulfilled, the salaries,

wages, fees and pay are taxable according to the rules provided in the first paragraph of Article 10 in this Agreement.

II. Remuneration referred to in the first paragraph includes, with respect to Canada, that paid by the Federal, Provincial and Municipal Governments and, with respect to France, that paid by the State, the *Départements* and the *Communes*.

Article 10

I. Subject to the provisions of the first paragraph of Article 9 above, the salaries, wages and other analogous remuneration are taxable by the State in whose territory the personal activity, the source of this income, is exercised.

II. In the application of the preceding paragraph, it shall not be considered as the exercise of personal activity in one of the States if an employee of an establishment situated in the other State carries out in the territory of the first State a temporary mission of short duration in the course of which his remuneration continues to be a charge on and paid by the said establishment.

Article 11

I. Private pensions and term or life annuities derived from one of the two contracting States and paid to persons having their fiscal domicile in the other State are taxable only in the latter State.

II. Nevertheless, term or life annuities created by will or donation are taxable in the State of the debtor.

Article 12

Directors' fee and other remuneration of directors of joint stock companies are taxable according to the provisions of paragraphs I and III of Article 8 above, subject to the application of Article 10 with respect to the remuneration which such persons receive in their other effective capacities.

Article 13

I. Royalties (*redevances*), other than those referred to in Article 8 of this Agreement, which are paid for the use of real property or the operation of mines, quarries, or other natural resources, are taxable in that one of the two contracting States where such property, mines, quarries, or other natural resources are situated.

II. Copyright royalties which are paid in one of the two contracting States to a person having its fiscal domicile in the other State are taxable only in this latter State.

Nevertheless, if this person carries on his activity in the former State through a permanent establishment, these rights are taxable in the said State.

III. The proceeds of royalties (*redevances*) derived from the sale or licensing of the use of patents, trademarks, secret processes or formulae, are taxable in the State of the debtor.

IV. The word "royalties" as used in paragraph III of this Article should be understood to include the income from the lease of motion picture films.

Article 14

I. Income derived from the exercise of a liberal profession and generally all earned income other than that governed by Articles 9, 10, 11 and 12 of this Agreement, is taxable by the State in the territory of which the personal activity is exercised from which is derived the income and to the extent that the activity is exercised in this territory.

II. Liberal professions within the meaning of this Article shall include particularly scientific, artistic, literary, teaching and pedagogical activity, as well as that of doctors, lawyers, architects and engineers.

Article 15

Students of one of the States who sojourn in the other State exclusively for the purpose of their studies, shall not be subject to any tax by the latter State on the remittances which they receive from a person having his fiscal domicile in the first State.

Article 16

It is agreed that double taxation shall be avoided in the following manner :

A. As regards Canada :

Canada shall deduct from the tax which is normally collectable in virtue of its own legislation, the fraction of this tax related to the income which, in virtue of this Agreement, is taxable in France.

Nevertheless, the amount of the deduction to be made in this way shall not exceed the amount of the tax collected in France on the income referred to in the preceding paragraph.

B. As regards France :

- a) The tax on the income of physical persons (proportional tax) and the tax on companies.
- (1) With respect to the income referred to in Articles 8 and 12 of this Agreement, a deduction of the tax withheld at the source in Canada from that which is collectable in France, will be effected in a lump sum by means of a reduction of fifteen in the rate of the French tax.
 - (2) When the income referred to in Articles 3, 4, 9, 10 and 13, paragraph I, of this Agreement is, in virtue of the said Agreement, taxable in Canada, it will be exempt from the taxes in France.
 - (3) When the income referred to in Article 11, paragraph II, 13 paragraphs III and IV, and 14 of this Agreement is, in virtue of the said Agreement, taxable in Canada, the regular amount of the taxes payable in France will be reduced by the fraction of this tax corresponding to the net amount of this income.
Nevertheless, the credit will, if necessary, be limited to the amount of tax collected in Canada.
- b) The tax on the income of physical persons (progressive surtax). The provisions of paragraphs I and II of Article 164 of the *Code français des Impôts* fixing the manner for the taxation of foreigners domiciled or resident in France will continue to be applied.

Article 17

Although the French *patente* tax is not referred to in the first Article of this Agreement, it is understood that in the case where the duties to which a Canadian enterprise is liable for this tax by reason of a permanent establishment situated in France are required to be established on the basis of capital, account will only be taken of that portion of the capital situated or employed (*investi*) in this country.

Article 18

Individuals and companies, or other bodies, of one of the two contracting States shall not be subject in the other State, to any taxes other or greater than those which are imposed on individuals and companies, or other bodies, of this latter State.

Article 19

The contracting States will exchange information of a fiscal nature which is available to them, or which they are able to obtain under their own legislation and which would be useful to assure the regular assessment and collection of the

taxes referred to in this Agreement, as well as the application with respect to these taxes of the legal provisions relative to the prevention of fiscal fraud.

The information so exchanged shall retain its secret nature and shall not be disclosed to persons other than those charged with assessment and collection of the taxes referred to in this Agreement.

The provisions of this Article shall not in any case be considered as requiring one of the contracting States to disclose to the other State, either, information other than that which its own fiscal legislation permits to obtain, or information the furnishing of which would involve the disclosure of industrial, commercial or professional secrets.

Neither shall these provisions be considered as imposing on one of the two contracting States the obligation to perform an administrative act which would be contrary to its regulations or practices.

Article 20

I. Any taxpayer who shows proof that the action of the revenue authorities of the two contracting States has resulted in double taxation with respect to the taxes referred to in this Agreement, may lodge a claim with a State in whose jurisdiction he is, or, if the taxpayer is a company or other entity, with the State where such company or entity was created or organized. Should the claim be upheld, the competent authority of this State may come to an agreement with the competent authority of the other State with a view to equitable avoidance of the double taxation.

II. The competent authorities of the two contracting States may likewise come to an Agreement for the purpose of overcoming double taxation in cases not otherwise provided by this Agreement, as well as in the case where the interpretation or the application of this Agreement gives rise to difficulties or doubts.

Article 21

I. At the same time the Agreement comes into force and so long as the Agreement shall remain in force, either contracting State may, on giving notice to the other State through diplomatic channels, declare its desire that the operation of the Agreement shall, wholly or subject to modifications to be stipulated in the notice, extend either to one of its overseas territories or to one of the overseas territories of the other State, subject to the condition that the said territory collects taxes which are similar in substance to the taxes referred to in Article 1 above.

The notice will indicate the date or dates from which the extension shall take effect, it being understood that such date or dates shall be at least sixty days after the date of the notice.

II. In the territory or territories designated by the notice referred to in the preceding paragraph the provisions of this Agreement will apply subject to the conditions and reservations which may be stated in the notice, from the date or dates mentioned therein, unless prior to the date fixed for a particular territory the contracting State which will have received notice shall have informed the other contracting State in writing and through diplomatic channels that it does not accept the notification with respect to this territory, in which case, the provisions which are the subject of the notice will not apply to the said territory.

III. At any time after the expiry of a period of one year from the coming into force of an extension by notice in accordance with the provisions of the first paragraph of this Article, either contracting State may, by notice given to the other contracting State through diplomatic channels, terminate the application of this Agreement to any territory to which this Agreement may have been extended. The Agreement shall cease to apply in the territory or territories stated in the notice from the date or dates mentioned in this notice.

It is understood, in any event, that such date or dates shall be at least six months after that of the notice and that such shall not affect in any way the continued application of the Agreement between France and Canada, nor shall it affect the continued application as between one of these countries and any other territory to which the Agreement may have been extended in virtue of the provisions of the first paragraph of the present Article.

IV. In the application of this Agreement in relation to any territory to which it may have been extended it shall be understood, each time that the Agreement refers to France or to Canada, that it will refer equally to such territory.

V. Unless the two governments shall have expressly agreed to the contrary, the notice of termination of this Agreement, as provided by Article 23, shall terminate the application of this Agreement with respect to any territory to which it may have been extended under the provisions of this Article.

VI. For the purpose of this Article, the expression "overseas territory" means a *département*, colony, protectorate or other overseas territory under the sovereignty or mandate of one of the two contracting States and united by constitutional law to one of these States; but it shall not include territories which do not have diplomatic representation either by France or Canada.

Article 22

I. The present Agreement is drawn up in the French and English languages, the two texts being equally authentic.

II. The present Agreement shall come into force on a date to be agreed upon by the two Governments.

III. The information referred to in Article 19 shall be supplied to the extent that it becomes available during the continuance of the Agreement.

Article 23

This Agreement shall remain in force for an indefinite period.

However, from the first January 1954, each of the two contracting States may notify the other State during the first six months of each year by writing and through diplomatic channels that it intends to terminate this Agreement.

In such case, this Agreement shall terminate effective from January 1st of the year following the date of notice, it being understood that its application will be limited to the annual taxes which will be assessed for the year during which the notification will have been given.

DONE at Paris, in duplicate, on the 16th day of March one thousand nine hundred and fifty-one.

For the Government of Canada :
G. P. VANIER

For the Government of the French Republic :
A. PARODI

CODICIL¹ TO THE AGREEMENT OF 16 MARCH 1951² BETWEEN FRANCE AND CANADA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO INCOME TAXES. SIGNED AT OTTAWA, ON 6 OCTOBER 1951

The Government of the French Republic and the Government of Canada, desiring to complete the Agreement signed on March 16th, 1951² for the avoidance of double taxation and the prevention of fiscal evasion, with respect to income taxes, have agreed as follows :

Article 1

Paragraph VI of Article 2 of the Agreement of March 16th, 1951 is to be completed with a new sub-paragraph (iii) which reads as follows :

“(iii). When a company of one of the States derives profits, in accordance with contracts settled in said State, from the sale of goods or merchandise kept in storage within the territory of the other State for the convenience of delivery and not for publicity purposes, such profits are not considered as resulting from a permanent establishment of the company located in the other State, notwithstanding the fact that offers of purchase have been collected by an agent who has transmitted them to the company for final acceptance.”

Former sub-paragraph (iii) of above-mentioned paragraph VI becomes sub-paragraph (iv).

Article 2

Both the French and English texts of the present codicil are equally valid.

It shall be part and parcel of the Agreement and shall come and stay in force under the provisions of Articles 22 paragraph II and 23 of said Agreement.

DONE at Ottawa, in duplicate, on October 6th, 1951.

For the Government
of the French Republic :
Hubert GUÉRIN

For the Government
of Canada :
L. B. PEARSON

¹ Came into force on 1 January 1952, the date agreed upon by the two Governments in the exchange of notes of 28 May 1953, in accordance with article 2.

² See p. 268 of this volume.

EXCHANGE OF NOTES REGARDING THE ENTRY INTO
FORCE OF THE AGREEMENT OF 16 MARCH 1951¹
BETWEEN CANADA AND FRANCE FOR THE AVOID-
ANCE OF DOUBLE TAXATION AND THE PREVEN-
TION OF FISCAL EVASION WITH RESPECT TO TAXES
ON INCOME. OTTAWA, 28 MAY 1953

I

The Secretary of State for External Affairs to the Ambassador of France to Canada

DEPARTMENT OF EXTERNAL AFFAIRS

Ottawa, May 28, 1953

Excellency,

I have the honour to refer to the Convention between the Government of Canada and the Government of France constituting an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Paris on March 16, 1951,¹ and to the Codicil to the aforesaid Convention signed at Ottawa on October 6, 1951.²

In accordance with paragraph II of Article 22 of the said Convention, I propose that the following provisions determine the conditions for the entry into force of the above-mentioned Convention and Codicil :

(1) Subject to the provisions herein the Convention and Codicil shall become effective on the 1st day of January, 1952.

(2) The exemption from tax provided by Article 6 of the Convention shall become effective in respect of aerial navigation enterprises on the 1st day of January, 1950.

(3) Without providing for any refund, the provisions of Article 7 of the Convention shall apply retroactively to any taxes imposed on income derived from securities and established under the law of June 29, 1872, and by the Decree of December 6, 1872, and to any taxes levied under the law substituted therefor as of the 1st of January, 1949, in Article 109, paragraph 2, and Article 1674 of the *Code Général des Impôts* unless prior to the 1st January, 1952, there shall have been a judicial decision, from which no appeal lies or which has not been the subject of an appeal in cassation.

(4) In respect of Article 8 and 12 of the Convention, no refund shall be made of any tax paid in the State of domicile of the recipient prior to the date of this Exchange of Notes on income received after the 1st January, 1952.

¹ See p. 268 of this volume.

² See p. 290 of this volume.

If your Gouvernement approves the proposal that the above-mentioned Convention and Codicil shall be effective subject to the provisions set out above, I have the honour to suggest that this note and your reply thereto shall constitute an agreement between the Government of Canada and the Government of France effective from the date of this Exchange of Notes.

It is understood that both the French and the English texts of this note are authentic.

Accept, Excellency, the renewed assurances of my highest consideration.

C. S. A. RITCHIE
For Secretary of State for External Affairs

II

The Ambassador of France to Canada to the Secretary of State for External Affairs

EMBASSY OF FRANCE IN CANADA

Ottawa, May 28, 1953

Mr. Secretary of State,

In your letter of May the 28, 1953, you referred to the Convention between the Government of France and the Government of Canada constituting an Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Paris on March 16, 1951, and to the Codicil to the aforesaid Convention signed at Ottawa on October 6, 1951.

In accordance with paragraph II of Article 22 of the said Convention, you propose that the following provisions determine the conditions for the entry into force of the above-mentioned Convention and Codicil :

[*See note I*]

I have the honour to inform you that the French Government approves the proposal that the above-mentioned Convention and Codicil shall be effective subject to the provisions set out above. As you suggest, your note of May 28, 1953, and my reply thereto shall constitute an agreement between the Government of France and the Government of Canada effective from the date of this Exchange of Notes.

It is understood that both the French and the English texts of your note of May 28 and of my reply thereto are authentic.

Accept, Mr. Secretary of State, the assurances of my highest consideration.

Hubert GUÉRIN