No. 9489

FRANCE
and
SENEGAL

Tax Agreement (with protocol and exchange of letters). Signed at Dakar on 3 May 1965

Authentic text: French.

Registered by France on 1 April 1969.

FRANCE
et
SÉNÉGAL

Convention fiscale (avec protocole et échange de lettres). Signée à Dakar le 3 mai 1965

Texte authentique: français.

Enregistré par la France le 1er avril 1969.

[TRANSLATION – TRADUCTION]

TAX AGREEMENT[1] BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF SENEGAL

The Government of the French Republic and the Government of the Republic of Senegal, desiring to avoid double taxation as far as is possible and to establish rules of reciprocal assistance with respect to taxes on income, succession duties, registration duties and stamp duties, have for that purpose agreed upon the following provisions:

TITLE I

GENERAL PROVISIONS

Article 1

For the purposes of this Agreement:

1. The term "person" means:

(*a*) Any individual;

(*b*) Any body corporate;

(*c*) Any unincorporated group of individuals.

2. The term "France" means metropolitan France and the overseas *départements* (Guadeloupe, Guiana, Martinique and Réunion).

The term "Senegal" means the territories of the Republic of Senegal.

Article 2

1. For the purposes of this Agreement, an individual shall be deemed to be domiciled in the place in which he has his "permanent home", the latter expression being understood to mean the centre of vital interests—i.e., the place with which his personal relations are closest.

Where the domicile of an individual cannot be determined on the basis of the foregoing sub-paragraph, he shall be deemed to be domiciled in that one of the Contracting States in which he principally resides. If he resides for equal periods in each of the two States, he shall be deemed to have his domicile in the Contracting

[1] Came into force on 4 September 1968, the date of the exchange of the notifications stating that the constitutional requirements in force in both States had been complied with, in accordance with article 43 (1).

State of which he is a national. If he is a national of neither Contracting State, the competent authorities of the Contracting States shall determine the question by agreement.

2. For the purposes of this Agreement, a body corporate shall be deemed to have its domicile in the place in which its registered offices (*siège social statutaire*) are situated; an unincorporated group of individuals shall be deemed to have its domicile in the place in which its centre of actual management is situated.

Article 3

The term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

(*a*) The following shall in particular be deemed to be permanent establishments:

(*aa*) A place of management;
(*bb*) A branch;
(*cc*) An office;
(*dd*) A factory;
(*ee*) A workshop;
(*ff*) A mine, quarry or other place of extraction of natural resources;
(*gg*) A building site or construction or assembly project;
(*hh*) A fixed place of business used for the purpose of storage, display and delivery of goods or merchandise belonging to the enterprise;
(*ii*) A stock of goods or merchandise belonging to the enterprise maintained for the purpose of storage, display and delivery;
(*jj*) A fixed place of business used for the purpose of purchasing goods or merchandise, or for collecting information which is the actual object of the business of the enterprise;
(*kk*) A fixed place of business used for the purpose of advertising.

(*b*) The term "permanent establishment" shall not be deemed to include:

(*aa*) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
(*bb*) The maintenance of a fixed place of business solely for the purpose of the supply of information, for scientific research or for similar activities which, so far as the enterprise is concerned, are preparatory in character.

(*c*) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of independent status within the meaning of sub-paragraph (*e*) below—shall be deemed to constitute a "permanent establishment" in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise.

Such authority shall, in particular, be deemed to be exercised by an agent who habitually has available to him in the first-mentioned Contracting State a stock of goods or merchandise, belonging to the enterprise, from which he regularly fills orders received by him on behalf of the enterprise.

(*d*) An insurance enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that State or insures risks situated therein through a representative who is not an agent within the meaning of sub-paragraph (*e*) below.

(*e*) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of independent status, where such persons are acting in the ordinary course of their business. However, where the agent whose services are used has available to him a stock of goods or merchandise on consignment from which the sales and deliveries are made, such stock shall be deemed to imply the existence of a permanent establishment of the enterprise.

(*f*) The fact that a company which is domiciled in a Contracting State controls or is controlled by a company which is domiciled in the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 4

For the purposes of this Agreement, rights which are governed by the taxation laws relating to real property, and rights of usufruct in immovable property, with the exception of claims of any kind secured by pledge of immovables, shall be deemed to be immovable property.

The question whether a property or a right is an immovable property or a right in respect of immovable property or can be considered to be an accessory to real property shall be decided in accordance with the laws of the State in which the property in question or the property to which the right in question relates is situated.

Article 5

1. Nationals and companies and other associations (*groupements*) of one Contracting State shall not be subjected in the other State to any taxation other or higher than the taxation to which nationals and companies and other associations of the latter State in the same circumstances are subjected.

2. In particular, nationals of one of the Contracting States who are liable to taxation in the territory of the other Contracting State shall be entitled, under the

same conditions as nationals of that other State, to such exemptions, reliefs, rebates and reductions of any taxes or charges whatsoever as may be granted in respect of family dependants.

Article 6

In the application of the provisions of this Agreement, the term "competent authorities" means:

In the case of France, the Minister of Finance and Economic Affairs or his duly authorized representative;

In the case of Senegal, the Minister of Finance or his duly authorized representative.

Article 7

In the application of this Agreement by one of the Contracting States, any term not defined in this Agreement shall unless the context otherwise requires have the meaning which it has under the laws in force in that State with respect to the taxes referred to in this Agreement.

TITLE II

DOUBLE TAXATION

Chapter I

INCOME TAXES

Article 8

1. This chapter shall apply to taxes on income levied in whatsoever manner on behalf of either Contracting State or of its local authorities.

The espression "taxes on income" shall be deemed to mean taxes levied on total income or on elements of income (including capital appreciation).

2. The object of the provisions of this chapter is to avoid double taxation such as might result, for persons (as defined in article 1) having their fiscal domicile, determined in accordance with article 2, in one of the Contracting States, from the simultaneous or successive collection in that State and the other Contracting State of the taxes referred to in paragraph 1 above.

3. The existing taxes to which this chapter shall apply are:

In the case of France:

(*a*) The tax on the income of individuals (*l'impôt sur le revenu des personnes physiques*);

(*b*) The complementary tax (*taxe complémentaire*);

(*c*) The tax on the profits of companies and other bodies corporate (*l'impôt sur les bénéfices des sociétés et autres personnes morales*).

In the case of Senegal:

(*a*) The tax on industrial and commercial profits and on profits from agriculture (*l'impôt sur les bénéfices industriels et commerciaux et sur les bénéfices de l'exploitation agricole*);

(*b*) The tax on profits from non-commercial professions (*l'impôt sur les bénéfices des professions non commerciales*);

(*c*) The tax on income from securities and from movable capital (*l'impôt sur les revenus des valeurs et capitaux mobiliers*);

(*d*) The general income tax (*l'impôt général sur le revenu*);

(*e*) The real estate tax on buildings (*la contribution foncière des propriétés bâties*);

(*f*) The development tax (*taxe de développement*);

(*g*) The levy on wages and the employers' contribution for the improvement of housing (*le prélèvement sur les salaires et la cotisation des employeurs pour l'amélioration de l'habitat*).

4. The Agreement shall also apply to any identical or similar taxes which may subsequently be added to or substituted for the existing taxes. The competent authorities of either Contracting State shall notify the competent authorities of the other Contracting State of any changes made in their taxation laws as soon as such changes are promulgated.

5. If, owing to changes in the taxation laws of either of the Contracting States, it appears expedient to adapt certain articles of the Agreement without affecting its general principles, the necessary adjustments may be made, by agreement, through an exchange of diplomatic notes.

Article 9

Income from immovable property, including profits from agricultural and forestry enterprises, shall be taxable only in the State in which the property is situated.

Article 10

1. Income from industrial, mining, commercial or financial enterprises shall be taxable only in the State in which a permanent establishment is situated.

2. Where an enterprise maintains permanent establishments in both Contracting States, each State may tax only the income derived from the operations of the permanent establishments situated in its territory.

3. Such taxable income may not exceed the amount of the industrial, mining, commercial or financial profits realized by the permanent establishment, including, where appropriate, any profits or advantages derived indirectly from that establishment or allotted or granted to third parties either by increasing or decreasing purchase or selling prices or by any other means. Part of the overhead expenses of the head office of the enterprise shall be charged against the earnings of the various permanent establishments in proportion to their turnover.

4. Where taxpayers with business in both Contracting States do not keep regular accounts showing separately and exactly the profits accruing to the permanent establishments situated in each State, the amount of profit taxable by each State may be determined by apportioning the total earnings between the two States in proportion to the turnover realized in their respective territories.

5. If one of the establishments situated in either Contracting State realizes no turnover, or if the business carried on in the two States is not comparable, the competent authorities of the two States shall consult together to establish the manner in which paragraphs 3 and 4 above are to be applied.

Article 11

1. Where an enterprise of one of the Contracting States, by virtue of its participation in the management or the capital of an enterprise of the other Contracting State, makes or imposes upon that enterprise, in their commercial or financial relations, conditions differing from those which it would make with any other enterprise, all profits which would normally have appeared in the accounts of one of the enterprises but which have in this manner been transferred to the other enterprise may be incorporated in the taxable profits of the first enterprise.

2. An enterprise shall in particular be deemed to participate in the management or the capital of another enterprise when the same persons participate directly or indirectly in the management or the capital of both enterprises.

Article 12

Income derived from the operation of aircraft in international traffic shall be taxable only in the Contracting State in which the enterprise has its fiscal domicile.

Article 13

Subject to the provisions of articles 15 to 17 below, income from securities and assimilated income (earnings from shares, founders' shares or partnership or *commandite* interests; interest on bonds and on all other negotiable certificates of

indebtedness) paid by companies or by public or private authorities having their fiscal domicile in one of the Contracting States shall be taxable in that State.

Article 14

A company of one of the Contracting States may not be subjected in the territory of the other Contracting State to a tax on its distributions of income from securities and of assimilated income (earnings from shares, founders' shares or partnership or *commandite* interests; interest on bonds and on all other negotiable certificates of indebtedness) solely by virtue of its participation in the management or the capital of companies domiciled in that other State or because of any other relationship with such companies; but income distributed by the latter companies and liable to the tax shall where appropriate be increased by the amount of any profits or advantages which the company of the first-mentioned State has indirectly derived from the said companies, either by increasing or decreasing purchase or selling prices or by any other means.

Article 15

1. Where a company having its fiscal domicile in one of the Contracting States is liable in that State to a tax on distributions of income from securities and of assimilated income (earnings from shares, founders' shares or partnership or *commandite* interests; interest on bonds and on all other negotiable certificates of indebtedness) and maintains one or more permanent establishments in the other Contracting State in respect of which it is also liable in the latter State to a similar tax, the taxable income shall be apportioned between the two States, in order to avoid double taxation.

2. The apportionment provided for in the foregoing paragraph shall be established for each fiscal year on the basis of the ratio:

$\frac{A}{B}$ for the State in which the company does not have its fiscal domicile;

$\frac{B-A}{B}$ for the State in which the company has its fiscal domicile.

The letter A represents the total book profits accruing to the company from all its permanent establishments in the State in which it does not have its fiscal domicile, after setting off against each other the profits and losses of those establishments. Book profits shall be understood to mean the profits deemed to have been earned in the said establishments in the light of the provisions of articles 10 and 11 of this Agreement.

The letter B represents the company's total book profits, as shown by its general balance-sheet.

In determining the total book profits, no account shall be taken of over-all losses established in respect of all the company's permanent establishments in either State after setting off against each other the profits and losses of those establishments.

Where there is either no over-all book profit or an over-all book loss in respect of a given fiscal year, the apportionment shall be effected on the bases previously established.

In the absence of previously established bases, the apportionment shall be effected in accordance with a ratio determined by agreement between the competent authorities of the Contracting States concerned.

3. Where the distributed profits include earnings from holdings of the company in the capital of other companies and such holdings fulfil the conditions under which affiliated companies are accorded special tax treatment under the internal legislation either of the State in which the company has its fiscal domicile or of the other State (according as such holdings are credited in the balance-sheet under the head of permanent establishments situated in the first or in the second State), each State shall apply to such part of the said distributed profits as consists of earnings from holdings governed by its internal legislation the provisions of that legislation, while that part of the said distributed profits which does not consist of earnings from such holdings shall be taxed by each State in accordance with the manner of apportionment provided for in paragraph 2 above.

Article 16

1. Where, as a result of checks carried out by the competent taxation administrations, the total profits earned during a fiscal year are adjusted in such a way as to modify the ratio defined in article 15, paragraph 2, such adjustments shall be taken into account in the apportionment between the two Contracting States of the tax bases pertaining to the fiscal year in which the adjustments took place.

2. Where such adjustments relate to the amount of earnings to be apportioned but do not affect the ratio of profits earned taken into account in the apportionment of the earnings to which the adjustments relate, a supplementary tax apportioned in the same ratio as the initial tax shall be imposed in accordance with the rules applicable in each State.

Article 17

1. The apportionment of tax bases referred to in article 15 shall be made by the company and communicated by it to each of the competent taxation administrations within the time-limit prescribed by the laws of each State for declaring such distributions of taxable earnings as the company is carrying out.

In support of such apportionment, the company shall furnish to each of the above-mentioned administrations, in addition to the documents which it is required to produce or deposit under internal legislation, copies of the documents produced to or deposited with the administration of the other State.

2. Any difficulties or disputes which may arise in connexion with the apportionment of tax bases shall be settled by agreement between the competent taxation administrations.

Failing agreement, the difference shall be settled by the mixed commission referred to in article 41.

Article 18

Directors' percentages, attendance fees and other emoluments received by members of the boards of directors or supervisory boards of joint-stock companies, limited share partnerships (*sociétés en commandite par actions*) or co-operative societies in their capacities as such shall be taxable in the Contracting State in which the company has its fiscal domicile, subject to the application of articles 22 and 23 below in respect of remuneration received by them in any other effective capacity.

Where the company, partnership or society maintains one or more permanent establishments in the other Contracting State, the above-mentioned directors' percentages, attendance fees and other emoluments shall be taxable in accordance with the provisions of articles 15 to 17.

Article 19

1. Income from loans, deposits, deposit accounts, notes of indebtedness and any other forms of debt-claims not represented by negotiable instruments shall be taxable in the State in which the creditor has his fiscal domicile.

2. However, each Contracting State shall retain the right, if its internal legislation so provides, to tax the income referred to in paragraph 1 above by deduction at the source.

3. The provisions of paragraphs 1 and 2 above shall not apply if the recipient of the interest in question, being domiciled in one of the Contracting States, maintains in the other Contracting State, in which the interest arises, a permanent establishment with which the debt-claim producing the interest is actually connected. In that case, article 10 relating to the attribution of profits to permanent establishments shall apply.

Article 20

1. Royalties paid for the use of immovable property or for the working of mines, quarries or other natural resources shall be taxable only in the Contracting

State in which such property, mines, quarries or other natural resources are situated.

2. Copyright royalties and proceeds or royalties from the sale or grant of licences for the use of patents, trade marks, secret processes and formulae paid in one of the Contracting States to a person having his fiscal domicile in the other Contracting State shall be taxable only in the latter State.

3. The royalties referred to in paragraph 2 above shall be deemed to include payments made for the hire of or for the right to use cinematographic films, similar remuneration for the provision of information concerning industrial, commercial or scientific experience and rentals for the use of or for the right to use industrial, commercial or scientific equipment, except where such equipment is an immovable property, in which case paragraph 1 shall apply.

4. Where a royalty exceeds the intrinsic and normal value of the rights for which it is paid, the exemption provided for in paragraphs 2 and 3 shall apply only to that part of the royalty which corresponds to the said intrinsic and normal value.

5. The provisions of paragraphs 2 and 3 shall not apply where the recipient of the royalties or other payments maintains in the Contracting State in which the income arises a permanent establishment or fixed place of business used for the practice of a profession or of any other independent activity and where the said royalties or other payments are attributable to that permanent establishment or fixed place of business. In such cases, the State in question shall be entitled to tax the income in accordance with its legislation.

Article 21

Pensions and annuities shall be taxable only in the Contracting State in which the recipient has his fiscal domicile.

Article 22

1. Failing specific agreements providing for special treatment in the matter, wages, salaries and other similar remuneration received by a person domiciled in one of the two Contracting States in respect of gainful employment shall be taxable only in that State, unless the employment is exercised in the other Contracting State. If the employment is exercised in the other Contracting State, the remuneration derived from it shall be taxable in the latter State.

2. Notwithstanding the provisions of paragraph 1 above, remuneration received by a person domiciled in a Contracting State in respect of gainful employment in the other Contracting State shall be taxable only in the first-mentioned State if:

(*a*) The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned;

(*b*) The remuneration is paid by or on behalf of an employer who is not domiciled in the other State; and

(*c*) The remuneration is not deducted from the profits of a permanent establishment or fixed base maintained by the employer in the other State.

3. Notwithstanding the preceding provisions of this article, remuneration for work done on board a ship or aircraft in international traffic shall be taxable only in the Contracting State in which the enterprise is domiciled.

Article 23

1. Income derived by a person domiciled in a Contracting State from a profession or from other independent activities of a similar character shall be taxable only in that State, unless the person in question has a fixed base for his activities regularly available to him in the other Contracting State. If he has such a fixed base, such part of the income as is attributable to that base shall be taxable in the other State.

2. For the purposes of this article, professions shall be deemed to include scientific, artistic, literary, educational or teaching activities and the activities of medical practitioners, lawyers, architects or engineers.

Article 24

Payments which a student or trainee from one of the Contracting States who is present in the other Contracting State solely for the purpose of his education or training receives for his maintenance, education or training shall not be taxed in that other State, provided that such payments are made to him from sources outside that other State.

Article 25

Income not mentioned in the foregoing articles shall be taxable only in the Contracting State in which the recipient has his fiscal domicile, unless such income is connected with the activity of a permanent establishment maintained by the recipient in the other Contracting State.

Article 26

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

1. A Contracting State may not include in the bases upon which the taxes on income referred to in article 8 are imposed any income which is taxable only in

the other Contracting State under the terms of this Agreement; but each State shall retain the right to calculate the tax at a rate corresponding to the total income taxable under its legislation.

2. Income of the kinds referred to in articles 13, 15, 18 and 19 originating in Senegal and payable to persons domiciled in France shall not be charged in Senegal with any tax other than the tax on income from movable capital.

Conversely, similar income originating in France and payable to persons domiciled in Senegal shall not be charged in France with any tax other than the tax deducted at the source on income from movable capital.

3. Income from movable capital and interest of the kinds referred to in articles 13, 15, 18 and 19 originating in Senegal and payable to individuals, companies or other bodies domiciled in France shall for the purposes of French taxation be included as to their gross amount in the bases upon which the taxes referred to in article 8, paragraph 3, above are imposed, subject to the following provisions:

(*a*) Income from movable capital of the kinds referred to in articles 13, 15 and 18 originating in Senegal and liable under the terms of the said articles to the Senegalese tax on income from movable capital shall be exempt in France from the tax deducted at the source on income from movable capital. The said tax shall nevertheless be considered, for the purposes of calculating either the tax on the income of individuals or the other taxes in the bases of which the said income is included, as having been actually paid at the normal rate applicable to income of the same kinds originating in France;

(*b*) Interest of the kinds referred to in article 19 which originates in Senegal and which has been charged with the Senegalese tax on income from movable capital shall entitle a recipient of the said interest domiciled in France to a tax credit of 16 per cent in that country. Such credit shall be allowed either against the complementary tax (*taxe complémentaire*) and, where appropriate, the tax on the income of individuals or against the company tax.

4. Income from movable capital and interest of the kinds referred to in articles 13, 15, 18 and 19 originating in France and payable to persons domiciled in Senegal shall not be charged in that country with any tax other than the general income tax.

Chapter II

SUCCESSION DUTIES

Article 27

1. This chapter shall apply to succession duties levied on behalf of either Contracting State.

The term "succession duties" shall be understood to mean taxes levied at death in the form of estate duties, inheritance taxes, death-duties or taxes on gifts *mortis causa*.

2. The existing duties to which this chapter apply are:

In the case of France: the succession duty;

In the case of Senegal: the succession duty.

Article 28

Immovable property (including accessories) shall be liable to succession duty only in the Contracting State in which it is situated; equipment or livestock of agricultural or forestry enterprises shall be taxable only in the Contracting State in which the enterprise is situated.

Article 29

Tangible or intangible movable property left by a deceased person who at the time of his death was domiciled in one of the Contracting States and invested in a commercial, industrial or handicraft enterprise of any kind shall be liable to succession duty in accordance with the following rule:

(*a*) If the enterprise has a permanent establishment in only one of the two Contracting States, the property shall be liable to duty only in that State; this provision shall apply even where the enterprise extends its operations to the territory of the other Contracting State, without maintaining a permanent establishment there;

(*b*) If the enterprise has a permanent establishment in each of the two Contracting States, the property shall be liable to duty in each State to the extent that it is used for a permanent establishment situated in the territory of that State.

However, the provisions of this article shall not apply to investments made by the deceased in joint-stock companies (limited companies, limited share partnerships (*sociétés en commandite par actions*), private limited companies (*sociétés à responsabilité limitée*), co-operative societies, civil companies subject to the tax regulations governing joint-stock companies) or—in the form of *commandite* interests—in simple limited partnerships (*sociétés en commandite simple*).

Article 30

Tangible or intangible movable property connected with a fixed place of business and used in the practice of a profession in one of the Contracting States

shall be liable to succession duty only in the Contracting State in which such place of business is situated.

Article 31

Tangible movable property other than the movables referred to in articles 29 and 30, including furniture, linen and household goods and art objects and collections, shall be liable to succession duty only in the State in which it is actually situated at the date of death.

However, ships and aircraft shall be liable to succession duty only in the Contracting State in which they were registered.

Article 32

Property of a deceased person's estate to which articles 28 to 31 do not apply shall be liable to succession duties only in the Contracting State in which the deceased was domiciled at the time of death.

Article 33

1. Debts pertaining to enterprises of the kinds referred to in articles 29 and 30 shall be charged against the property of those enterprises. If the enterprise has a permanent establishment or fixed place of business, as the case may be, in both Contracting States, the debts shall be charged against the property of the establishment or place of business to which they pertain.

2. Debts secured on immovable property or on rights in immovable property, or on ships or aircraft as referred to in article 31, or on property used in the practice of a profession as provided for in article 30, or on the property of an enterprise of the kind referred to in article 29, shall be charged against such property. If a debt is secured at the same time on property situated in both States, it shall be charged against the property situated in each of them in proportion to the taxable value thereof.

This provision shall apply to the debts referred to in paragraph 1 only to the extent to which they are not covered in the manner provided for in that paragraph.

3. Debts not provided for in paragraphs 1 and 2 shall be charged against property covered by the provisions of article 32.

4. If, after the procedure provided for in the three preceding paragraphs, there remains an outstanding balance in one of the Contracting States, such balance shall be deducted from the value of any other property liable to succession duty in the same State. If there is no other property subject to duty in that

State or if after such deduction a balance still remains, such balance shall be charged against the property subject to duty in the other Contracting State.

Article 34

Notwithstanding the provisions of articles 28 to 33, each Contracting State shall retain the right to assess the duty on inherited property which it has the exclusive right to tax at the average rate applicable to the sum of the property which would be liable to duty under its internal legislation.

Chapter III

REGISTRATION TAXES OTHER THAN SUCCESSION DUTIES; STAMP TAXES

Article 35

Where an instrument or judgement drawn up in one of the Contracting States is presented for registration in the other Contracting State, the taxes applicable in the latter State shall be determined in accordance with the provisions of its internal legislation, provided that the taxes due in that State shall where appropriate be reduced by the amount of the registration taxes already levied in the first-mentioned State.

However, instruments or judgements transferring the ownership or usufruct of an immovable or a business or the use of an immovable, and instruments or judgements registering the sale of a right to lease or to benefit by an option to lease all or part of an immovable, may be charged with a transfer tax only in the Contracting State in whose territory the immovable or business is situated.

The provisions of the first paragraph of this article shall not apply to company articles of association or amendments thereto. Such documents shall be liable to the *ad valorem* capital contribution tax (*droit proportionnel d'apport*) only in the State in which the company has its registered offices. In cases of mergers or similar operations, the tax shall be levied in the State in which the new or absorbing company has its registered offices.

Article 36

Instruments or bills (*effets*) drawn up in one Contracting State shall not be subject to stamp tax in the other Contracting State if they have actually been charged with such tax at the rate applicable in the first-mentioned State or if they are legally exempt from such tax in the first-mentioned State.

TITLE III

ADMINISTRATIVE ASSISTANCE

Article 37

1. The taxation authorities of each of the Contracting States shall communicate to the taxation authorities of the other Contracting State any fiscal information available to them and useful to the latter authorities to ensure the proper assessment and collection of the taxes to which this Agreement relates and the enforcement with respect to such taxes of the statutory provisions concerning the prevention of tax fraud.

2. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes to which this Agreement relates. No information shall be exchanged which would reveal a commercial, industrial or professional secret. Assistance may be withheld where the requested State considers that it would be likely to endanger its sovereignty or security or to prejudice its general interests.

3. Information shall be exchanged as a matter of routine or on request in connexion with particular cases. The competent authorities of the two Contracting States shall agree on the list of classes of information to be communicated as a matter of routine.

Article 38

1. The Contracting States agree to lend each other assistance and support with a view to the collection, in accordance with the rules of their respective laws or regulations, of the taxes to which this Agreement relates and of any tax increases, surcharges, overdue payment penalties, interest and costs pertaining to the said taxes, where such sums are finally due under the laws or regulations of the requesting State.

2. Requests for assistance shall be accompanied by such documents as are required under the laws or regulations of the requesting State as evidence that the sums to be collected are finally due.

3. On receipt of the said documents, writs shall be served and measures of recovery and collection taken in the requested State in accordance with the laws or regulations governing the recovery and collection of its own taxes.

4. Tax debts to be recovered shall enjoy the same safeguards and privileges as similar tax debts in the requested State.

Article 39

In the case of tax debts still subject to appeal, the taxation authorities of the creditor State may, in order to safeguard the latter's rights, request the

competent taxation authorities of the other Contracting State to take such interim measures as its laws or regulations permit.

Article 40

The measures of assistance specified in articles 38 and 39 shall also apply to the recovery of any taxes and duties other than those to which this Agreement relates, and, in general, to all debt-claims of whatsoever nature of the Contracting States.

TITLE IV

MISCELLANEOUS PROVISIONS

Article 41

1. Where a taxpayer shows proof that as a result of measures taken by the taxation authorities of the Contracting States he has suffered double taxation in respect of the taxes to which this Agreement relates, he may make application to the competent authorities of the State in the territory of which he has his fiscal domicile or to those of the other State. If the application is upheld, the competent authorities of the two States shall reach agreement with a view to the equitable avoidance of double taxation.

2. The competent authorities of the States may also reach agreement with a view to the prevention of double taxation in cases not provided for in this Agreement, and in cases where the application of the Agreement gives rise to difficulties.

3. If it appears that agreement would be facilitated by negotiations, the matter shall be referred to a mixed commission composed af an equal number of representatives of each Contracting State, appointed by their respective Ministers of Finance. The commission shall be presided over alternately by a member of each delegation.

Article 42

The competent authorities of the two Contracting States shall consult together to determine, by agreement and so far as may be necessary, the procedure for the application of this Agreement.

Article 43

1. This Agreement shall be approved in accordance with the constitutional provisions in force in each of the two States and shall enter into force upon the exchange of notes indicating that both Parties have complied with these provisions, it being understood that it shall apply for the first time:

— In respect of taxes on income, to the taxation of income relating to the calendar year 1963 or to fiscal years ended in the course of that year. However, in the case of income the taxation of which is governed by articles 15 to 18, the Agreement shall apply to distributions taking place after the entry into force of the Agreement;

— In respect of succession duties, to the estates of persons deceased on or after the day of entry into force of the Agreement;

— In respect of other registration taxes and of stamp taxes, to instruments and judgements drawn up after the entry into force of the Agreement.

2. The provisions of the Agreement concluded on 31 January and 20 March 1956 between the French Government and the Government General of French West Africa for the Avoidance of Double Taxation and the Establishment of Rules of Reciprocal Administrative Assistance with respect to Taxes on Income from Movable Capital shall cease to have effect as between France and Senegal upon the entry in force of the present Agreement.

Article 44

This Agreement shall remain in force indefinitely.

However, on or after 1 January 1971 either of the Contracting States may give notice to the other of its intention to terminate this Agreement, such notice to be given before the thirtieth day of June of any year. In that event the Agreement shall cease to apply as from the first day of January of the year following the year in which the notice was given, it being understood that its effects shall be limited:

— In respect of taxes on income, to income acquired or paid during the year in which notice of termination was given;

— In respect of succession duties, to the estates of persons deceased not later than the thirty-first day of December of that year;

— In respect of other registration taxes and of stamp taxes, to instruments and judgements dated not later than the thirty-first day of December of that year.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Agreement, drawn up in two original copies.

DONE at Dakar, on 3 May 1965.

For the Government of the Republic of Senegal:

Jean COLLIN

For the Government of the French Republic:

Michel HABIB-DELONCLE

PROTOCOL

On signing the Agreement between the Government of France and the Government of Senegal for the avoidance of double taxation and the establishment of rules of reciprocal administrative assistance with respect to taxation, the signatories have agreed upon the following declarations, which shall form an integral part of the Agreement:

I. The expression "gross amount" in article 26 of the Agreement means the amount of income taxable before deduction of the tax levied on it in the State of origin;

II. In the application of article 40 of the Agreement, the provisions of the Convention of 1 March 1962 concerning relations between the French Treasury and the Senegalese Treasury which relate to the recovery of debt-claims of the Contracting States shall be deemed to be an agreement within the meaning of article 42.

Michel HABIB-DELONCLE
Minister of State for Foreign Affairs
of the French Republic

Jean COLLIN
Minister of Finance
of the Republic of Senegal

EXCHANGE OF LETTERS

I

Dakar, 3 May 1965

Sir,

As you are aware, articles 38 to 40 of the Tax Agreement between the Government of the French Republic and the Government of the Republic of Senegal, signed at Dakar on 3 May 1965, provide for measures of reciprocal assistance with a view to the collection of the taxes to which the Agreement relates, of all other taxes and duties and, in general, of all debt-claims of whatsoever nature of the Contracting States.

In order that the application of the above provision may not give rise, in certain cases, to difficulties of procedure and in order to preserve the atmosphere of confidence which exists between the Governments of our two countries, I have the honour to propose that, where, in application of the provisions of the above-mentioned articles 38 to 40, proceedings are instituted against a taxpayer in one of our two States for the recovery of taxes or debts owned in the other State, the taxpayer shall be entitled to request the competent authorities of the first-mentioned State to stay such proceedings if he is able to establish title to property situated in the State in which the tax in question was assessed or to establish a claim on a public or quasi-public authority of the said State.

If the request, which must be supported by the necessary documents, appears to be justified, the application of the provisions of article 38 shall be stayed. The competent authorities of the requesting State shall be informed of that decision and the request shall be submitted within three months to the mixed commission referred to in article 41 for examination. That commission shall decide whether, and to what extent, the measures of enforced recovery shall proceed.

In more general terms, disputes relating to collection shall be deemed to be difficulties of application within the meaning of article 41 of the Agreement.

The referring of the matter of the mixed commission shall not preclude the application of the provisions of article 39 of the Agreement.

I should be greatly obliged if you would inform me whether this proposal is acceptable to your Government.

Accept, Sir, etc.

Michel HABIB-DELONCLE
Minister of State for Foreign Affairs
of the French Republic

Mr. Jean Collin
The Minister of Finance of the Republic of Senegal

II

REPUBLIC OF SENEGAL
MINISTRY OF FINANCE
The Minister

Dakar, 3 May 1965

Sir,

By letter of today's date, you informed me as follows:

[*See letter I*]

I have the honour to inform you that my Government agrees to the foregoing proposal.

Accept, Sir, etc.

Jean COLLIN

His Excellency Mr. Michel Habib-Deloncle
Minister of State for Foreign Affairs
of the French Republic
