No. 11022

FRANCE
and
SWITZERLAND

Convention for the avoidance of double taxation with respect to taxes on income and fortune (with additional protocol). Signed at Paris on 9 September 1966

Additional Agreement to the above-mentioned Convention. Signed at Paris on 3 December 1969

Authentic texts: French.

Registered by France on 5 April 1971.

FRANCE
et
SUISSE

Convention en vue d'éviter les doubles impositions en matière d'impôts sur le revenu et sur la fortune (avec protocole additionnel). Signée à Paris le 9 septembre 1966

Avenant à la Convention susmentionnée. Signé à Paris le 3 décembre 1969

Textes authentiques: français.

Enregistrés par la France le 5 avril 1971.

[TRANSLATION — TRADUCTION]

CONVENTION[1] BETWEEN THE FRENCH REPUBLIC AND THE SWISS CONFEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND FORTUNE

The President of the French Republic and the Federal Council of the Swiss Confederation, desiring to avoid double taxation with respect to taxes on income and fortune, have decided to conclude a Convention and have for that purpose appointed as plenipotentiaries:

The President of the French Republic:
Mr. Gilbert de Chambrun, Minister Plenipotentiary, Director for Administrative Agreements and Consular Affairs in the Ministry of Foreign Affairs;

The Swiss Federal Council:
Mr. Claude Caillat, Chargé d'affaires a.i. of Switzerland in France,

who, having communicated to each other their full powers, found in good and due form, have agreed on the following provisions:

Article I

This Convention shall apply to persons who are residents of one or both of the Contracting States.

Article II

1. This Convention shall apply to taxes on income and on fortune imposed on behalf of each Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on fortune all ordinary and extraordinary taxes imposed on total income, on total fortune, or on elements of income or of fortune, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.

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[1] Came into force on 26 July 1967 by the exchange of the instruments of ratification, which took place at Berne, in accordance with article XXXII.

However, the Convention shall not apply to taxes on lottery prizes, deducted at the source.

3. The existing taxes to which the Convention shall apply are:

A. In France:

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

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

(*c*) The tax on companies (*l'impôt sur les sociétés*);
as well as all withholdings, advance collections and prepayments in respect of such taxes;

(*d*) The real estate tax on buildings (*la contribution foncière des propriétés bâties*) and the real estate tax on land (*la contribution foncière des propriétés non bâties*).

B. In Switzerland:
The federal, cantonal and communal taxes:

(*a*) In income (total income, earned income, income from fortune, industrial and commercial profits, capital gains, etc.); and

(*b*) On fortune (total fortune, movable and immovable property, business assets, capital and reserves, etc.).

4. The Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes. At the end of each year, the competent authorities of the Contracting States shall notify each other of any changes which have been made in their respective taxation laws.

Article III

1. In this Convention, unless the context otherwise requires:

(*a*) The terms "a Contracting State" and "the other Contracting State" mean France or Switzerland, as the context requires;

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

(*c*) The term "Switzerland" means the Swiss Confederation;

(*d*) The term "person" means an individual, a company or any other body of persons;

(*e*) The term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(*f*) The terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(*g*) The term "competent authorities" means:

(i) In the case of France, the Direction générale des impôts,

(ii) In the case of Switzerland, the Administration fédérale des contributions.

2. As regards the application of the Convention by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the Convention.

Article IV

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then this case shall be determined in accordance with the following rules:

(*a*) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him, this term meaning the centre of vital interests—i.e., the place with which his personal relations are closest;

(*b*) If the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

(*c*) If he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;

(*d*) If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated. The same shall apply to partnerships constituted or organized under the law of a Contracting State.

4. Where an individual has definitely transferred his domicile from one Contracting State to the other, he shall cease to be liable to taxation in the first-mentioned State, in so far as this liability is determined by domicile, as from the end of the day on which the transfer of domicile was effected.

Liability to taxation, in so far as it is determined by domicile, shall commence in the other State as from the same date.

5. The following shall not be deemed to be residents of a Contracting State within the meaning of this article:

(*a*) Any person who, although falling within the definition in paragraphs 1 to 3 above, is only the apparent recipient of the income, such income in fact accruing—directly, or indirectly through other individuals or bodies corporate—to a person who cannot himself be considered a resident of the said State within the meaning of this article;

(*b*) Any individual who is liable to taxation in that State only on a presumptive basis determined according to the rental value of the residence or residences which he owns in the territory of that State.

Article V

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

(*a*) A place of management;

(*b*) A branch;

(*c*) An office;

(*d*) A factory;

(*e*) A workshop;

(*f*) A mine, quarry or other place of extraction of natural resources;

(*g*) A building site or construction or assembly project which exists for more than twelve months.

3. The term "permanent establishment" shall not be deemed to include:

(*a*) The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(*b*) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(*c*) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(*d*) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

(*e*) The maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom paragraph 6 applies—shall be deemed to be 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, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

5. 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 the last-mentioned State or insures risks situated in that territory through a representative.

6. 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 an independent status, where such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of 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.

8. Where a site or project in a Contracting State is not opened directly by an entrepreneur of the other Contracting State, but through an ordinary partnership under Swiss law (if it is opened in Switzerland) or a *de facto* partnership or

a special partnership under French law (if it is opened in France) in which the said entrepreneur has an interest, the provisions of article VII, paragraph 8, and article XXIV, paragraph 4, shall apply only if the conditions of paragraph 2 (*g*) of this article are fulfilled.

Article VI

1. Income from immovable property may be taxed in the Contracting State in which such property is situated.

2. The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the legislative provisions respecting landed property apply, as well as rights of usufruct in immovable property, with the exception of debt-claims of any kind secured by pledge of immovables, and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

If, in accordance with the provisions of its national law, a Contracting State deems rights pertaining to buildings situated in that State to be immovable property within the meaning of the preceding sub-paragraph, and if such rights are deemed to be movable property by the other Contracting State in which the holder of the rights resides, the law of the State in which the building to which the rights pertain is situated shall prevail only if actual taxation in that State can be proved.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property, with the exception of income derived by a resident of a Contracting State from the exercise of grazing rights in the territory of the other Contracting State.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

Article VII

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise

carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

4. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles laid down in this article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other articles of this Convention, then the provisions of those articles shall not be affected by the provisions of this article.

8. Income from interests in enterprises constituted in the form of ordinary partnerships, *de facto* partnerships, general partnerships or simple limited partnerships, and income derived from rights in special partnerships or in civil companies under French law, if subject to the tax regulations governing partnerships, may be taxed in the State in which the enterprises have a permanent establishment. This provision shall be without prejudice to the application of the provisions of article X, paragraph 1, and article XI of the Convention with respect to income from interests in the form of silent partnership in simple limited partnerships.

Article VIII

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

3. If the place of effective management of a shipping enterprise or of an inland waterways transport enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.

4. The provisions of paragraph 1 shall also apply to the profits of an enterprise from a pool, a joint operating arrangement or an international operating organization.

Article IX

Where

(*a*) An enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

(*b*) The same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Article X

1. Companies which are residents of Switzerland and which maintain a permanent establishment in France shall remain liable in France to deduction at the source, in accordance with the provisions of French national law, it being understood, however, that the basis of taxation shall be reduced by one third and that the rate applicable shall be that specified in article XI, paragraph 2.

2. Companies which are residents of Switzerland shall not be liable in France to the deduction referred to in paragraph 1 on the ground of participation in the management or capital of a company or any other relations with a company which is a resident of France. The foregoing shall be without prejudice to the provisions of articles IX and XI.

3. Companies which are residents of Switzerland and which, in accordance with paragraph 1, remain liable in France to deduction at the source shall not be liable to such deduction in respect of the interest on obligations issued and loans contracted by their head office or establishments situated outside France.

Nevertheless, such companies shall be liable to the said deduction in respect of the whole of the interest on obligations issued and loans contracted by their establishments situated in France in the course of the business transacted by those establishments. This provision shall be without prejudice to the application of article XII, even where the obligations are placed or the loans contracted with the head office in Switzerland.

It is understood that the provisions of this paragraph shall also apply, *mutatis mutandis,* to companies which are residents of France and which maintain a permanent establishment in Switzerland.

4. The provisions of paragraph 1 shall apply by analogy only to the income allotted to silent partners who are residents of Switzerland by simple limited partnerships which are residents of Switzerland and which maintain a permanent establishment in France.

Article XI

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

3. If one of the Contracting States taxes as dividends, by deduction at the source, distributions made by ordinary partnerships, *de facto* partnerships, general partnerships or simple limited partnerships, or by special partnerships or civil companies, to recipients who are residents of the other Contracting State, such recipients shall be entitled to the limitation on the deduction rate specified in paragraph 2.

4. The term "dividends" as used in this article means income from shares, *jouissance* shares or *jouissance* rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, in which the dividends arise, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of article VII shall apply.

6. Where dividends distributed by a company which is a resident of France are liable to the tax collected in advance on movable property, recipients of such dividends who are residents of Switzerland shall be entitled to a refund of such tax, less the amount of tax deductible at the source appropriate to the amount of the sums refunded.

Article XII

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 10 per cent of the amount of the interest. France reserves the right to maintain at 12 per cent the rate of its deduction at the source for interest on negotiable obligations issued before 1 January 1965.

3. The term "interest" as used in this article means income from government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the interest, being a resident of a Contracting State, has in the other Contracting State in which the interest arises a permanent establishment with which the debt-claim from which the interest arises is effectively connected. In such a case, the provisions of article VII shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident

of a Contracting State or not, has in a Contracting State a permanent establishment in connexion with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Article XIII

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, royalties may be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of article VII shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent estab-

lishment with which the use, right or information for which the royalties are paid is connected, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the establishment is situated.

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipent in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

Article XIV

1. A body corporate which is a resident of a Contracting State and in which persons who are not residents of that State have a direct or indirect controlling interest as shareholders or otherwise may not obtain relief in respect of taxes of the other Contracting State imposed on dividends, interest and royalties arising in that other State, in accordance with the provisions of articles XI, XII and XIII, unless:

(*a*) Interest-bearing credit accounts opened in the name of persons who are not residents of the first-mentioned State are not equal to more than six times the combined total of the share capital (or registered capital) and of the apparent reserves;

(*b*) Debts contracted towards the aforesaid persons do not bear interest at a rate exceeding the normal rate; the normal rate being deemed to be:

(i) In the case of France, the rate for loans from the Banque de France, increased by two points;

(ii) In the case of Switzerland, the rate of the average yield on obligations issued by the Swiss Confederation, increased by two points;

(*c*) Not more than 50 per cent of the income in question arising in the other Contracting State is used to meet liabilities (interest owed, licence fees, development costs, advertising expenses, initial equipment costs, travel expenses, amortization of assets of every kind including intangible assets, processes, etc.) to persons who are not residents of the first-mentioned State;

(*d*) Expenses connected with the income in question arising in the other Contracting State are met exclusively from such income;

(*e*) The company distributes at least 25 per cent of the income in question arising in the other Contracting State.

The foregoing shall be without prejudice to any more extensive measures which have been or may be adopted by one of the Contracting States with a view to preventing irregular claims for relief in respect of tax levied at the source by the other Contracting State.

2. A body corporate which is a resident of Switzerland and in which persons who are not residents of Switzerland have a direct or indirect controlling interest as shareholders or otherwise may not, even if it meets the requirements laid down in paragraph 1, claim relief in respect of taxes levied by France on interest or royalties arising in France which are paid to it unless, in the canton in which the body corporate has its head office, such interest or royalties are liable to the cantonal income tax under conditions which are the same as or similar to those prescribed by the provisions relating to the federal national defence tax.

A family foundation which is a resident of Switzerland may not claim relief in respect of taxes levied by France on dividends, interest and royalties arising in France which are paid to it if the founder or a majority of the recipients are persons who are not residents of Switzerland and if more than one third of the income in question accrues or will accrue to persons who are not residents of Switzerland.

3. The supervision, investigation and certification required for the application of paragraphs 1 and 2 shall be the responsibility of the competent authorities of the Contracting State of which the recipient of the income in question is a resident.

If the competent authorities of the other Contracting State in which such income arises have reliable information which casts doubt on declarations made by the recipient of the income in applying for relief and certified by the competent authorities of the first-mentioned State, it shall transmit such information to the competent authorities of the first-mentioned State; the latter authorities shall make a further investigation and notify the competent authorities of the other State of the result. In the event of persistent differences of opinion between the competent authorities of the two States, the provisions of article XXVII shall apply. Pending agreement, all relief shall be suspended.

Article XV

1. Gains from the alienation of immovable property, as defined in article VI, paragraph 2, first sub-paragraph, may be taxed in the Contracting State in which such property is situated. The foregoing shall be without prejudice to the application by analogy of the provisions of article VI, paragraph 2, second sub-paragraph.

2. It is understood that each State shall continue, in accordance with the provisions of its national law, to tax capital appreciation resulting from the alienation of shares or other rights in real estate companies or in companies whose business property is composed mainly of immovable property situated in its territory.

Where the beneficiary of such capital appreciation is a resident of the other State and the capital appreciation may be taxed in that State under the provisions of its national law, the last-mentioned State shall waive its right to tax after actual taxation in the first-mentioned State has been proved.

3. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State. However, gains from the alienation of movable property of the kind referred to in article XXIV, paragraph 3, shall be taxable only in the Contracting State in which such movable property is taxable according to the said article.

4. Gains from the alienation of the property mentioned in paragraphs 1, 2 and 3, as they are defined for the purpose of assessment of the tax on capital appreciation, shall be calculated in the same manner, whether the beneficiary is a resident of one Contracting State or a resident of the other. When such gains are liable in a Contracting State to a levy conferring exemption from the tax on income or the tax on companies, such levy shall be calculated in the same manner, whether the beneficiary is a resident of one Contracting State or a resident of the other.

5. Gains from the alienation of any property other than those mentioned in paragraphs 1, 2 and 3 shall be taxable only in the State of which the alienator is a resident.

Article XVI

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

2. The term "professional services" includes, especially, independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article XVII

1. Subject to the provisions of articles XVIII to XXI, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised 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, and

(*b*) The remuneration is paid, or on behalf of, an employer who is not a resident of the other State, and

(*c*) The remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

4. Notwithstanding the preceding provisions of this article, the taxation of the earnings of frontier workers and employees shall be governed by the terms of the Franco-Swiss Agreement of 18 October 1935 relating to the taxation of inhabitants of frontier districts and by the exchange of notes relating thereto.

Article XVIII

1. Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

2. The same shall apply to remuneration paid to directors (*gérants*) having a majority interest in private limited companies which have not elected to be subject to the tax regulations governing partnerships, to managers (*gérants*) of limited share partnerships, and to partners in firms and in special partnerships which have elected to be subject to the tax regulations governing companies.

Article XIX

1. Notwithstanding the provisions of articles XVI and XVII, income derived by public entertainers, such as theatre, motion picture, radio or television artists, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

2. However, such income may also be taxed in the Contracting State of which the recipient is a resident.

Article XX

Subject to the provisions of article XXI, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article XXI

Remuneration, including pensions, paid by a Contracting State or a political subdivision, local authority or public-law corporation thereof, either directly or out of a special fund, to any individual who is a national of that State in respect of present or past services rendered shall be taxable only in the Contracting State in which such remuneration arises.

Article XXII

Payments which a student or business apprentice who is or was formerly a resident of a Contracting State and who is present in the other Contracting State solely for the purpose of his education or training receives for the purpose of 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 XXIII

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing articles of this Convention shall be taxable only in that State.

Article XXIV

1. Fortune represented by immovable property, as defined in article VI, paragraph 2, first sub-paragraph, may be taxed in the Contracting State in which such property is situated. The foregoing shall be without prejudice to the application by analogy of the provisions of article VI, paragraph 2, second sub-paragraph.

2. Fortune represented by movable property forming part of the business property of a permanent establishment of an enterprise, or by movable property pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

3. Ships and aircraft operated in international traffic and boats engaged in inland waterways transport, and movable property pertaining to the operation of such ships, aircraft and boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Interests in enterprises constituted in the form of ordinary partnerships, *de facto* partnerships, general partnerships or simple limited partnerships, and rights in special partnerships or in civil companies under French law, if subject to the tax regulations governing partnerships, may be taxed in the State in which the enterprises have a permanent establishment.

5. Furniture may be taxed in the Contracting State in which the place of abode where it is used is situated.

6. Movable property subject to a usufruct shall be taxable only in the Contracting State of which the enjoyer of the usufruct is a resident.

7. All other elements of fortune of a resident of a Contracting State shall be taxable only in that State.

Article XXV

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

A. In the case of France:

1. Income other than that referred to in paragraph 3 below shall be exempt from the French taxes mentioned in article II, paragraph 3 (A), of this Convention, where such income is liable to taxation in Switzerland.

2. Notwithstanding the provisions of paragraph 1 above, the French taxes referred to in that paragraph may be charged to income taxable in France under this Convention at the rate appropriate to the total income taxable under French law.

3. In the case of income of the kinds referred to in articles XI, XII, XIII and XIX on which Swiss tax has been paid as provided in those articles, France shall grant to the recipient of such income, being a resident of France, a tax credit corresponding to the amount of the Swiss tax and applicable to taxes levied on a basis in which the said income is included.

4. The tax credits referred to in paragraph 3 above shall be applied separately to the French taxes levied on bases in which the corresponding income referred to in that paragraph is included, within the limit of the French taxes relating to the same income.

B. In the case of Switzerland:

1. Where a resident of Switzerland derived income or owns fortune which, in accordance with the provisions of the Convention, may be taxed in France, Switzerland shall exempt such income (with the exception of dividends, interest and royalties) or fortune from tax but may, in calculating tax on the remaining income or fortune of that person, apply the rate of tax which would have been applicable if the exempted income or fortune had not been so exempted.

2. Where a resident of Switzerland derives dividends, interest or royalties which, in accordance with the provisions of articles XI to XIII, may be taxed in France, Switzerland shall, on application, grant such person relief from tax. This relief shall consist of:

a) A deduction of the tax paid in France in accordance with the provisions of articles XI to XIII from the Swiss tax on such income of the person concerned, provided that such deduction shall not exceed that part of the Swiss tax, as computed before the deduction is given, which is appropriate to such income taxed in France, or

b) A lump-sum reduction of the Swiss tax, or

c) A partial exemption of the income in question from Swiss tax, but at least a deduction of the tax paid in France from the gross amount of the income derived from France.

However, the relief shall consist of a deduction of the tax paid in France from the gross amount of such income derived from France if the recipient, being a resident of Switzerland, is, under the provisions of article XIV, not entitled to the limitation on the French tax on dividends, interest and royalties specified in articles XI to XIII.

Switzerland shall determine the type of relief and the appropriate procedure in accordance with the provisions concerning the application of international agreements entered into by the Confederation for the avoidance of double taxation.

Article XXVI

1. The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

In particular, nationals of a Contracting State who are liable to taxation in the territory of the other Contracting State shall be entitled, in the same manner as nationals of the last-mentioned State in the same circumstances, to such tax exemptions, basic allowances, deductions and reductions as may be granted in respect of family responsibilities.

2. The term "nationals" means, in the case of each Contracting State:

(*a*) All individuals possessing the nationality of that State;

(*b*) All legal persons, partnerships and associations deriving their status as such from the law of the said State.

3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

The provisions of this paragraph shall be without prejudice to the application of the provisions of article X.

4. Enterprises of a Contracting State the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

5. In this article the term "taxation" means taxes of every kind and description.

Article XXVII

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authorities of the Contracting State of which he is a resident.

As a general rule, the case must be presented within one year after the expiry of the calendar year in which the person concerned became aware of taxation not in accordance with the Convention through the receipt of tax statements or the notification of other official decisions.

2. The said competent authorities shall endeavour, if the objection appears to them to be justified and if they are not themselves able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authorities of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties arising as to the application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a commission consisting of representatives of the competent authorities of the Contracting States.

Article XXVIII

1. The competent authorities of the Contracting States may on request exchange information (if it is obtainable under normal administrative practice in accordance with the taxation laws of the two States) required for the proper application of this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment or collection of the taxes to which this Convention relates. Information which would disclose a commercial, banking, industrial or professional secret or a commercial process may not be exchanged.

2. The provisions of this article shall not in any case be construed as imposing on one of the Contracting States the obligation to take administrative action at variance with its own regulations and administrative practice or with its sovereignty, its security, its general interests or its public policy, or to transmit information which is not obtainable under its own laws and those of the State requesting it.

Article XXIX

1. Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

2. In so far as, by reason of the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special international agreements, income or fortune is not taxable in the receiving State, the right of taxation shall be reserved to the sending State.

3. For the purposes of the Convention, members of a diplomatic or consular mission of a Contracting State accredited to the other Contracting State or to a third State who are nationals of the sending State shall be deemed to be residents of the sending State if they are subject therein to the same liability with respect to taxes on income and fortune as residents of that State.

4. The Convention shall not apply to international organizations, to the organs or officials thereof or to persons who are members of a diplomatic or consular mission of a third State if they are present in the territory of a Contracting State and are not treated as residents in either Contracting State for the purposes of taxes on income and fortune.

Article XXX

1. This Convention may be extended, either in its entirety or with any necessary modifications, to Overseas Territories of the French Republic which impose taxes substantially similar in character to those to which this Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Contracting States in notes to be exchanged through the diplomatic channel or in any other manner in accordance with their constitutional procedures.

2. Unless otherwise agreed by both States, the denunciation of the Convention by one of them under article XXXIII below shall terminate, in the manner provided for in that article, the application of the Convention to any territory or part of a territory to which it has been extended under this article.

Article XXXI

The competent authorities of the Contracting States shall determine the mode of application of this Convention. In particular, they shall agree on the tax relief procedure provided for in articles XI to XIV.

Article XXXII

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Berne as soon as possible.

2. It shall enter into force upon the exchange of instruments of ratification and its provisions shall apply for the first time:

(*a*) To taxes levied by deduction at the source on dividends, interest and royalties paid after 31 December 1966;

(*b*) To the other French taxes imposed in respect of the year 1967;

(*c*) To the other Swiss taxes levied for the year 1967.

3. The Convention concluded at Paris on 31 December 1953 between the French Republic and the Swiss Confederation for the avoidance of double taxation with respect to taxes on income and property[1] is abrogated and shall cease to have effect as regards the taxes to which this Convention is applicable in accordance with paragraph 2. However, the provisions of the afore-mentioned Convention shall remain in force, in so far as reference is made thereto, for the purposes of the application of the Convention concluded at Paris on 31 December 1953 between the French Republic and the Swiss Confederation for the avoidance of double taxation with respect to death duties.[2]

Article XXXIII

This Convention shall remain in force until denounced by one of the Contracting States. Either Contracting State may denounce the Convention, through the diplomatic channel, by giving notice of termination at least six months before the end of any calendar year. In such event, the Convention shall apply for the last time:

(*a*) To taxes levied by deduction at the source on dividends, interest and royalties paid before the expiry of the year at the end of which the denunciation is to take effect;

(*b*) To the other French taxes imposed in respect of the year at the end of which the denunciation is to take effect;

[1] See p. 221 of this volume.
[2] See p. 259 of this volume.

(*c*) To the other Swiss taxes levied for the year at the end of which the denunciation is to take effect.

IN WITNESS WHEREOF the plenipotentiaries of the two States have signed this Convention and have thereto affixed their seals.

DONE in duplicate at Paris, on 9 September 1966.

For the President of the French Republic:	For the Swiss Federal Council:
[GILBERT DE CHAMBRUN] [SEAL]	[CLAUDE CAILLAT] [SEAL]

ADDITIONAL PROTOCOL

TO THE CONVENTION BETWEEN THE FRENCH REPUBLIC AND THE SWISS CONFEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND FORTUNE

On proceeding to sign the Convention concluded this day between the French Republic and the Swiss Confederation for the avoidance of double taxation with respect to taxes on income and fortune, the undersigned plenipotentiaries have agreed on the following additional provisions, which shall form an integral part of the Convention:

I. The provisions of article V, paragraph 2 (*g*), whereby a building site or construction or assembly project which exists for more than twelve months shall be deemed to be a permanent establishment, shall apply only to sites or projects opened after the entry into force of this Convention. Sites or projects already in operation on that date shall be deemed to be permanent establishments only if the operations are not completed within the period of three years heretofore specified in paragraph 6, first sub-paragraph, of the Final Protocol *ad* article 4 of the Convention of 31 December 1953 for the avoidance of double taxation with respect to taxes on income and property.

II. It is understood that residents of a Contracting State who have one or more residences available to them in the territory of the other State shall not be subjected in the last-mentioned State to a tax on income on a presumptive basis determined according to the rental value of such residence or residences.

DONE in duplicate at Paris, on 9 September 1966.

For the President of the French Republic:

[GILBERT DE CHAMBRUN]

For the Swiss Federal Council:

[CLAUDE CAILLAT]

ADDITIONAL AGREEMENT[1] TO THE CONVENTION OF 9 SEPTEMBER 1966 BETWEEN FRANCE AND SWITZERLAND FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND FORTUNE,[2] SIGNED AT PARIS ON 3 DECEMBER 1969

The President of the French Republic and the Federal Council of the Swiss Confederation, desiring to amend the Convention of 9 September 1966[2] between France and Switzerland, have for that purpose appointed as their plenipotentiaries:

The President of the French Republic: Mr. Gilbert de Chambrun, Minister Plenipotentiary, Director for Administrative Agreements and Consular Affairs in the Ministry of Foreign Affairs;

The Swiss Federal Council: His Excellency Mr. Pierre Dupont, Ambassador Extraordinary and Plenipotentiary of the Swiss Confederation in France,

who, having communicated to each other their full powers, in good and due form, have agreed on the following provisions:

Article 1

Article XI of the Convention shall be replaced by the following provisions:

"Article XI

"1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

"2. However, subject to the provisions of paragraph 3, such dividends may be taxed in the Contracting State of which the company paying them is a resident, and according to the law of that State, but the tax so charged shall not exceed:

(*a*) 15 per cent of the gross amount of the dividends if the recipient is a company which, at the time of distribution, holds directly at least 20 per cent of the capital of the company paying the dividends and if

[1] Came into force on 24 September 1970 by the exchange of the instruments of ratification, which took place at Berne, in accordance with article 3.

[2] See p. 277 of this volume.

persons who are not residents of the other State have, directly or indirectly, a controlling interest in the recipient company, either through holdings of shares or by some other means, and provided that the capital of neither of the companies concerned is constituted by shares quoted on the official market or traded in the unofficial market;

(*b*) In all other cases, 5 per cent of the gross amount of the dividends.

"3. The recipient of dividends paid by a company resident in France in respect of which a tax credit (*avoir fiscal*) could be claimed if they were received by residents of France shall be entitled to payment of the tax credit following deduction of the tax withheld at the source, which shall be calculated at the rate of 15 per cent of the gross dividend constituted by the dividend distributed plus the tax credit, when the dividends are paid to:

(*a*) An individual who is a resident of Switzerland;

(*b*) A company which is a resident of Switzerland and which holds less than 20 per cent of the capital of the distributing company at the time of distribution.

"4. Unless entitled to the payment referred to in paragraph 3, a resident of Switzerland who receives dividends from a company resident in France may apply for a refund of the pre-payment (*précompte*) which may have been made in respect of those dividends by the distributing company. France may deduct in advance from the amount of the sums refunded the tax withheld at the source referred to in paragraph 2 of this article, calculated at the rate applied for taxation of the dividends in respect of which the sums are refunded.

"5. The term 'dividend' as used in this article means income from shares, *jouissance* shares or *jouissance* rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident. In the case of dividends originating in France, this term also includes tax credits and pre-payments.

"6. The provisions of paragraphs 1, 2, 3 and 4 shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, in which the dividends arise, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, the provisions of article VII shall apply.

"However, where a company resident in Switzerland has a permanent establishment in France, that establishment shall be entitled to a refund of the pre-payment, less the amount of tax withheld at the source calculated at the statutory rate (*taux de droit commun*)."

Article 2

Article X, paragraph 1, of the Convention shall be replaced by the following provision:

"Companies which are residents of Switzerland and which maintain a permanent establishment in France shall remain liable to France to deduction at the source, in accordance with the provisions of French national law, it being understood, however, that the applicable rate shall be 5 per cent."

Article 3

This Additional Agreement shall be ratified and the instruments of ratification shall be exchanged at Berne as soon as possible.

It shall enter into force upon the exchange of instruments of ratification.

Its provisions shall apply for the first time to dividends paid on or after 1 January 1970.

Article 4

This Additional Agreement shall form an integral part of the Convention and shall remain in force for as long as the Convention is applicable.

IN WITNESS WHEREOF the plenipotentiaries of the two States have signed this Additional Agreement and have thereto affixed their seals.

DONE in duplicate at Paris, on 3 December 1969.

For the President of the French Republic:	For the Swiss Federal Council:
GILBERT DE CHAMBRUN	PIERRE DUPONT