No. 10999

FRANCE
and
FEDERAL REPUBLIC OF GERMANY

Convention for the avoidance of double taxation and the establishment of principles for reciprocal administrative and legal assistance with respect to taxes on income and fortune, business taxes and land taxes (with additional protocol). Signed at Paris on 21 July 1959

Additional Agreement to the above-mentioned Convention. Signed at Bonn on 9 June 1969

Authentic texts: French and German.

Registered by France on 8 March 1971.

FRANCE
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE

Convention en vue d'éviter les doubles impositions et d'établir des règles d'assistance administrative et juridique réciproque en matière d'impôts sur le revenu et sur la fortune ainsi qu'en matière de contributions des patentes et de contributions foncières (avec protocole additionnel). Signée à Paris le 21 juillet 1959

Avenant à la Convention susmentionnée. Signé à Bonn le 9 juin 1969

Textes authentiques: français et allemand.

Enregistrés par la France le 8 mars 1971.

[TRANSLATION — TRADUCTION]

CONVENTION [1] BETWEEN THE FRENCH REPUBLIC AND THE FEDERAL REPUBLIC OF GERMANY FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE ESTABLISHMENT OF PRINCIPLES FOR RECIPROCAL ADMINISTRATIVE AND LEGAL ASSISTANCE WITH RESPECT TO TAXES ON INCOME AND FORTUNE, BUSINESS TAXES AND LAND TAXES

The President of the French Republic and the President of the Federal Republic of Germany, desiring to avoid double taxation and to establish principles for reciprocal administrative and legal assistance with respect to taxes on income and fortune, business taxes and land taxes, have agreed to conclude a Convention and have for this purpose appointed as their plenipotentiaries:

The President of the French Republic:

His Excellency Mr. Louis Joxe, Ambassador of France, Secretary General of the Ministry of Foreign Affairs,

The President of the Federal Republic of Germany:

Dr. Gerhard Josef Jansen, Councillor, Chargé d'Affaires of the Federal Republic of Germany,

who, having exchanged their full powers, found in good and due form, have agreed as follows:

Article 1

(1) The purpose of this Convention is to protect residents of each of the contracting States against double taxation in respect of taxes which are levied, under the laws of the said States either directly on income or fortune or in the form of business taxes or land taxes (or of local surtaxes), for the benefit of the Contracting States or of *Länder, départements,* municipalities or associations of municipalities.

(2) The taxes to which this Convention applies are:

1. In the case of the French Republic:

(*a*) The tax on the income of individuals (proportional tax and progressive surtax) (*l'impôt sur le revenu des personnes physiques, taxe proportionnelle et surtaxe progressive*);

[1] Came into force on 4 November 1961, i.e., one month after the exchange of the instruments of ratification, which took place at Bonn on 4 October 1961, in accordance with article 29.

(*b*) The presumptive tax on certain profits from non-commercial professions (*le versement forfaitaire applicable à certains bénéfices des professions non commerciales*);
(*c*) The tax on the profits of companies and other bodies corporate (*l'impôt sur les bénéfices des sociétés et autres personnes morales*);
(*d*) The business tax (*la contribution des patentes*);
(*e*) The apprenticeship tax (*la taxe d'apprentissage*);
(*f*) The real estate tax (land tax or buildings tax) (*la contribution foncière sur les propriétés bâties et non bâties*);
(*g*) The special tax on the increment value of loans (*l'impôt spécial sur la plus-value de réévaluation provenant des emprunts*).

2. In the Federal Republic of Germany:

(*a*) The income tax (*Einkommensteuer*);
(*b*) The corporation tax (*Körperschaftsteuer*);
(*c*) The Berlin emergency contribution (*Abgabe Notopfer Berlin*);
(*d*) The fortune tax (*Vermögensteuer*);
(*e*) The business tax (*Gewerbesteuer*);
(*f* The land tax (*Grundsteuer*).

(3) This Convention shall apply to any other taxes of a substantially like or similar nature introduced after its signature in one of the Contracting States or in any territory to which this convention may have been extended in accordance with the provisions of article 27.

(4) The competent authorities of the Contracting States shall resolve by agreement any doubts which may arise as to the question which taxes shall be covered by the Convention.

Article 2

(1) In this Convention:

1. The term " France ", used in a geographical sense, means only Metropolitan France and the overseas *départements* (Guadeloupe, Guiana, Martinique, and Réunion).

2. The term " Federal Republic ", used in a geographical sense, means the territory in which the Basic Law for the Federal Republic of Germany is in force.

3. The term " person " means:

(*a*) Individuals;

(*b*) Bodies corporate. Groups of persons and assets which are subject as such to taxation as bodies corporate shall be deemed to be bodies corporate.

4. (*a*) In this Convention, " a resident of a Contracting State " means any person who, under the law of that State, is liable to taxation in that State by reason of his domicile, his residence, his place of business management or any other criterion of a similar nature.

(*b*) Where, under the terms of sub-paragraph (*a*), an individual is a resident of both Contracting States, the following shall apply:

(*aa*) The individual shall be deemed to be a resident of the Contracting State in which he has a permanent place of abode. Where he has a permanent place of abode in both Contracting States, he shall be regarded as a resident of the Contracting State with which he has the closer personal and economic ties (centre of vital interests);

(*bb*) If the Contracting State in which the individual has the centre of his vital interests cannot be determined, or if he has no permanent place of abode in either of the Contracting States, he shall be deemed to be a resident of the Contracting State in which he habitually resides;

(*cc*) If the individual habitually resides in both or in neither of the Contracting States, he shall be deemed to be a resident of the contracting State of which he is a national;

(*dd*) If the individual is a national of both or of neither of the Contracting States, the competent authorities of the Contracting States shall settle the question by agreement;

(*c*) Where, under the terms of sub-paragraph (*a*), a body corporate is a resident of both Contracting States, it shall be deemed to be a resident of the Contracting State in which its place of actual management is situated. The same shall apply to partnerships and associations which, under the national laws to which they are subject, do not possess legal personality.

5. In this Convention, the place of actual management of an enterprise means the place at which the centre of general business management is situated.

6. The term " German enterprise " means a business enterprise operated by a resident of the Federal Republic.

The term " French enterprise " means a business enterprise operated by a resident of France.

The terms " enterprise of one of the Contracting States " and " enterprise of the other Contracting State " mean a German enterprise or a French enterprise, as the context requires.

7. 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, in particular, shall be deemed to be permanent establishments:

(*aa*) A place of management;

(*bb*) A branch;

(*cc*) A business office;
(*dd*) A factory;
(*ee*) A workshop;
(*ff*) A mine, a quarry, or any other place where natural resources are worked;
(*gg*) A construction or assembly project the duration of which exceeds twelve months.

(*b*) The following shall not be deemed to constitute a permanent establishment:

(*aa*) The use of facilities exclusively for the storage, display or delivery of goods or merchandise belonging to the enterprise;
(*bb*) The maintenance, exclusively for storage, display or delivery, of a stock of goods or merchandise belonging to the enterprise;
(*cc*) The maintenance, exclusively for processing by some other enterprise, of a stock of goods or merchandise belonging to the enterprise;
(*dd*) The maintenance of a fixed place of business exclusively for the purchase of goods or merchandise or for procuring information for the enterprise;
(*ee*) The maintenance of a fixed place of business exclusively for advertising purposes, for the furnishing of information or for the conduct of scientific research or similar activities which so far as the enterprise is concerned, are in the nature of preparatory or subsidiary activities.

(*c*) A person — other than an independent agent within the meaning of sub-paragraph (*e*) — who acts in one of the Contracting States on behalf of an enterprise of the other Contracting State shall be deemed to constitute a " permanent establishment " in the first-mentioned State if he possesses and habitually exercises in that State authority to conclude contracts there on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

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

(*e*) An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business dealings in that State through a commission agent, general broker or other independent agent acting in the ordinary course of his businesses.

(*f*) The fact that a company resident in one of the Contracting States controls,

or is controlled by, a company which is resident in the other State or which carries on business dealings in that State (whether through a permanent establishment or otherwise) shall not of itself constitute one of the two companies a permanent establishment of the other.

8. In this convention; the term " competent authorities " means, in the case of France, the Ministry of Finance (Department of Taxation), and in the case of the Federal Republic, the Federal Ministry of Finance.

(2) In the application of this Convention by either of the Contracting States, any term not defined in this convention shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that State relating to the taxes which are the subject of this Convention.

Article 3

(1) Income from immovable property (including accessories, and livestock and equipment of agricultural and forestry enterprises) shall be taxable only in the Contracting State in which the property is situated.

(2) Immovable property shall be defined according to the law of the Contracting State in which the property is situated.

(3) For the purposes of this article, rights which are subject to the provisions of civil law concerning landed property, rights of usufruct in immovable property and rights to variable or fixed compensation for the working of mineral deposits, wells and other natural resources shall be deemed to constitute immovable property; ships shall not be deemed to constitute immovable property.

(4) The provisions of paragraphs (1) to (3) shall also apply to income derived from the direct use, lease or use in any other form of immovable property, including income from agriculture and forestry. They shall also apply to profits derived from the alienation of immovable property.

(5) The provisions of paragraphs (1) to (4) shall also apply to income from the immovable property of enterprises other than agricultural and forestry enterprises and to income from immovable property used in the exercise of a profession.

Article 4

(1) The profits of an enterprise of one of the Contracting States shall be taxable only in that State, unless the enterprise carries on business in the other State through a permanent establishment situated therein. If the enterprise carries on such business, the profits of the enterprise may be taxed in the other State, but only to the extent that they are attributable to the permanent establishment. This part of the profits shall not be taxable in the first-mentioned Contracting State.

(2) Where an enterprise of one of the Contracting States carries on business in the other State through a permanent establishment situated therein, there shall be attributed to that permanent establishment the profits which it might have derived if it had been an independent enterprise engaged in the same or similar business under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

(3) Shares of the profits of an enterprise operated as an unincorporated society, a partnership or a *commandite* partnership accruing to a partner therein, and shares of the profits of a *société de fait, association en participation* or *société civile* under French law shall be taxable only in the State in which the enterprise has a permanent establishment, but only to the extent of the partner's share of the profits of the permanent establishment.

(4) Paragraphs (1) and (3) shall apply both to income derived from direct administration and enjoyment and to income derived from the lease or use in any other form of the business enterprise and profits derived from the alienation of the entire enterprise, of a share in the enterprise, of a part of the enterprise or of any object used in the enterprise.

(5) No portion of the profits accruing to an enterprise in one of the Contracting States shall be attributed to a permanent establishment situated in the other State by reason of the mere purchase of goods in that State by the enterprise.

(6) The profit derived from the activities of a permanent establishment shall as a general rule be determined on the basis of the balance-sheet of the establishment. In this connexion, account shall be taken of all expenditure attributable to the establishment, including a proportion of the general expenses of the enterprise. In special cases, the profit may be determined by apportioning the total profit of the enterprise; so far as concerns insurance enterprises, the basis used in such cases shall be the ratio between the premium income of the establishment and the total premium income of the enterprise.

(7) Paragraph (1) shall apply *mutatis mutandis* to business tax levied on a base other than the commercial profit.

(8) The competent authorities of the Contracting States shall if necessary agree on the formulation of rules for apportioning the profits of an enterprise, in default of regular accounts showing exactly and separately the profits accruing to the permanent establishments in their respective territories.

(9) Paragraphs (1) and (3) shall not be so construed as to prohibit one of the Contracting States from taxing in accordance with this Convention income derived from sources in its territory by an enterprise of the other Contracting State (income from immovable property, dividends), where such income cannot be attributed to a permanent establishment situated in the territory of the first-mentioned State.

Article 5

Where: an enterprise of one of the Contracting States participates directly or indirectly in the management or financial structure of an enterprise of the other Contracting State, or where the same persons participate directly or indirectly in the management or financial structure of an enterprise of one of the Contracting States 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 6

(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 actual 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 actual management of the enterprise is situated.

(3) If the place of actual management of a shipping or inland waterways transport enterprise is on board a ship or boat, it shall be deemed to be situated in the Contracting State in which the home port of the ship or boat is situated. If the home port is not situated in either of the Contracting States, the place of actual management shall be deemed to be situated in the Contracting State of which the operator of the ship or boat is a resident.

(4) Paragraphs (1) and (2) shall apply *mutatis mutandis* to business tax levied on a base other than the commercial profit.

Article 7

(1) Income derived from the alienation of an interest in a joint-stock company shall be taxable only in the Contracting State of which the alienor is a resident.

(2) Paragraph (1) shall not apply where the interest alienated forms part of the assets of a permanent establishment in the other State owned by the alienor. In this case, article 4 shall apply.

Article 8

(1) Companies resident in the Federal Republic which maintain a permanent establishment in France and are liable in France to the proportio-

nal tax on income from movable capital under article 109-2 of the General Tax Code shall pay the tax in the manner prescribed by that article.

The fraction of the distributed profits actually liable to the French proportional tax may not, however, exceed one-quarter of the income taxable under article 109-2 aforesaid, which income may not itself exceed the amount of the commercial profits realized by the permanent establishment in France as determined for the assessment of the tax on the profits of companies payable by such permanent establishment in accordance with the provisions of this Convention.

Where a company is able to show proof, in a manner acceptable to the competent authorities of the Contracting States, that more than three-quarters of its total capital stock, founders' shares or partner's shares is owned by residents of the Federal Republic, the fraction of its profits taxable in France under the terms of the foregoing paragraph shall be reduced accordingly.

(2) A company resident in the Federal Republic shall not be liable in France to the proportional tax on income from movable capital by reason of its participation in the management or in the capital of a company resident in France or because of any other relationship with that company.

Article 9

(1) Subject to paragraphs (2) and (3), dividends shall be taxable only in the Contracting State of which the recipient is a resident.

(2) Each of the Contracting States shall retain the right to collect the tax on dividends by deduction at the source in accordance with its laws. The amount so deducted may not, however, exceed 15 per cent of the gross amount of the dividends.

(3) So long as in the Federal Republic the rate of the corporation tax on distributed profits is lower than the rate for undistributed profits and so long as the difference is not less than 20 per cent, the tax deducted at the source in the Federal Republic on profits distributed after 31 December 1958 may notwithstanding paragraph (2), sentence 2, amount to 25 per cent of the gross amount of the dividends if:

1. The dividends are distributed by a joint stock company resident in the Federal Republic to a joint stock company resident in France, and

2. The French company owns at least 25 per cent of the capital stock of the German company.

This provision shall apply in France, *mutatis mutandis,* to tax deducted at the source on dividends, if the rate of the tax on the profits of companies applied to distributed profits is lower than the rate applied to undistributed profits and the difference is not less than 20 per cent.

(4) Sùbject to paragraph (5) the term " dividends " in this article means income derived from shares in joint-stock companies and similar securities

and from shares in private limited companies, and income derived by a sleeping partner from his participation. Distributions made on shares in an investment trust shall also be deemed to be dividends.

(5) In the case of French taxation, income from *commandite* interests may be taxed by France in accordance with its laws, to the extent that it is entitled under the provisions of articles 4 and 6 to tax the profits from which such income is derived.

(6) Paragraphs (1) to (3) shall not apply where the recipient of the dividends has a permanent establishment in the other Contracting State and the shares form part of the assets of that establishment. In this case, article (4) shall apply.

Article 10

(1) Interest and other income from bonds, treasury bills, loans and deposits or any other form of indebtedness, whether or not secured by mortgage, shall be taxable only in the Contracting State of which the recipient is a resident.

(2) Paragraph (1) shall not apply where the recipient of interest or other income has a permanent establishment in the other Contracting State and the indebtedness forms part of the assets of that establishment. In this case, article 4 shall apply.

Article 11

(1) Subject to paragraph (2), directors' percentages, attendance fees and other emoluments received by members of the boards of joint-stock companies and *commandite* companies or by members of similar bodies in their capacity as such shall be taxable only in the Contracting State of which the recipient is a resident.

(2) Each of the Contracting States shall retain the right to collect the tax on the income referred to in paragraph (1) by deduction at the source, in accordance with its laws.

(3) Emoluments received by the persons referred to in paragraph (1) in any other capacity shall be subject, according to their nature, to the provisions of article 12 or article 13.

Article 12

(1) Income from professions and all earned income other than that referred to in articles 13 and 14 shall be taxable only in the Contracting State in which the personal activity from which the income is derived is performed.

(2) A profession shall be deemed to be exercised in one of the Contracting States only where the taxpayer uses for his activity a fixed base regularly available to him in that State. This condition shall not, however, apply in the case of independent activities carried on in the form of public performances by artistes, professional athletes, variety entertainers, executants or other persons.

(3) Article 4, paragraph (4) shall apply *mutatis mutandis*.

Article 13

(1) Subject to the provisions of the following paragraphs, income from employment shall be taxable only in the Contracting State in which the personal activity from which the income is derived is performed. Income from employment shall be deemed to include salaries, wages, bonuses or other emoluments and any similar benefits paid or granted by persons other than those referred to in article 14.

(2) Remuneration in respect of an activity performed on board a ship or aircraft in international traffic or on board a boat engaged in inland waterways transport shall be taxable only in the Contracting State in which the place of actual management of the enterprise is situated. If that State does not tax such remuneration, it shall be taxable in the Contracting State of which the recipient is a resident.

(3) Paragraph (1) shall not apply to students resident in one of the Contracting States who are gainfully employed by an enterprise of the other Contracting State for a period not exceeding 183 days in a calendar year for the purpose of acquiring necessary practical training. Income from such employment shall be taxable only in the State of which the student is a resident.

(4) Notwithstanding the provisions of paragraph (1), income from employment shall be taxable only in the Contracting State of which the employed person is a resident if:

1. He is present in the other State only temporarily, for a total of not more than 183 days in a calendar year,
2. His remuneration for the activity carried on during that time is paid by an employer resident in the first-mentioned State, and
3. His activity is not chargeable to a permanent establishment or fixed base of the employer situated in the other State.

(5) Notwithstanding the provisions of paragraphs (1), (3) and (4), income from employment accruing to persons resident in the frontier zone of one of the Contracting States and working in the frontier zone of the other State shall be taxable only in the State in which such persons are resident. The " frontier zone " of each State shall be as defined by the frontier

agreement of 10 July 1950 between France and the Federal Republic of Germany.

(6) Private pensions and annuities shall be taxable only in the Contracting State of which the recipient is a resident.

Article 14

(1) Salaries, wages and similar remuneration and retirement pensions paid by one of the Contracting States, a *Land* or a public corporation of such State or *Land* to individuals who are residents of the other State in consideration of present or past administrative or military service, shall be taxable only in the first-mentioned State. This provision shall not, however, apply where the remuneration is paid to a person who possesses the nationality of the other State without being at the same time a national of the first-mentioned State; in this case, the remuneration shall be taxable only in the State of which the person concerned is a resident.

(2) The provisions of paragraph (1), sentence 1, shall also apply:

1. To payments made under statutory social insurance schemes;
2. To pensions, annuities and other recurrent or non-recurrent payments made by one of the Contracting States, a *Land* or a public corporation of such State or *Land* by way of compensation for damage sustained as a result of acts of war or political persecution.

(3) The provisions of paragraph (1) shall not apply to payments made in respect of services rendered in connexion with profit-making business operations carried on by one of the Contracting States, a *Land* or a public corporation of such State or *Land.*

Article 15

(1) Royalties and other remuneration for the use of or for the right to use copyrights in literacy, artistic or scientific works, including cinematograph films, patents, trade marks, brands, designs, patterns, plans, secret processes or formulae or any similar property or rights shall be taxable only in the Contracting State of which the recipient is a resident.

(2) Royalties shall be deemed to include rentals and similar remuneration for the use of or for the right to use industrial, commercial or scientific equipment or for the provision of information concerning industrial, commercial or scientific experience.

(3) Variable or fixed payments for the working of mines, quarries or other natural resources shall not be deemed to constitute royalties.

(4) Paragraph (1) shall also apply to income derived from the alienation of the property and rights mentioned in paragraphs (1) and (2).

(5) Paragraphs (1) to (4) shall not apply where the recipient of the royalties or other remuneration maintains a permanent establishment or fixed place of business in the Contracting State from which the income is derived for the purpose of exercising a profession or any other independent activity and where the royalties or other remuneration are chargeable to that permanent establishment or fixed place of business. In this case, the income shall be taxable by that State.

Article 16

Professors or teachers resident in one of the Contracting States who receive remuneration during a period of temporary residence not exceeding two years, for teaching at a university, college, school or other educational establishment in the other State shall be liable to taxation in respect of such remuneration only in the first-mentioned State.

Article 17

Students, apprentices and trainees of one of the Contracting States staying in the other State for the sole purpose of study or training shall be exempt from taxation in the latter State in respect of remittances received by them from abroad in the form of maintenance, education or training allowances.

Article 18

Income not mentioned in the foregoing articles shall be taxable only in the Contracting State of which the recipient of the income is a resident.

Article 19

Current taxes on fortune shall be levied in accordance with the following rules:

1. Where the fortune consists of:
   (*a*) Immovable property (including accessories thereto),
   (*b*) Business enterprises, including shipping, inland waterways transport and air transport enterprises, or
   (*c*) Assets used in the exercice of a profession,

it shall be taxable only in the Contracting State which, under the foregoing articles, is entitled to tax the income from such fortune.

2. All other assets shall be taxable only in the State of which the owner is a resident.

Article 20

(1) This Convention shall not restrict the right of the Contracting State of which a person is a resident to assess the taxes on income or elements of fortune over which it retains the right of taxation at the rate applicable to the total income or total fortune of that person.

(2) Taxes:

1. On dividends collected by deduction at the source in accordance with article 9, paragraphs (2) and (3),
2. On the income referred to in article 11, paragraph (1), collected by deduction at the source in accordance with article 11, paragraph (2),

shall be credited against the tax levied on such dividends or income in the Contracting State of which the recipient is a resident.

(3) Notwithstanding paragraph (2), dividens paid by a joint-stock company resident in France to a joint-stock company resident in the Federal Republic shall be exempt from taxation in the Federal Republic if the German company owns at least 25 per cent of the capital stock of the French company.

(4) Notwithstanding article 19-2, shares in a joint-stock company resident in France which are owned by a joint-stock company resident in the Federal Republic shall be exempt from fortune tax in the Federal Republic if the German company owns at least 25 per cent of the capital stock of the French society.

Article 21

(1) Nationals of one Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or higher than the taxation and connected requirements to which nationals of the latter State are or may be subjected under the same conditions.

(2) The term " nationals " means:

1. In relation to France,
   all individuals possessing French nationality;
2. In relation to the Federal Republic,
   all Germans within the meaning of article 116, paragraph 1, of the Basic Law for the Federal Republic of Germany;
3. All bodies corporate, partnerships and other associations constituted in accordance with the laws in force in either of the Contracting States.

(3) Stateless persons shall not be subjected in a Contracting State to any taxation or any requirement connected therewith which is other or higher than the taxation and connected requirement to which nationals of that State are or may be subjected under the same conditions.

(4) A permanent establishment maintained by an enterprise of one of the Contracting States in the other Contracting State shall not be taxed in the latter State less favourably than enterprises of the latter State which carry on the same business.

This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State the allowances, reliefs and reductions on grounds of personal circumstances or family responsibilities which it grants to its own residents.

(5) Enterprises of one of the Contracting States whose capital is wholly or partly, directly or indirectly, owned or controlled 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 higher than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

(6) In this article, the term " taxation " means taxes of every kind and description.

Article 22

(1) The Contracting States shall render each other administrative and legal assistance in connexion with the assessment and collection of the taxes referred to in article 1.

(2) To that end, the Contracting States agree that their competent authorities shall, in particular, exchange such tax information (being information which is at their disposal or which is statutorily available to them) as is necessary for applying this Convention and for preventing tax evasion. Such information shall be treated as secret and shall be disclosed only to persons statutorily responsible for the assessment and collection of the taxes which are the subject of this Convention.

(3) The provisions of this article shall not be so construed as to oblige either of the Contracting States to communicate to the other State information which is not obtainable under its own taxation laws or which would disclose a trade or professional secret. Similarly, the provisions of this article shall not be so construed as to oblige either of the Contracting States to take administrative measures at variance with its regulations or administrative practices. An application for information may also be refused if the State applied to considers that such information would be likely to endanger its sovereignty or security or to prejudice its general interests.

(4) If the Contracting State receiving information finds that it is not in conformity with the facts, the competent authority of that State shall, if it considers such feasible and advantageous to the other State, return the documents received to the competent authority of the other State as soon as possible,

explaining the reasons for their return and informing it of the facts as it has established them.

Article 23

(1) The Contracting States shall render each other assistance and support in the collection of taxes, duties, surcharges, overdue payment penalties, interests and costs in accordance with their legislation, where such sums are finally due under the laws of the applicant State.

(2) Applications for such assistance shall be accompanied by the documents required under the laws of the applicant State to establish that the sums to be collected are finally due.

(3) On receipt of these documents, the State applied to shall serve writs and take measures of recovery and collection in accordance with the laws governing the recovery and the collection of its own taxes. In particular, writs of execution shall be drawn in the form prescribed by the statutory provisions of that State.

(4) Where a tax claim is still subject to appeal, the creditor State, in order to protect its rights, may request the other State to take such interim measures as are lawful under the statutory provisions of the latter State.

Article 24

(1) The following special provisions shall apply to members of the diplomatic and consular missions of the two Contracting States.

Such members shall be subject in the receiving State to the taxes referred to in article 1 only in respect of the income specified in article 3 and the fortune specified in article 19-1, sub-paragraphs (*a*) and (*b*), or where the tax is collected by deduction at the source. This provision shall also apply to persons employed by such missions or their members.

(2) The provisions of paragraph (1) shall apply to the said persons only if they are nations of the sending State and do not carry on in the other State, apart from their duties of service, any occupation or business or other habitual gainful activity.

(3) The provisions of paragraphs (1) and (2) shall not apply to non-career consuls. Non-career consuls, who possess no nationality other than that of the sending State shall not be liable in the receiving State to income taxes in respect of the emoluments they receive as remuneration for their consular duties.

(4) Where under this article income and fortune are not taxed in the receiving State, the sending State shall retain the right to tax such income and fortune.

(5) The provisions of this article shall not affect any additional exemptions which may be granted to diplomatic and consular officers under the general

rules of international law or under specific agreements; where by reason of such additional exemptions income or fortune is not taxed in the receiving State, the sending State shall retain the right to tax such income or fortune.

Article 25

(1) Where a person shows proof that the action of the taxation authorities of the Contracting States has resulted or may result in his case in double taxation in respect of the taxes referred to in article 1, he may apply to the state of which he is a resident.

(2) If the application is allowed, the competent authority of that State may come to an agreement with the competent authority of the other State with a view to the avoidance of double taxation.

(3) The competent authorities of the Contracting States shall reach agreement with a view to the avoidance of double taxation in cases not provided for in this Convention and to the settlement of any difficulties or doubts which may arise in the application of this Convention.

(4) If it appears that agreement would be facilitated by discussions, such discussions may be entrusted to a mixed commission composed of representatives of the administrations of the Contracting States, designated by the competent authorities.

Article 26

(1) The competent authorities of the Contracting States shall take such administrative measures as may be necessary to give effect to this Convention.

(2) The said authorities may by agreement extend the measures of administrative and legal assistance provided for in articles 22 and 23 to the assessment and collection of:

1. Taxes referred to in article 1 of this Convention relating to a period before the entry into force of the Convention;
2. Taxes and duties other than those referred to in article 1.

Article 27

(1) The provision of this Convention may be extended either wholly or in part with such amendments as may be deemed necessary, to any territory for the international relations of which France is responsible and which levies taxes of the same nature as those which are the subject of this Convention.

(2) The extension of this Convention as provided in paragraph (1) shall be effected by exchange between the Contracting States of diplomatic notes specifying the territory to which the provisions extended shall apply and the conditions of such extension. Provisions extended by exchange of notes as

aforesaid, either wholly or in part or with such amendments as may be necessary, shall apply to the specified territory with effect from the date indicated in the notes.

(3) At any time after the expiry of a period of one year from the entry into force of an extension effected in accordance with paragraphs (1) and (2), either of the Contracting States may, by notice in writing to the other Contracting State through the diplomatic channel, terminate the application of the provisions to any of the territories to which they may have been extended; in such case, the provisions shall cease to apply to that territory from 1 January following the date of the notice, provided that such termination shall not affect the application of the said provisions to France and to any other territory not mentioned in the notice to which they may have been extended.

(4) When the provisions of this Convention cease to apply between France and the Federal Republic, they shall also cease to apply to any territory to which they may have been extended in accordance with this article, except as otherwise expressly decided by the Contracting States.

(5) For the purposes of the application of this Convention in any territory to which it may have been extended, any reference in the Convention to France shall be deemed to apply equally to the said territory.

Article 28

(1) This Convention shall also apply to *Land Berlin*, unless the Government of the Federal Republic of Germany notifies the Government of the French Republic to the contrary within three months after its entry into force.

(2) For the purposes of the application of this Convention to *Land Berlin*, any reference to the Federal Republic shall also apply to *Land Berlin*.

Article 29

(1) This Convention shall be ratified, and the instruments of ratification shall be exchanged at Bonn as soon as possible.

(2) It shall enter into force one month after the exchange of the instruments of ratification, and its provisions shall apply for the first time to:

1. Taxes collected by deduction at the source on the dividends, interest and other income referred to in articles 9, 10 and 11, paid from 1 January 1958;
2. Other French taxes established for the calendar year 1957;
3. Other German taxes levied for the calendar year 1957.

Article 30

(1) This Convention shall remain in force indefinitely.

(2) On or after 1 January 1962, either of the Contracting States may communicate to the other State through the diplomatic channel, during the first four months of any calendar year, notice in writing of its intention to terminate the Convention. In such case, the Convention shall cease to be operative from 1 January of the year following the date of notification. The provisions of the Convention shall then apply for the last time to:

(*a*) Taxes collected by deduction at the source on the dividends, interest and other income referred to in articles 9, 10 and 11, paid before the end of the calendar year preceding the calendar year from which the Convention ceases to be operative;

(*b*) Other French taxes established for the calendar year preceding the calendar year from which the Convention ceases to be operative;

(*c*) Other German taxes levied for the calendar year preceding the calendar year from which the Convention ceases to be operative.

Article 31

The Franco-German Convention of 9 November 1934 concerning avoidance of double taxation and reciprocal administrative assistance in connexion with direct taxation is hereby abrogated. Tax payments, the postponement of which has been accorded by either of the Contracting States in accordance with the provisions of paragraph 15 of the Final Protocol of that Convention shall be deemed to be remitted in full. The provisions of the Convention under which such postponements are accorded shall apply for the last time to:

1. Taxes levied on the income from movable capital referred to in article 9 of the Conventions, paid before 1 January 1958;
2. Other French taxes established for the calendar year 1956;
3. Other German taxes levied for the calendar year 1956;

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

DONE in Paris on 21 July 1959 in duplicate in the French and German languages, both texts being equally authentic.

For the French Republic:	For the Federal Republic of Germany:
[LOUIS JOXE]	[GERHARD JOSEF JANSEN]
[SEAL — SCEAU]	[SEAL — SCEAU]

SUPPLEMENTARY PROTOCOL

CONCERNING THE APPLICATION IN RESPECT OF NON-RECURRENT TAXES ON FORTUNE OF THE CONVENTION BETWEEN THE FRENCH REPUBLIC AND THE FEDERAL REPUBLIC OF GERMANY FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE ESTABLISHMENT OF PRINCIPLES FOR RECIPROCAL ADMINISTRATIVE AND LEGAL ASSISTANCE WITH RESPECT TO TAXES ON INCOME AND FORTUNE, BUSINESS TAXES AND LAND TAXES

With a view to the avoidance of double taxation in respect of non-recurrent taxes on fortune (excluding inheritance taxes) which have been or may be instituted and established in either of the Contracting States after 31 December 1947 and before 1 January 1960, the French Republic and the Federal Republic of Germany have agreed on the following provisions by way of supplement to the Convention between the French Republic and the Federal Republic of Germany for the avoidance of double taxation and the establishment of principles for reciprocal administrative and legal assistance with respect to taxes on income and fortune, business taxes and land taxes.

1. Subject to the provisions of paragraphs 2 and 3 below, article 19 of the Convention shall apply, *mutatis mutandis*, to the non-recurrent taxes on fortune referred to above.

2. In the case of a resident of the Federal Republic of Germany, the provisions of article 19-1 of the Convention shall apply only if such resident, on the date on which he became or becomes liable to taxation in respect of the fortune in question, possessed or possesses French nationality without at the same time possessing German nationality.

3. In the case of a resident of the French Republic, the provisions of article 19-1 of the Convention shall apply only if such resident, on the date on which he became or becomes liable to taxation in respect of the fortune in question, possessed or possesses German nationality without at the same time possessing French nationality.

4. Rights to relief under the provisions of this Supplementary Protocol shall lapse unless the appropriate application is submitted within a period of three years after the entry into force of the Convention.

5. The legal and administrative assistance provided for under the Convention shall also be rendered in connexion with the non-recurrent taxes on fortune referred to above.

This Supplementary Protocol shall constitute an integral part of the Convention.

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

DONE in Paris on 21 July 1959 in duplicate, in the French and German languages, both texts being equally authentic.

For the French Republic:

[LOUIS JOXE]

For the Federal Republic of Germany:

[GERHARD JOSEF JANSEN]

ADDITIONAL AGREEMENT [1] TO THE CONVENTION BETWEEN THE FRENCH REPUBLIC AND THE FEDERAL REPUBLIC OF GERMANY FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE ESTABLISHMENT OF PRINCIPLES FOR RECIPROCAL ADMINISTRATIVE AND LEGAL ASSISTANCE WITH RESPECT TO TAXES ON INCOME AND FORTUNE, BUSINESS TAXES AND LAND TAXES SIGNED AT PARIS ON 21 JULY 1959 [2]

Desiring, within the framework of the relations between States members of the European Economic Community, to promote the economic development of the two countries and to equalize as nearly as possible the tax burden on profits realized by companies resident in the two States respectively which are distributed to residents of either State, the President of the French Republic and the President of the Federal Republic of Germany have decided to amend certain provisions of the Tax Convention signed at Paris on 21 July 1959 [2] and have for this purpose appointed as their plenipotentiaries:

The President of the French Republic:

His Excellency the Ambassador of France, François Seydoux de Clausonne,

The President of the Federal Republic of Germany:

The Federal Minister for Foreign Affairs, Willy Brandt, and the State Secretary of the Federal Ministry of Finance, Walter Grund,

who, having exchanged their full powers, found in good and due form, have agreed as follows:

Article 1

Article 8 of the Convention shall be replaced by the following provision:

" Article 8

" Companies resident in the Federal Republic which maintain a permanent establishment in France shall not be liable to the tax on distributions (*impôt de distribution*) referred to in article 115 *quinquies* of the General Tax Code. "

[1] Came into force on 8 October 1970 by the exchange of the instruments of ratification, which took place at Paris, in accordance with article 7.

[2] See p. 382 of this volume.

Article 2

Article 9 of the Convention shall be amended as follows:

(*a*) Paragraph (1) shall be replaced by the following provision:

" (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. "

(*b*) The following paragraphs shall be inserted after paragraph (2):

" (3) Notwithstanding the provisions of paragraph (2), dividends paid to a resident of the Federal Republic by a company resident in France whose distributions would confer entitlement to a tax credit (*avoir fiscal*) if they were made to a person resident in France shall not be charged with French tax, such tax being paid in accordance with the procedure laid down in article 20, paragraph (1) (*b*) (*bb*).

" (4) Notwithstanding the provisions of paragraphs (2) and (3), dividends paid by a joint stock company resident in France to a joint stock company resident in the Federal Republic which owns at least 25 per cent of the capital stock of the first-mentioned company shall not be taxable in France. Any prelevy (*précompte*) imposed at the time when such dividends are paid shall be refunded to the company resident in the Federal Republic. "

(*c*) Paragraph (3) shall become paragraph (5).

(*d*) Paragraph (4) shall become paragraph (6), and the reference therein to paragraph (5) shall be replaced by a reference to the new paragraph (7).

(*e*) Paragraph (5) shall be replaced by the new paragraph (7) below.

" (7) To the extent that France is entitled under articles 4 and 6 to tax the profits of the societies and partnerships referred to in article 4, paragraph (3), the income from such profits, which under French law is regarded as dividends, may be taxed in accordance with the provisions of paragraph (2) of this article. "

(*f*) Paragraph (6) shall become paragraph (8), and the reference therein to paragraphs (1) to (3) shall be replaced by a reference to paragraphs (1) to (5).

Article 3

Article 20 of the Convention shall be replaced by the following provisions:

" Article 20

" (1) In the case of residents of the Federal Republic, double taxation shall be avoided as follows:

(*a*) Subject to the provisions of subparagraphs (*b*) and (*c*), income arising in France and elements of fortune situated in France which under this Convention may be taxed in France shall be excluded from the German tax base. This provision shall not limit the right of the Federal Republic to take into account, in determining the rate of its taxes, the income and elements of fortune so excluded.

(*b*) (*aa*) Subparagraph (*a*) shall apply to dividends only when they are paid by a joint stock company resident in France to a joint stock company resident in the Federal Republic which owns at least 25 per cent of the capital stock of the first-mentioned company. This provision shall also apply to shares the dividends from which would come within the scope of the preceding sentence.

(*bb*) Dividends not covered by subparagraph (*aa*) above which are distributed by a company resident in France referred to in article 9 paragraph (3), shall be treated as follows:

Residents of the Federal Republic shall receive a tax credit equal to that granted to residents of France at the time when dividends are distributed in respect of earnings of the same kind; the amount of the said tax credit is at present one half of the dividend distributed. For the purpose of determining the German tax base, the tax credit, which constitutes additional income for the recipient, shall be added to the amount of the dividend distributed. The tax credit shall be allowed as a deduction from the German tax levied on the dividend so augmented. Where the tax credit exceeds the amount of this German tax, the excess amount shall be refunded, unless it can be set off against the German tax levied on other income. The French Treasury shall refund to the German Treasury an amount equal to this tax credit; however, the French Treasury shall deduct from the said amount a sum corresponding to tax withheld at the source, computed at the rate of 15 per cent of the aggregate of the dividend and the tax credit. On the basis of a tax credit equal to one half of the dividend distributed, the amount to be refunded by the French Treasury is at present 27.5 per cent of the said dividend.

(*c*) French tax levied in accordance with this Convention on dividends other than those covered in subparagraph (*b*) above, and on income

referred to in article 11, arising in France shall be allowed as a deduction from the German tax levied on the same income. For the purposes of this subparagraph, the income referred to in article 9, paragraph (7), shall not be regarded as dividends.

" (2) In the case of residents of France, double taxation shall be avoided as follows:

(*a*) Subject to the provisions of subparagraphs (*b*) and (*c*), income arising in the Federal Republic which under this Convention may be taxed in the Federal Republic shall be excluded from the French tax base. This provision shall not, however, limit the right of France to take into account, in determining the rate of its taxes, the income so excluded.

(*b*) German tax levied in accordance with the provisions of article 9, paragraph (2), on dividends arising in the Federal Republic shall be allowed as a deduction from the French tax owed by the recipient of such income. Any excess amount shall be refunded to the taxpayer in the manner provided for in the French taxation laws relating to tax credits.

(*c*) German tax levied in accordance with the provisions of article 11, paragraph (2), on the income referred to therein shall be allowed as a deduction from that part of the French tax which relates to the said income. "

Article 4

The following paragraph shall be added to article 26 of the Convention:

" (3) The competent authorities shall agree on ways of ensuring that the measures provided for in articles 8, 9 and 20 of this Convention do not benefit persons who are not residents of the Federal Republic. "

Article 5

The following article shall be inserted in the Convention:

" Article 30 *bis*

" (1) The competent authorities of each Contracting State shall be required to inform the competent authorities of the other State of any changes which have been made in their respective taxation laws relating to the taxation of companies and of distributed income. Such information must be supplied upon promulgation of the changes.

" (2) The Contracting States shall consult together on such amendments to the provisions of this Convention as may be necessitated by the changes referred to in paragraph (1) above. "

Article 6

This Additional Agreement shall also apply to *Land Berlin,* unless the Government of the Federal Republic of Germany notifies the Government of the French Republic to the contrary within three months after its entry into force.

Article 7

(1) This Additional Agreement shall be ratified, and the instruments of ratification shall be exchanged at Paris as soon as possible.

(2) The Additional Agreement shall enter into force on the date of the exchange of the instruments of ratification; its provisions shall apply for the first time:

— In the case of article 1, to taxes leviable for the financial year 1968 on companies resident in the Federal Republic which have a permanent establishment in France;

— In the case of articles 2 and 3, to taxes leviable both in France and in the Federal Republic in respect of dividends payable on or after 1 January 1968.

Article 8

This Additional Agreement shall form an integral part of the Convention of 21 July 1959 and shall remain in force for as long as the Convention continues to apply.

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

DONE at Bonn on 9 June 1969 in duplicate in the German and French languages, both texts being equally authentic.

For the French Republic:

[*Signed*]
F. SEYDOUX

[SEAL]

For the Federal Republic of Germany:

[*Signed*]
W. BRANDT

[*Signed*]
W. GRUND

[SEAL]