No. 11767

FRANCE
and
ALGERIA

Agreement for the elimination of double taxation and the establishment of rules of mutual administrative assistance with respect to taxation (with protocol and exchanges of letters). Signed at Algiers on 2 October 1968

Authentic text: French.

Registered by France on 19 April 1972.

FRANCE
et
ALGÉRIE

Convention tendant à éliminer les doubles impositions et à établir des règles d'assistance mutuelle administrative en matière fiscale (avec protocole et échanges de lettres). Signée à Alger le 2 octobre 1968

Texte authentique : français.

Enregistrée par la France le 19 avril 1972.

[TRANSLATION — TRADUCTION]

AGREEMENT[1] BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE DEMOCRATIC AND POPULAR REPUBLIC OF ALGERIA FOR THE ELIMINATION OF DOUBLE TAXATION AND THE ESTABLISHMENT OF RULES OF MUTUAL ADMINISTRATIVE ASSISTANCE WITH RESPECT TO TAXATION

The Government of the French Republic and

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

TITLE I

GENERAL PROVISIONS

Article 1

For the purposes of this Agreement:

1. The term "person" means:

(*a*) Any individual;

(*b*) Any body corporate;

(*c*) Any unincorporated group of individuals.

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

3. The term "Algeria" means the entire territory of Algeria.

[1] Came into force on 1 June 1970, the first day of the month following the exchange of notes indicating that both Parties had complied with the constitutional provisions in force in each of the two countries, in accordance with article 44 (1).

Article 2

1. For the purposes of this Agreement, an individual shall be deemed to be domiciled in the place in which he has his "permanent home".

If an individual has a permanent home in each of the two States, he shall be deemed to be domiciled in that one of the Contracting States in which he has his centre of professional or business activities and, failing that, in the Contracting State in which he principally resides.

2. For the purposes of this Agreement, a body corporate or unincorporated group of individuals shall be deemed to have its domicile in the place in which its centre of actual management is situated.

Article 3

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

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

(*aa*) A place of operation;
(*bb*) A branch;
(*cc*) A sales office serving the State in which it is situated;
(*dd*) A factory;
(*ee*) A workshop;
(*ff*) A mine, quarry or other place of extraction of natural resources;
(*gg*) A building site or construction project;
(*hh*) A sales outlet.

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

(*aa*) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
(*bb*) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise for dispatch to the enterprise itself in the other Contracting State;

(*cc*) 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, so far as the enterprise is concerned, are of a preparatory or auxiliary character, provided that no orders are accepted there.

(*c*) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State — other than an agent of independent status within the meaning of sub-paragraph (*e*) below—shall be deemed to constitute a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise and such goods or merchandise are not resold in the first-mentioned State.

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

(*d*) An insurance enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if, through a representative having an authority to enter into commitments on its behalf, it collects premiums in the territory of that State, insures risks situated therein or, more generally, concludes insurance contracts in that territory.

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

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

Article 4

For the purposes of this Agreement, property and rights which are treated as immovable property under the taxation laws in force in the country in which the property in question is situated, and rights of usufruct in immovable property, with the exception of claims of any kind secured by pledge of immovables, shall be deemed to be immovable property.

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

Article 5

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

2. In particular, nationals of one of the Contracting States who are liable to taxation in the territory of the other Contracting State shall be entitled, under the same conditions as nationals of that other State, to such exemptions, reliefs, rebates and reductions of any taxes or charges whatsoever as may be granted in respect of family dependants.

Article 6

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

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

In the case of Algeria, the Minister of State for Finance and Planning or his duly authorized representative.

Article 7

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

TITLE II

DOUBLE TAXATION

Chapter I

INCOME TAXES

Article 8

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

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

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

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

In the case of France:

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

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

(*c*) The tax on wages (*taxes sur les salaires*);

(*d*) The tax on the profits of companies and other bodies corporate (*l'impôt sur les bénéfices des sociétés et autres personnes morales*), as well as all withholdings (*retenues*), advance collections (*précomptes*) and prepayments (*avances décomptés*) in respect of such taxes.

In the case of Algeria:

(*a*) The schedular taxes on income (*impôts cédulaires sur le revenu*), namely:

(*aa*) The real estate tax on buildings and land (*taxe foncière des propriétés bâties et non bâties*), including the contributions (*cotisations*) referred to in articles 28 and 33 of Ordinance No. 67-83 of 2 June 1967;

(*bb*) The tax on industrial and commercial profits (*l'impôt sur les bénéfices industriels et commerciaux*);

(*cc*) The tax on profits from agriculture (*l'impôt sur les bénéfices de l'exploitation agricole*);

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

(*b*) The tax on income from securities and from movable capital (*l'impôt sur le revenu des valeurs et capitaux mobiliers*);

(*c*) The royalty (*redevance*) and the direct tax on profits payable in Algeria by enterprises engaged in the exploration, exploitation or transport by pipeline of hydrocarbons;

(*d*) The standard assessment on employers and payers of pensions and annuities (*versement forfaitaire à la charge des employeurs et débirentiers*);

(*e*) The tax on public and private salaries, on remunerations and emoluments, on wages, on pensions and on annuities (*l'impôt sur les traitements publics et privés, indemnités et émoluments, salaires, pensions et rentes viagères*);

(*f*) The complementary tax on total income (*l'impôt complémentaire sur l'ensemble du revenu*);

(*g*) The complementary tax on high wages (*taxe complémentaire sur les hauts salaires*) instituted by article 15 of Act No. 62-155 of 31 December 1962;

(*h*) The temporary extraordinary levy (*prélèvement exceptionnel temporaire*) instituted by article 3 of Act No. 63-295 of 10 August 1963;

(*i*) The palm-tree *lexma* and the related tax;

(*j*) The *zekkat* tax and the related tax;

(*k*) The tax on professional activity (*taxe sur l'activité professionnelle*) levied on behalf of local authorities, and local direct taxes.

4. The Agreement shall also apply to any identical or similar taxes which may subsequently be added to or substituted for the existing taxes. The com-

petent authorities of either Contracting State shall notify the competent authorities of the other Contracting State of any changes made in their taxation laws as soon as such changes are promulgated.

5. It is agreed that, if the taxation laws of either Contracting State are amended in a manner substantially affecting the nature or the character of the taxes referred to in paragraph 3 of this article, the competent authorities of the two States shall consult together to agree on such changes as it may be necessary to make in this Agreement.

Article 9

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

Article 10

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

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

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

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

5. If one of the establishments situated in either Contracting State realizes no turnover, or if the business carried on in the two States is not

comparable, the competent authorities of the two States shall consult together to establish the manner in which paragraphs 3 and 4 above are to be applied.

Article 11

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

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

Article 12

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

Article 13

1. Subject to the provisions of articles 15 to 17 below, income from securities and assimilated income (earnings from shares, founders' shares, or partnership or *commandite* interests; interest on bonds and on all other negotiable certificates of indebtedness) paid by companies or by public or private authorities having their fiscal domicile in one of the Contracting States shall be taxable in that State.

2. Where dividends distributed by companies having their fiscal domicile in France are liable to the tax collected in advance on movable property (*précompte mobilier*), recipients of such income who are domiciled in Algeria 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. The mode of application of this provision shall be determined by mutual agreement between the competent authorities of the two States.

Article 14

A company of one of the Contracting States may not be subjected in the territory of the other Contracting State to a tax on its distributions of

income from securities and of assimilated income (earnings from shares, founders' shares or partnership or *commandite* interests; interst on bonds and on all other negotiable certificates of indebtedness) solely by virtue of its participation in the management or the capital of companies domiciled in that other State or because of any other relationship with such companies; but income distributed by the latter companies and liable to the tax shall where appropriate be increased by the amount of any profits or advantages which the company of the first-mentioned State has directly derived from the said companies, either by increasing or decreasing purchase or selling prices or by any other means.

Article 15

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

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

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

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

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

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

In determining the total book profits, no account shall be taken of overall losses established in respect of all the company's permanent establishments

in either State after setting off against each other the profits and losses of those establishments.

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

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

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

Article 16

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

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

Article 17

1. The apportionment of tax bases referred to in article 15 shall be made by the company and communicated by it to each of the competent taxation administrations within the time-limit prescribed by the laws of each State

for declaring such distributions of taxable earnings as the company is carrying out.

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

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

Failing agreement, the difference shall be settled by the mixed commission referred to in article 42.

Article 18

Directors' percentages, attendance fees and other emoluments received by members of the boards of directors or supervisory boards of joint-stock companies, limited share partnerships (*sociétés en commandite par actions*) or co-operative societies in their capacities as such shall be taxable in the Contracting State in which the company has its fiscal domicile, subject to the application of articles 22 to 24 below in respect of remuneration received by them in any other effective capacity.

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

Article 19

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

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

3. The provisions of paragraphs 1 and 2 above shall not apply if the recipient of the interest in question, being domiciled in one of the Contracting States, maintains in the other Contracting State, in which the interest arises, a permanent establishment with which the debt-claim producing the interest

is actually connected. In that case, article 10 relating to the attribution of profits to permanent establishments shall apply.

Article 20

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

2. Royalties for the use of, or the right to use, any copyright of literary, artistic or scientific work, excluding cinematograph films, which are paid in one of the Contracting States to a person having his fiscal domicile in the other Contracting State shall be taxable only in the latter State.

3. Royalties from the sale or grant of licences for the use of patents, trade marks, secret processes and formulae arising from sources situated in the territory of one of the Contracting States and paid to a person domiciled in the other Contracting State shall be taxable in the latter State.

However, such 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 15 % of the amount of the royalties.

4. The royalties referred to in paragraph 3 shall be deemed to include payments made for the hire of or for the right to use cinematograph and television films, similar remuneration for the provision of information concerning industrial, commercial or scientific experience and remuneration for technical or economic studies.

The same shall apply to rentals and similar remuneration for the use of or the right to use agricultural, industrial, harbour, commercial or scientific equipment.

5. Where a royalty exceeds the intrinsic and normal value of the rights for which it is paid, the exemption provided for in paragraph 2 or the limitation provided for in paragraph 3, as the case may be, shall apply only to that part of the royalty which corresponds to the said intrinsic and normal value.

6. The provisions of paragraphs 2 and 3 shall not apply where the recipient of the royalties or other payments maintains in the Contracting

State in which the income arises a permanent establishment or fixed place of business used for the practice of a profession or of any other independent activity and where the said royalties or other payments are attributable to that permanent establishment or fixed place of business. In such cases, the State in question shall be entitled to tax the income in accordance with its legislation.

Article 21

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

Article 22

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

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

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

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

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

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

Article 23

Salaries, wages, remunerations or emoluments, pensions and annuities

paid by individuals or bodies corporate—other than one of the Contracting States or public authorities or public administrative corporations of those States—shall be subject to the standard assessment on employers and payers of pensions and annuities or the tax on wages only in the State in which the employers or the payers of the pensions or annuities have their domicile or a permanent establishment or fixed base which bears the cost of the remuneration in question.

Article 24

1. Without prejudice to the provisions of article 20, income derived by a person domiciled in a Contracting State from a profession or from other independent activities of a similar character shall be taxable only in that State, unless the person in question has a fixed base for his activities regularly available to him in the other Contracting State. If he has such a fixed base, such part of the income as is attributable to that base shall be taxable in the other State.

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

Article 25

Profits and fees derived from theatrical, musical, music-hall, circus and similar performances shall be taxable only in the Contracting State in which such performances take place.

Article 26

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

Article 27

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

Article 28

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

1. A Contracting State may not include in the bases upon which the taxes on income referred to in article 8 are imposed any income which is taxable only in the other Contracting State under the terms of this Agreement, but each State shall retain the right to calculate the tax at a rate corresponding to the total income taxable under its legislation.

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

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

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

(*a*) Income from movable capital of the kinds referred to in articles 13, 15 and 18 originating in Algeria and liable under the terms of the said articles to the Algerian tax on income from securities and from movable capital shall entitle the recipient to a deduction from the taxes payable in France on the same income. The rate of deduction shall be 25 % in the case of dividends and 12 % in the case of other categories of income;

(*b*) Interest of the kinds referred to in article 19 which originates in Algeria and which has been charged with the Algerian tax on income from securities and from movable capital shall entitle a recipient of the said interest domiciled in France to a tax credit of 18 % in that country. Such credit shall be allowed either against the tax on the income of individuals or against the company tax.

4. Income of the kinds referred to in article 20, paragraphs 3 and 4, originating in Algeria and payable to persons domiciled in France shall for the purposes of French taxation be included as to its gross amount in the bases upon which the taxes referred to in article 8, paragraph 3, are imposed,

but the amount of tax paid on such income in Algeria shall be deducted from the amount of the French tax payable on the said income, in so far as it does not exceed the amount of that tax.

5. Income of the kinds referred to in articles 13, 15, 18 and 19 and in article 20, paragraphs 3 and 4, originating in France and payable to persons domiciled in Algeria shall not be charged in that country with any tax other than the complementary tax on total income.

Chapter II

SUCCESSION DUTIES

Article 29

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

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

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

In the case of France:

— the succession duty;

In the case of Algeria:

— the succession duty.

Article 30

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

Article 31

1. Tangible or intangible movable property left by a deceased person who at the time of his death was domiciled in one of the Contracting States and invested in a commercial, industrial or handicraft enterprise of any kind

shall be liable to succession duty in accordance with the following rule:

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

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

2. The term "property invested in a commercial, industrial or handicraft enterprise" shall be understood to include participations in enterprises in the form of companies, with the exception of shares, rights participating in profits and other similar interests in joint-stock companies.

Article 32

Tangible or intangible movable property connected with a fixed place of business and used in the practice of a profession in one of the Contracting States shall be liable to succession duty only in the Contracting State in which such place of business is situated.

Article 33

Tangible movable property other than the movables referred to in articles 31 and 32, including furniture, linen and household goods and art objects and collections, shall be liable to succession duty only in the Contracting State in which it is actually situated at the date of death.

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

Article 34

Property of a deceased person's estate to which articles 30 to 33 do not apply shall be liable to succession duties only in the Contracting State in which the deceased was domiciled at the time of his death.

Article 35

1. Debts pertaining to enterprises of the kinds referred to in articles 31

and 32 shall be charged against the property of those enterprises. If the enterprise has a permanent establishment or fixed place of business, as the case may be, in both Contracting States, the debts shall be charged against the property of the establishment or place of business to which they pertain.

2. Debts secured on immovable property or on rights in immovable property, or on ships or aircraft as referred to in article 33, or on property used in the practice of a profession as provided for in article 32, or on the property of an enterprise of the kind referred to in article 31, shall be charged against such property. If a debt is secured at the same time on property situated in both States, it shall be charged against the property situated in each of them in proportion to the taxable value thereof.

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

3. Debts not provided for in paragraphs 1 and 2 shall be charged against property covered by the provisions of article 34.

4. If, after the procedure provided for in the three preceding paragraphs, there remains an outstanding balance in one of the Contracting States, such balance shall be deducted from the value of any other property liable to succession duty in the same State.

If there is no other property subject to duty in that State or if after such deduction a balance still remains, such balance shall be charged against the property subject to duty in the other Contracting State.

Article 36

Notwithstanding the provisions of articles 30 to 35, each Contracting State shall retain the right to assess the duty on inherited property which it has the exclusive right to tax at the average rate applicable to the sum of the property which would be liable to duty under its internal legislation.

Chapter III

REGISTRATION TAXES OTHER THAN SUCCESSION DUTIES. STAMP TAXES

Article 37

1. Taxes pertaining to an instrument or judgement liable to registration shall, subject to the provisions of paragraphs 2 and 3 below, be payable in the State in which the instrument is drawn up or the judgement is rendered.

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

2. Company articles of association or amendments thereto shall be liable to the *ad valorem* capital contribution tax (*droit proportionnel d'apport*) only in the State in which the company has its registered offices (*siège statutaire*). In cases of mergers or similar operations, the tax shall be levied in the State in which the new or absorbing company has its registered offices.

However, notwithstanding the provisions of the preceding subparagraph, the capital contribution tax payable on contributions consisting of the ownership or usufruct of immovables and businesses and on the right to lease or to benefit by an option to lease all or part of an immovable shall be levied only in the Contracting State in whose territory the immovable or business in question is situated.

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

Article 38

Instruments or bills (*effets*) drawn up in one Contracting State shall not be subject to stamp tax in the other Contracting State if they have actually been

charged with such tax at the rate applicable in the first-mentioned State or if they are legally exempt from such tax in the first-mentioned State.

TITLE III

ADMINISTRATIVE ASSISTANCE

Article 39

1. The taxation authorities of each of the Contracting States shall communicate to the taxation authorities of the other Contracting State any fiscal information available to them and useful to the latter authorities to ensure the proper assessment and collection of the taxes to which this Agreement relates.

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

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

Article 40

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

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

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

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

Article 41

In the case of tax debts still subject to appeal, the taxation authorities of the creditor State may, in order to safeguard the latter's rights, request the competent taxation authorities of the other Contracting State to take such interim measures as its laws or regulations permit.

TITLE IV

MISCELLANEOUS PROVISIONS

Article 42

1. If a taxpayer asserts that the actions of the taxation authorities of the Contracting States result in taxation not in accordance with the principles of this Agreement, he shall submit an objection to the competent authorities of the State whose taxation he disputes. If the objection is not accepted or is not disposed of within a period of six months, he may refer the matter to the competent authorities of the other State. If his application is upheld, the latter authorities shall reach agreement with the competent authorities of the first-mentioned State with a view to the avoidance of taxation not in accordance with the Agreement.

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

3. If it appears that agreement would be facilitated by negotiations, the matter shall be referred to a mixed commission composed of an equal

number of representatives of each Contracting State. The commission shall be presided over alternately by a member of each delegation.

Article 43

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

Article 44

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

— In respect of taxes on income, to the taxation of income relating to the calendar year 1968 or to fiscal years ended in the course of that year. However, in the case of income the taxation of which is governed by articles 15 to 18, the Agreement shall apply to distributions taking place after the entry into force of the Agreement;

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

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

2. Notwithstanding the provisions of the preceding paragraph, assistance with regard to collection as provided for in articles 40 and 41 shall apply for the first time to the taxation of income relating to the calendar year in which this Convention enters into force or to fiscal years beginning after its entry into force.

Article 45

This Agreement shall remain in force indefinitely.

However, on or after 1 January 1969 either Government may, subject to six months' notice through the diplomatic channel, denounce the Agreement as from the first day of January of any calendar year. In that event the Agreement shall cease to apply:

— In respect of taxes on income, to income acquired or paid during the calendar year preceding the first day of January with effect from which the Agreement is denounced;

— In respect of succession duties, to the estates of persons deceased after the thirty-first day of December of the said calendar year;

— In respect of other registration taxes and of stamp taxes, to instruments and judgements dated after the thirty-first day of December of the said calendar year.

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

DONE at Algiers, on 2 October 1968.

For the Government of the French Republic:

[*Signed*]

PIERRE DE LEUSSE

For the Government of the Democratic and Popular Republic of Algeria:

[*Signed*]

ABDELAZIZ BOUTEFLIKA

PROTOCOL

On signing the Agreement between the Government of the French Republic and the Government of the Democratic and Popular Republic of Algeria for the elimination of double taxation and the establishment of rules of mutual administrative assistance with respect to taxation, the undersigned have agreed upon the following declarations, which shall form an integral part of the Agreement:

Ad *article 2*

(*a*) An individual formerly domiciled in one of the Contracting States shall be deemed to have retained his permanent home there if his family continues habitually to reside in that State although such individual, in fact,

personally resides for most of the year in the other State, where he has his centre of professional or business activities.

(*b*) An individual formerly domiciled in one of the Contracting States shall not be deemed to have his permanent home in the other Contracting State, although his family now habitually resides in the latter State, if such individual continues, in fact, personally to reside for most of the year in the first-mentioned State and has retained his centre of professional or business activities there. However, this provision shall not apply where most of the income taxable in the name of the individual—as head of family—is derived from sources other than those situated in the State in which he formerly had his domicile.

Ad *article 4*

The two Contracting Parties agree to treat as immovable property, for the purposes of article 4, the stocks and shares of companies whose sole effective purpose is either to construct or purchase buildings or groups of buildings with a view to dividing them into smaller units to be allocated to the shareholders as owners or occupiers or to manage such buildings or groups of buildings so divided.

Ad *article 12*

The provisions of article 12 shall, in so far as they relate to the operation of ships, apply only to income for fiscal years ended after the entry into force of the Shipping Agreement concluded between the two countries on 24 July 1967.[1]

Ad *article 20*

1. In the application of paragraphs 3 and 4, the amounts taxable in the State of origin shall be determined by applying to the gross amount of the royalties a deduction of 20 % in the case of the earnings referred to in paragraph 3 and of 50 % in the case of the payments referred to in paragraph 4.

2. The provisions of article 20, paragraph 4, second subparagraph, concerning rentals and similar remuneration for the use of or the right to use agricultural, industrial, harbour, commercial or scientific equipment relate to

[1] See p. 393 of this volume.

equipment belonging to another enterprise which is made habitually available and which is used or can be used for the carrying on of a single type of business or the performance of a single operation.

Ad *article 22*

In order to take account of the special relations existing between France and Algeria, the two Contracting Parties have agreed that, for a transitional period which may be terminated by an agreement concluded at the request of either Party, the length of time referred to in article 22, paragraph 2 (*a*), shall be reduced to 120 days.

Ad *article 28*

The expression "gross amount" in article 28 means the amount of income taxable before deduction of the tax levied on it in the State of origin.

Ad *article 40*

Any taxpayer against whom, in application of the provisions of article 40, proceedings are instituted in one Contracting State for the recovery of taxes owed in the other Contracting State shall be entitled to request the competent authorities of the first-mentioned State to stay such proceedings if, after the date of signature of the present Agreement, he is able to establish rights pertaining to property situated in the State in which the taxes in question were assessed or to establish a claim on that State or on a public authority, public establishment or public service agency in that State.

However, taxpayers who have established themselves or have carried on any gainful activity in the territory of the requesting State after the date of signature of the present Agreement may invoke the aforementioned rights for the purpose of obtaining a stay of proceedings only in so far as they pertain to property which was at their disposal on or after that date.

If the request, which must be supported by the necessary documents, appears to be justified, the application of the provisions of article 40 shall be stayed. The competent authorities of the requesting State shall be informed of that decision and the request shall be submitted within three months to the mixed commission referred to in article 42, paragraph 3, for examination.

That commission shall decide whether, and to what extent, the measures of enforced recovery shall proceed.

In more general terms, disputes relating to collection shall be deemed to be difficulties of application within the meaning of article 42 of the Agreement.

[*Signed*]
PIERRE DE LEUSSE

[*Signed*]
ABDELAZIZ BOUTEFLIKA

EXCHANGES OF LETTERS

I *a*

DEMOCRATIC AND POPULAR REPUBLIC OF ALGERIA

MINISTRY OF FOREIGN AFFAIRS

The Minister

Algiers, 2 October 1968

Sir,

Article 23 of the Tax Agreement which we have signed this day makes no mention of the taxation in the form of standard assessment or tax on wages which applies to salaries, wages, remunerations or emoluments, pensions and annuities paid by the Contracting States or by public authorities or public administrative corporations of those States.

I have the honour to request you to confirm that this silence does not prejudge the future solution of the problems presented by the existence of these taxes in relations between our two countries.

Accept, Sir, etc.

[*Signed*]
ABDELAZIZ BOUTEFLIKA

His Excellency Mr. Pierre de Leusse
Ambassador Extraordinary and Plenipotentiary
High Representative of the French Republic
in Algeria

II *a*

EMBASSY OF FRANCE IN ALGERIA

The Ambassador

Algiers, 2 October 1968

Sir,

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

[*See letter I* a]

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

Accept, Sir, etc.

PIERRE DE LEUSSE

His Excellency Mr. Abdelaziz Bouteflika
Minister for Foreign Affairs
of the Democratic and Popular Republic
of Algeria
Algiers

I *b*

EMBASSY OF FRANCE IN ALGERIA

The Ambassador

Algiers, 2 October 1968

Sir,

Notwithstanding the provisions of the Tax Agreement which we have signed this day, it is understood that the fiscal provisions contained in the Agreement concluded on 29 July 1965 between the French Republic and the Democratic and Popular of Algeria concerning the settlement of questions relating to hydrocarbons and the industrial development of Algeria, including the annexes thereto, shall remain in force.

I have the honour to request you to confirm that your Government agrees on this point.

Accept, Sir, etc.

PIERRE DE LEUSSE

His Excellency Mr. Abdelaziz Bouteflika
Minister for Foreign Affairs
of the Democratic and Popular Republic
of Algeria
Algiers

II *b*

DEMOCRATIC AND POPULAR REPUBLIC OF ALGERIA

MINISTRY OF FOREIGN AFFAIRS

The Minister

Algiers, 2 October 1968

Sir,

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

[*See letter II* b]

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

Accept, Sir, etc.

[*Signed*]
ABDELAZIZ BOUTEFLIKA

His Excellency Mr. Pierre de Leusse
Ambassador Extraordinary and Plenipotentiary
High Representative of the French Republic
in Algeria

I *c*

EMBASSY OF FRANCE IN ALGERIA

The Ambassador

Algiers, 2 October 1968

Sir,

With reference to the Tax Agreement which we have signed on 2 October 1968, in view of the fact that its provisions essentially meet the concerns which prompted the introduction in Algeria of tax clearance certificates, I have the honour, on instructions from my Government, to request that as from today my compatriots leaving Algeria, temporarily or permanently, shall no longer be subject to the provisions of Decree No. 63-196 of 5 June 1963 concerning tax clearance certificates.

I should be grateful if you would inform me whether this proposal meets with the approval of the Government of the Democratic and Popular Republic of Algeria.

Accept, Sir, etc.

PIERRE DE LEUSSE

His Excellency Mr. Abdelaziz Bouteflika
Minister for Foreign Affairs
of the Democratic and Popular Republic
of Algeria
Algiers

II *c*

DEMOCRATIC AND POPULAR REPUBLIC OF ALGERIA

MINISTRY OF FOREIGN AFFAIRS

The Minister

Algiers, 2 October 1968

Sir,

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

[*See letter I* c]

I have the honour to inform you that my Government agrees on this point.

Accept, Sir, etc.

[*Signed*]
ABDELAZIZ BOUTEFLIKA

His Excellency Mr. Pierre de Leusse
Ambassador Extraordinary and Plenipotentiary
High Representative of the French Republic
in Algeria
