

No. 15170

**FRANCE
and
POLAND**

**Convention for the avoidance of double taxation with respect to taxes on income and on capital (with protocol).
Signed at Warsaw on 20 June 1975**

Authentic texts: French and Polish.

Registered by France on 30 December 1976.

**FRANCE
et
POLOGNE**

Convention tendant à éviter les doubles impositions en matière d'impôts sur le revenu et sur la fortune (avec protocole). Signée à Varsovie le 20 juin 1975

Textes authentiques : français et polonais.

Enregistrée par la France le 30 décembre 1976.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND CAPITAL

The Government of the French Republic and the Government of the Polish People's Republic,

Desiring to continue and promote the development of their economic relations, have decided to conclude a Convention for the avoidance of double taxation with respect to taxes on income and capital and have agreed on the following provisions:

Article 1. PERSONAL SCOPE

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

Article 2. TAXES COVERED

1. This Convention shall apply to taxes on income and on capital imposed in each Contracting State, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

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

(a) *In the case of the Polish People's Republic*

- (1) the income tax (*podatek dochodowy*),
- (2) the tax on wages and salaries (*podatek od wynagrodzeń*),
- (3) the surtax (*podatek wyrównawczy do podatku dochodowego albo do podatku od wynagrodzeń*)

(hereinafter referred to as "Polish tax");

(b) *In the case of the French Republic:*

- (1) the income tax (*l'impôt sur le revenu*),
 - (2) the company tax (*l'impôt sur les sociétés*),
 - (3) the tax on business income (*la contribution des patentes*),
- including all withholdings at source, advance collections (*précompte*) and prepayments in respect of the above taxes (hereinafter referred to as "French tax").

4. The Convention shall also apply to any identical or substantially similar taxes which enter into effect after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any major changes made in their respective taxation laws.

¹ Came into force on 12 September 1976, i.e., 30 days after the exchange of the instruments of approval, in accordance with article 29(1).

Article 3. GENERAL DEFINITIONS

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

(a) The terms “a Contracting State” and “the other Contracting State” mean respectively the Polish People’s Republic or the French Republic;

(b) The term “person” comprises an individual, a company and any other body of persons;

(c) The term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;

(d) The terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(e) The term “nationals” means:

(1) all individuals possessing the nationality of a Contracting State;

(2) all bodies corporate, companies and associations constituted in conformity with the legislation in force in a Contracting State;

(f) By “international traffic” is meant any transportation by ship, aircraft or rail or road vehicle operated by an enterprise with its place of effective management in a Contracting State, except when the ship, aircraft or vehicle is operated solely between points situated in the other Contracting State;

(g) The term “competent authority” means:

(1) in the case of the Polish People’s Republic, the Minister of Finance or his authorized representative;

(2) in the case of the French Republic, the Minister of Economic Affairs and Finance or his authorized representative.

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

Article 4. FISCAL DOMICILE

1. For the purposes of this Convention, the term “resident of a Contracting State” means any persons who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, but does not include persons who are liable to taxation in that State solely in respect of the income which they receive from sources situated in that State or in respect of the capital which they possess in that State.

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

(a) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (centre of vital interests).

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

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

(d) If his status cannot be determined in accordance with the provisions of subparagraphs (a), (b) and (c) above, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

Article 5. PERMANENT ESTABLISHMENT

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

2. The term “permanent establishment” shall include especially:

- (a) a place of management;
- (b) a branch;
- (c) a business office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, quarry or other place of extraction of natural resources;
- (g) a building site or construction or assembly project which exists for more than 12 months.

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

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of treatment or processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character for the enterprise.

4. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom paragraph 5 applies—shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

5. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the course of their business.

6. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establish-

ment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6. INCOME FROM IMMOVABLE PROPERTY

1. Income from immovable property, including income from agriculture or forestry, may be taxed in the Contracting State in which such property is situated.
2. The term “immovable property” shall be defined in accordance with the taxation law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

Article 7. BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles laid down in this article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraph 5, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

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

8. The profits of an insurance or reinsurance company of a Contracting State shall be taxable only in that State, unless the enterprise carries on business in that other State through a permanent establishment situated therein.

Article 8. INTERNATIONAL TRANSPORT

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

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

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

4. Profits from the operation of rail or road vehicles in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

5. The provisions of paragraphs 1, 2 and 4 shall also apply:

- (a) to profits from the operation of chartered ships, or aircraft, or leased rail or road vehicles in international traffic and to profits from the operation of chartered boats engaged in inland waterways transport;
- (b) to profits from participation in a pool, a joint business or an international operating agency.

Article 9. ASSOCIATED ENTERPRISES

Where:

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

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, 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 10. DIVIDENDS

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

2. However, such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State, but, if the person receiving the dividends is the effective recipient, the tax so charged shall not exceed:

- (a) 5 per cent of the gross amount of the dividends if the recipient is a company (excluding partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends;
- (b) in all other cases, 15 per cent of the gross amount of the dividends.

3. The term "dividends" as used in this article means income from shares or other rights, not being debt claims, as well as income from other corporate rights subject to the same tax régime as income from shares under the taxation law of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of one of the Contracting States, performs in the other Contracting State, of which the company paying the dividends is a resident, either an industrial or commercial activity through a permanent establishment situated therein, or professional services through a fixed base situated therein, and if the holding by virtue of which the dividends are paid is effectively connected thereto. In such a case, the provisions of article 7 or of article 14, as the case may be, shall apply.

5. A resident of Poland who receives dividends distributed by a company which is a resident of France may obtain reimbursement of any advance collection which has been made from the distributing company in respect of those dividends. This advance collection shall be reimbursed, minus the amount of tax deducted in accordance with national legislation and the provisions of paragraph 2.

The gross amount of the reimbursed advance collection shall be considered as a dividend for the purposes of the application of the provisions of this Convention.

Article 11. INTEREST

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

2. The term "interest" as used in this article means income from debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, in particular income from government securities, bonds or debentures, including premiums and lottery prizes associated therewith. Penalties for late payment shall not be considered as interest for the purposes of this article.

3. The provisions of paragraph 1 shall not apply if the recipient of the interest, being a resident of one of the Contracting States, performs in the other Contracting State, in which the interest arises, either an industrial or commercial activity through a permanent establishment situated therein, or professional services through a fixed base situated therein, and if the debt claim by virtue of which the interest is paid is effectively connected thereto. In such a case, the provisions of article 7 or of article 14, as the case may be, shall apply.

4. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a local autonomous administrative unit, a public law body corporate or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connexion with which the indebtedness on which the interest is paid was incurred, and the interest is borne by that permanent establishment, then the

interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

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

Article 12. ROYALTIES

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

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the law of that State, but if the person who receives the royalties is the effective recipient, the tax so charged shall not exceed 10 per cent of the amount of the royalties.

3. Notwithstanding the provisions of paragraph 2, royalties arising from copyright in literary, artistic or scientific works shall be taxable only in the Contracting State of which the recipient is a resident.

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

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient of the royalties, being a resident of one of the Contracting States, performs in the other Contracting State, in which the royalties arise, either an industrial or commercial activity through a permanent establishment situated therein, or professional services through a fixed base situated therein, and if the right or property by virtue of which the royalties are paid is effectively connected thereto. In such a case, the provisions of article 7 or of article 14, as the case may be, shall apply.

6. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a local autonomous administrative unit, a public law body corporate or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment, and where the contract on the basis of which the royalties are paid was concluded for the purposes pursued by that permanent establishment and the royalties are borne by that permanent establishment, the royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

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

Article 13. CAPITAL GAINS

1. Gains from the alienation of immovable property, as defined in article 6, paragraph 2, or from the alienation of shares or similar rights in a company whose business property is composed mainly of immovable property may be taxed in the Contracting State in which such immovable property is situated.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State. However, gains from the alienation of movable property of the kind referred to in paragraph 3 of article 22 shall be taxable only in the Contracting State in which such movable property is taxable according to the said article.

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

Article 14. INDEPENDENT PERSONAL SERVICES

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

2. The term "independent activities" means any activities—other than commercial, industrial or agricultural activities—performed independently, on his own account, by a person who receives the profits or bears the losses from such activities.

Article 15. DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned;
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

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

Article 16. DIRECTORS' FEES

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

Article 17. ARTISTS AND ATHLETES

1. Notwithstanding the provisions of articles 14 and 15, income derived by public entertainers, such as theatre, motion picture, radio or television artists, and musicians, and by athletes from their personal activities as such may be taxed in the Contracting State in which those activities are exercised.

2. When income from activities exercised personally by a public entertainer or an athlete is attributed to a person other than the entertainer or athlete himself, it may, notwithstanding the provisions of articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the public entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income arising from activities defined in paragraph 1 and performed within the framework of cultural exchanges approved by the State of which the artists or athletes are residents shall be taxable only in that State.

Article 18. PENSIONS

Subject to the provisions of paragraph 2 of article 19, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 19. GOVERNMENTAL FUNCTIONS

1. (a) Remuneration, other than pensions, paid by a Contracting State or a local authority or a public law body corporate thereof to any individual in respect of services of a governmental nature rendered to that State or authority or body corporate shall be taxable only in that State.

(b) Nevertheless, such remuneration shall be taxable in the other Contracting State only if the services are rendered in that State and if the recipient of the remuneration is a resident and a national of that State.

2. (a) Pensions paid by, or out of funds created by, a Contracting State, or a local authority or public law body corporate thereof, to any individual in respect of services of a governmental nature rendered to that State or authority or body corporate shall be taxable only in that State.

(b) Nevertheless, such pensions shall be taxable in the other Contracting State only if the recipient is a resident and a national of that State.

3. The governmental nature of the services rendered to a Contracting State or local authority or public law body corporate thereof shall be determined in accordance with the internal legislation of that Contracting State.

4. The provisions of articles 15, 16 and 18 shall apply to remuneration or pensions in respect of services rendered in connexion with any business or trade carried on by one of the Contracting States or a local authority or public law body corporate thereof.

Article 20. TEACHERS, RESEARCH WORKERS AND STUDENTS

1. A teacher or a research worker who is a resident of a Contracting State and who visits the other Contracting State for teaching or research purposes shall be

exempt from tax in that other State for a period not exceeding two years on the remuneration derived from such activities.

2. The provisions of paragraph 1 shall not apply to income derived from research work if such work is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

3. Payments which a student or business apprentice who is or was formerly a resident of a Contracting State and who is present in the other Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that other State, provided that such payments are made to him from sources outside that other State.

4. Notwithstanding the provisions of paragraph 3, remuneration which a student or business apprentice, who is or was formerly a resident of a Contracting State and who is present in the other Contracting State solely for the purpose of his education or training, receives in respect of services rendered in that other State shall not be taxable in that State, provided that such services are connected with his studies or training or that remuneration for such services is necessary to complement the resources available for his maintenance.

Article 21. INCOME NOT EXPRESSLY MENTIONED

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing articles of this Convention, shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply if the recipient of the income, being a resident of one of the Contracting States, performs in the other Contracting State either an industrial or commercial activity through a permanent establishment situated therein, or professional services through a fixed base situated therein, and if the right or property by virtue of which the income is paid is effectively connected thereto. In such a case, the provisions of article 7 or article 14, as the case may be, shall apply.

Article 22. CAPITAL

1. Capital represented by immovable property, as defined in article 6, paragraph 2, may be taxed in the Contracting State in which such property is situated.

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

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

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 23. METHODS FOR ELIMINATION OF DOUBLE TAXATION

Double taxation shall be avoided in the following way:

1. *In the case of Poland:*

(a) Where a resident of Poland derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in France, Poland

shall, subject to the provisions of subparagraph (b), exempt such income or capital from tax, but may, in calculating tax on the remaining income or capital of that resident, apply the rate of tax which would have been applicable if the income or capital in question had not been so exempted.

(b) Where a resident of Poland derives income which, in accordance with the provisions of articles 10, 12, 14, 16 and 17 may be taxed in France, Poland shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in France. Such deduction shall not, however, exceed that part of the tax, as calculated before the deduction is given, which is appropriate to the income derived from France.

2. *In the case of France:*

(a) Income other than that referred to in subparagraph (b) below shall be exempt from the French taxes mentioned in article 2, paragraph 3 (b), if such income is taxable in Poland by virtue of this Convention.

(b) The income referred to in articles 10, 12, 14, 16 and 17 which arises in Poland shall be taxable in France. The Polish tax levied on such income entitles residents of France to a tax credit equivalent to the amount of Polish tax levied but which shall not exceed the amount of French tax levied on such income. This credit shall be charged against the taxes referred to in article 2, paragraph 3 (b), the assessments of which include the said income.

(c) Notwithstanding the provisions of subparagraphs (a) and (b), French tax shall be calculated on income taxable in France under this Convention at the rate applicable to the total amount of the income taxable under French legislation.

Article 24. NON-DISCRIMINATION

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

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

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

3. Except where the provisions of article 9, article 11, paragraph 5, and article 12, paragraph 7, apply, interest, royalties and other sums paid by an enterprise of a Contracting State to a resident of the other Contracting State shall be deductible, when determining the taxable profits of that enterprise, as if they had been paid to a resident of the first-mentioned State.

Similarly, the debts of an enterprise of a Contracting State to the residents of the other Contracting State shall be deductible, when determining the taxable capital of that enterprise, as if they had been contracted to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other

Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

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

6. The provisions of this article cannot be interpreted as obliging a Contracting State to grant to residents of the other Contracting State abatements granted to residents of a third State under conventions concluded with that third State.

Article 25. AMICABLE SETTLEMENT PROCEDURE

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident. The case must be presented within three years from the first notification of the action resulting in taxation which is not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the national legislation of the Contracting States.

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

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

5. The competent authorities shall jointly determine the procedures for applying this Convention and, in particular, the formalities to be completed by residents of a Contracting State to obtain, in the other Contracting State, tax reliefs or exemptions on the income, referred to in articles 10, 11 and 12, which arises in that other State.

Article 26. EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention and of the domestic laws of the Contracting States concerning taxes covered by this Convention in so far as the taxation thereunder is in accordance with this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities (including courts and administrative bodies) other than those concerned with the assessment, levying or collection of the taxes covered by this Convention, or with prosecutions, claims and appeals in respect of those taxes.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Contracting States the obligation:

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;
- (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

Article 27. DIPLOMATIC AND CONSULAR OFFICIALS

1. Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions and their private servants, the members of consular posts and the members of permanent delegations under the rules of international law or under treaty provisions.

2. The Convention shall not apply to international organizations, to organs or officials thereof and to persons who, being members of a diplomatic mission, consular post or permanent delegation of a third State, are present in a Contracting State and are not treated in either Contracting State as residents in respect of taxes on income and capital.

Article 28. TERRITORIAL FIELD OF APPLICATION

This Convention shall apply:

- (a) in the case of Poland, to the territory of the Polish People's Republic and those areas situated beyond Polish territorial waters over which, under international law, Poland may exercise rights relating to the sea-bed and subsoil thereof and their natural resources;
- (b) in the case of France, the European and overseas *départements* of the French Republic and those areas situated beyond the territorial waters adjacent to the said *département* over which, under international law, France may exercise rights relating to the sea-bed and subsoil thereof and their natural resources.

Article 29. ENTRY INTO FORCE

1. This Convention shall be approved. It shall enter into force 30 days after exchange of the instruments of approval.

2. The provisions of this Convention shall apply for the first time:

- (a) in respect of taxes payable by deduction at the source, to sums paid on or after 1 January 1974;
- (b) in respect of other taxes on income, to income earned during the year 1974 or relating to the financial year ending in the course of that year.

Article 30. TERMINATION

1. This Convention shall remain in force indefinitely. However, beginning in the fifth year following that in the course of which it entered into force, either Contracting State may denounce it by giving at least six months' notice through the diplomatic channel, the denunciation to take effect from the end of any calendar year.

2. In such event, the provisions of the Convention shall apply for the last time:

- (a) in respect of taxes payable by deduction at the source, to sums paid no later than 31 December of the calendar year for the end of which the notice of termination has been given;

(b) in respect of other taxes on income, to income earned during the calendar year for the end of which the notice of termination has been given, or relating to the financial year ending in the course of that calendar year.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE at Warsaw, on 20 June 1975, in duplicate, in the French and Polish languages, both texts being equally authentic.

For the Government of the French
Republic:

[Signed]

JEAN-PIERRE FOURCADE
Minister of Economic Affairs
and Finance

For the Government of the Polish People's
Republic:

[Signed]

HENRYK KISIEL
Minister of Finance

PROTOCOL

On proceeding to sign this day the Convention for the avoidance of double taxation with respect to taxes on income and capital, the undersigned have agreed on the following provisions, which shall form an integral part of the Convention:

1. *Addendum to article 3*

The transportation referred to in article 3, paragraph 1 (f), shall also include transportation:

- (a) by containers, transported by sea, land or air,
- (b) by lighters, transported by ships, or
- (c) by any other equipment related to the operation of ships, aircraft, rail or road vehicles,

whether such equipment is the property of the operating transport enterprise or chartered by that enterprise.

2. *Addendum to article 5*

For the purposes of article 5, paragraph 2 (g), it is understood that during the period of application of the Agreement on the development of economic, industrial, scientific and technical co-operation between the Government of the French Republic and the Government of the Polish People's Republic of 5 October 1972,¹ a building or construction site shall only be considered a permanent establishment if in existence for more than 18 months.

3. *Addendum to article 7*

For the purposes of article 7, paragraph 2, it is understood that where an enterprise of a Contracting State sells merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that

¹ United Nations, *Treaty Series*, vol. 871, p. 225.

permanent establishment shall not be determined on the basis of the total turnover or earnings of the enterprise, but shall be calculated on the basis of that proportion of the earnings arising from the above-mentioned sales or business which is attributable solely to that permanent establishment.

4. *Addendum to article 12*

It is understood that the provisions of article 7 or of article 14, as the case may be, shall apply only to remuneration of any kind paid for the use of, or the right to use, industrial, commercial or scientific equipment, services comprising scientific or technical studies or research, or for advisory, supervisory or management services.

5. *Addendum to article 24*

It is understood that, in the case of Poland:

- (a) the taxes referred to in article 24, paragraph 5, shall not include the declaration tax (*opłaty meldunkowe*) or the establishment licence tax (*opłaty za zezwolenie na otwarcie przedsiębiorstwa*);
- (b) the provisions of article 24 shall not be affected by the different tax régime applying in the Polish People's Republic to the income, profits or fortune of collective establishments.

6. *Addendum to article 27*

For the purposes of the Convention, the members of a diplomatic or consular mission of a Contracting State accredited in the other Contracting State or in a third State, who are nationals of the sending State, are deemed to be residents of the sending State if they are subject to the same obligations in respect of taxes on income and capital as the residents of the said State.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Protocol.

DONE at Warsaw, on 20 June 1975, in duplicate, in the French and Polish languages, both texts being equally authentic.

For the Government of the French Republic:

[Signed]

JEAN-PIERRE FOURCADE
Minister of Economic Affairs and Finance

For the Government of the Polish People's
Republic:

[Signed]

HENRY KISIEL
Minister of Finance
