

No. 16674

**FRANCE
and
BENIN**

Tax Agreement. Signed at Cotonou on 27 February 1975

Authentic text: French.

Registered by France on 11 May 1978.

**FRANCE
et
BÉNIN**

Convention fiscale. Signée à Cotonou le 27 février 1975

Texte authentique : français.

Enregistrée par la France le 11 mai 1978.

[TRANSLATION — TRADUCTION]

TAX AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF DAHOMEY

The Government of the French Republic, on the one hand,
The Government of the Republic of Dahomey, on the other hand,
Desiring to avoid double taxation as far as is possible with respect to income tax, succession duties, registration taxes and stamp duties,
Have for that purpose agreed upon the following provisions:

TITLE I. GENERAL PROVISIONS

Article I. 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 the European *départements* and overseas *départements* (Guadeloupe, Guiana, Martinique and Réunion) of the French Republic and any areas outside the territorial waters of France in which, in accordance with international law and under its legislation, France may exercise rights with respect to the sea-bed and subsoil thereof and their natural resources.

The term "Dahomey" means the territory of the Republic of Dahomey and any areas outside the territorial waters of Dahomey in which, in accordance with international law and under its legislation, Dahomey may exercise rights with respect to the sea-bed and subsoil thereof and their natural resources.

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

Where the domicile of an individual cannot be determined on the basis of the foregoing subparagraph, he shall be deemed to be domiciled in that one of the Contracting States in which he principally resides. If he resides for equal periods in each of the two States, he shall be deemed to have his domicile in the Contracting State of which he is a national. If he is a national of neither Contracting State, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

¹ Came into force on 25 June 1977, i.e., the date of the last notification by which the Parties had notified each other of the completion of their required constitutional procedures, in accordance with article XLIII.

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

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

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

(b) The term “permanent establishment” shall be deemed not to include:

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

(c) 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 within the meaning of subparagraph *e*) below—shall be deemed to constitute a “permanent establishment” in the first-mentioned State if he has, and habitually exercises, in that State an authority to conclude contracts in the name of the enterprise.

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

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

(e) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when such an agent habitually carries on his activities wholly or almost wholly on behalf of the enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph and constitutes for the enterprise a permanent establishment. Likewise, if the agent whose

services are used has available to him a stock of goods or merchandise on consignment from which the sales and deliveries are made, such stock shall be deemed to imply the existence of a permanent establishment of the enterprise.

For the purposes of this paragraph, it is considered that activities are carried on almost wholly on behalf of an enterprise when charges for the services rendered to the enterprise amount in a given year to at least 90 per cent of the turnover of the agent for that year.

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

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

Article V. 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 VI. 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 Dahomey, the Minister of Finance or his duly authorized representative.

Article VII. As regards the application of this Agreement by one of the Contracting States, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that State concerning the taxes referred to in this Agreement.

TITLE II. DOUBLE TAXATION

Chapter I. INCOME TAXES

Article VIII. 1. This chapter shall apply to taxes on income levied in whatsoever manner on behalf of either Contracting State or its 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 I) having their physical domicile, determined in accordance with article II, 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 income tax (*impôt sur le revenu*);
- (b) The corporation tax (*impôt sur les sociétés*);
- (c) The annual flat-rate tax on bodies corporate (*impôt forfaitaire annuel sur les personnes morales*);
- (d) The prepayment on income from movable property (*précompte mobilier*).

In the case of Dahomey:

- (a) The tax on industrial and commercial profits (*impôt sur les bénéfices industriels et commerciaux*), regardless of the method of calculation;
- (b) The tax on profits from non-commercial occupations (*impôt sur les bénéfices des professions non commerciales*);
- (c) The tax on profits from agriculture (*impôt sur les bénéfices de l'exploitation agricole*);
- (d) The graduated tax on salaries and wages (*impôt progressif sur les traitements et salaires*);
- (e) The tax on income from movable capital (*impôt sur le revenu des capitaux immobiliers*);
- (f) The tax on rents (*taxe immobilière sur les loyers*);
- (g) The general income tax (*impôt général sur le revenu*).

4. The Agreement shall also apply to any identical or substantially similar taxes which are imposed in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any changes made in their taxation laws as soon as such changes are promulgated.

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

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

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

3. Such taxable income may not exceed the amount of the industrial, mining, commercial or financial profits realized by the permanent establishment, including, where appropriate, any profits or advantages derived indirectly from that establishment or credited or granted to third parties either by increasing or decreasing purchase or selling prices or by any other means.

4. 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.

If as a result of the apportionment of the overhead expenses of the head office, effected as described above, the permanent establishment fails to show a normal profit corresponding to its actual business dealings, the competent authorities of the two States may, in the light of the provisions of article XXXXI of this Agreement, make the necessary adjustments in order to determine the profit of the permanent establishment.

5. 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.

Article XI. 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 the latter enterprise, in their commercial or financial relations, conditions differing from those which it would make with any other enterprise, all profits which would normally have appeared in the accounts of one of the enterprises but which have in this manner been transferred to the other enterprise may be incorporated in the taxable profits of the first enterprise.

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

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

Article XIV. A company of one of the Contracting States may not be subjected in the territory of the other Contracting State to a tax on its distributions of income from securities and of assimilated income (earnings from shares, founders' shares or partnership or *commandite* interests; interest on bonds and on all other negotiable certificates of indebtedness) solely by virtue of its participation in the management or the capital of companies domiciled in that other State or because of any other relationship with such companies; but income distributed by the latter companies and liable to the tax shall where appropriate be increased by the amount

of any profits or advantages which the company of the first-mentioned State has indirectly derived from the said companies, either by increasing or decreasing purchase or selling prices or by any other means.

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

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

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

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

where 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 X and XI of this Agreement; the letter B represents the company's total book profits, as shown by its general balance sheet.

In determining the total book profits, no account shall be taken of 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 overall book profit or an overall 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 XVI. 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 XV, 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 XVII. 1. The apportionment of tax bases referred to in article XV 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 connection 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 XXXXI.

Article XVIII. Directors' percentages, attendance fees and other emoluments received by members of the boards of directors or supervisory boards of companies limited by shares (*sociétés anonymes*), limited partnerships with share capital (*sociétés en commandite par actions*) or co-operative societies (*sociétés coopératives*) 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 XXII and XXIII 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 XV to XVII.

Article XIX. 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 X relating to the attribution of profits to permanent establishments shall apply.

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

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

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

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

5. The provisions of paragraphs 2 and 3 shall not apply where the recipient of the royalties or other payments maintains in the Contracting State in which the income arises a permanent establishment or a 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 XXI. Pensions and annuities shall be taxable only in the Contracting State in which the recipient has his fiscal domicile.

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

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

- (a) The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned;
- (b) The remuneration is paid by or on behalf of an employer who is not domiciled in the other State; and
- (c) The remuneration is not deducted from the profits of a permanent establishment or fixed base maintained by the employer in the other State.

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

Article XXIII. 1. Income derived by a person domiciled in a Contracting State from a profession or from other independent activities of a similar character

shall be taxable only in that State, unless the person in question has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. 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 XXIV. 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 arise from sources outside that other State.

Article XXV. 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 XXVI. 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 income taxes referred to in article VIII 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 XIII, XV, XVIII and XIX originating in Dahomey and payable to persons domiciled in France shall not be charged in Dahomey with any tax other than the tax on income from movable capital.

Conversely, similar income originating in France and payable to persons domiciled in Dahomey 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 XIII, XV, XVIII and XIX originating in Dahomey and payable to persons domiciled in France shall for the purposes of French taxation be included as to their gross amount, i.e. their amount before deduction of the tax with which they were charged in Dahomey, in the bases upon which the taxes referred to in article VIII, paragraph 3, are imposed.

The said income, when liable to the Dahomean tax on income from movable capital under the terms of paragraph 2 of this article, shall entitle the recipient to a deduction applicable to the taxes payable in France on the same income and not exceeding the amount of those taxes. Such deduction shall equal the actual amount of tax paid in Dahomey upon verification of that amount. However, with regard to dividends, the deduction in respect of the tax actually paid in Dahomey shall equal 25 per cent.

4. Income from movable capital and interest of the kinds referred to in articles XIII, XV, XVIII and XIX originating in France and payable to persons domiciled in Dahomey shall be subject in Dahomey:

- (a) In the case of individuals, only to the general income tax;
- (b) In the case of bodies corporate, only to the tax on industrial and commercial profits.

Chapter II. SUCCESSION DUTIES

Article XXVII. 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 Dahomey: the succession duty.

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

- (a) If the enterprise has a permanent establishment in only one of the two Contracting States, the property shall be liable to duty only in that State; this provision shall apply even where the enterprise extends its operations to the territory of the other Contracting State without maintaining a permanent establishment there;
- (b) If the Enterprise has a permanent establishment in each of the two Contracting States, the property shall be liable to duty in each State to the extent that it is used for a permanent establishment situated in the territory of that State.

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

Article XXX. 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 XXXI. Tangible movable property other than the movables referred to in articles XXIX and XXX, 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 XXXII. Property of a deceased person's estate to which articles XXVIII to XXXI 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 XXXIII. 1. Debts pertaining to enterprises of the kinds referred to in articles XXIX and XXX shall be charged against the property of those enterprises. If the enterprise has a permanent establishment or a 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 by immovable property or rights in immovable property, or by ships or aircraft as referred to in article XXXI, or by property used in the practice of a profession as provided for in article XXX, or by the property of an enterprise of the kind referred to in article XXIX, shall be charged against such property. If a debt is secured at the same time by 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 XXXII.

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 XXXIV. Notwithstanding the provisions of articles XXVIII to XXXIII, 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 DUTIES

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

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

The provisions of the first paragraph of this article shall not apply to company articles of association or amendments thereto. Such documents shall be liable to the *ad valorem* capital tax (*droit proportionnel d'apport*) only in the State in which the

company has its registered offices. In cases of mergers or similar operations, the tax shall be levied in the State in which the acquiring or new company has its registered offices.

Article XXXVI. Deeds or bills (*effets*) drawn up in one Contracting State shall not be subject to stamp duty in the other Contracting State if such duty has actually been paid on them at the rate applicable in the former State or if they are legally exempt from such duty in that State.

TITLE III. ADMINISTRATIVE ASSISTANCE

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

2. The information so exchanged shall be treated as confidential and shall not be disclosed to 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 prejudice its general interests.

3. Information shall be exchanged automatically, or on request in connection with specific cases. The competent authorities of the two Contracting States shall agree on the list of classes of information to be provided automatically.

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

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

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

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

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

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

TITLE IV. MISCELLANEOUS PROVISIONS

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

2. The competent authorities of the Contracting Parties 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. Where, under articles XXXVIII to XL, proceedings are instituted against a debtor in one of the two States for the recovery of taxes or debts owed in the other State, the debtor may request the stay of proceedings if he is able, by providing the necessary documents, to establish title to property situated in the State in which the taxes in question are assessed or to substantiate a claim against a public or quasi-public authority of that State. In such a case, recovery shall be temporarily postponed, without prejudice, however, to the implementation of the interim measures provided for in article XXXIX above.

The documents produced by the debtor shall be considered by the competent authorities of the Contracting States, which shall determine by agreement whether or not to resume the recovery proceedings.

4. If, in the cases cited in the preceding paragraphs, it appears that agreement would be facilitated by negotiations, the matter shall be referred:

- (a) If a matter of principle is at issue, to the main commission provided for in article III of the General Agreement of 27 February 1975¹ concerning co-operation;
- (b) If a particular case is at issue, to a mixed commission composed of an equal number of representatives of each Contracting State, appointed by the Ministers of Finance. The commission shall be presided over alternately by a member of each delegation. The commission's conclusions shall be submitted to the competent authorities for approval. Periodic reports on the decisions taken shall be made to the above-mentioned main commission.

Article XLII. The competent authorities of the two Contracting Governments shall consult each other to determine, by agreement and so far as may be necessary, the procedures for the application of this Agreement.

Article XLIII. 1. Each of the Contracting States shall notify the other of the completion of the procedures required by its legislation for the entry into force of this Agreement. The Agreement shall enter into force on the date of the later notification and shall be applicable:

- In respect of taxes on income, to income relating to the calendar year in which it enters into force or to financial years ending in the course of that year. However, in the case of income of the kinds referred to in articles XIII, XV, XVIII and IX, this Agreement shall apply to income payable as from its entry into force;

¹ See p. 331 of this volume.

- In respect of succession duties, to the estates of persons deceased on or after the day of entry into force of this Agreement;
- In respect of other registration taxes and stamp duties, to deeds and judgements dated after the entry into force of this Agreement;
- In respect of the recovery of any debts other than fiscal debts, to debts arising out of a transaction made after the entry into force of this Agreement.

2. The entry into force of this Agreement shall terminate the Tax Agreement, the Protocol and the Exchange of letters between France and Dahomey of 21 October 1965.

The provisions of those agreements shall cease to be operative as from the date on which the corresponding provisions of this Agreement take effect in pursuance of paragraph 1 above.

Article XLIV. This Agreement shall remain in force indefinitely.

However, on or after 1 January of the fifth year following the year of the entry into force of this Agreement, either of the Contracting States may give notice to the other of its intention to terminate the Agreement, such notice to be given before 30 June of any year. In that event, the Agreement shall cease to apply as from 1 January of the year following the year in which notice is given, it being understood that its effects shall be limited:

- In respect of income, to income acquired or payable during the year in which notice of termination is given;
- In respect of succession, to the estates of persons deceased not later than 31 December of that year;
- In respect of other registration taxes and stamp duties, to deeds and judgements dated not later than 31 December of that year;
- In respect of the recovery of debts of any nature, to debts arising out of a transaction made not later than 31 December of that year.

DONE at Cotonou, on 27 February 1975.

For the Government of the French Republic:

[Signed]

PIERRE ABELIN
Minister for Co-operation

For the Government of the Republic of Dahomey:

[Signed]

MICHEL ALLADAYE
Minister for Foreign Affairs
and Co-operation