

No. 22699

**FRANCE
and
KUWAIT**

Convention for the avoidance of double taxation with respect to taxes on income and on inheritances (with protocol). Signed at Kuwait on 7 February 1982

Authentic texts: French and Arabic.

Registered by France on 7 February 1984.

**FRANCE
et
KOWEÏT**

Convention en vue d'éviter les doubles impositions en matière d'impôts sur le revenu et sur les successions (avec protocole). Signée à Koweït le 7 février 1982

Textes authentiques : français et arabe.

Enregistrée par la France le 7 février 1984.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE STATE OF KUWAIT FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND ON INHERITANCES

The Government of the French Republic and the Government of the State of Kuwait,

Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income and on inheritances,

Have agreed as follows:

Article 1. PERSONAL SCOPE

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

Article 2. TAXES COVERED

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

(a) In the case of France:

- The income tax;
- The corporation tax;
- The inheritance tax;

Including any withholding tax, prepayment (*précompte*) or advance payment with respect to the aforesaid taxes

(hereinafter referred to as “French tax”).

The Convention shall apply also to any taxes identical or substantially similar to those mentioned above which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes.

(b) In the case of Kuwait:

- The corporate income tax;
- Any taxes on total income or on elements of income — including gains from the alienation of movable or immovable property — and any taxes on inheritances which are imposed after the date of signature of the Convention and are similar to those to which the Convention shall apply in the case of France

(hereinafter referred to as “Kuwaiti tax”).

2. The competent authorities of the two States shall notify each other of significant changes which have been made in their respective taxation laws.

¹ Came into force on 1 September 1983, i.e., the first day of the second month following the date of receipt of the last of the notifications by which the States informed each other (on 19 January and 5 July 1983) of the completion of the required legal procedures, in accordance with article 23 (1).

Article 3. GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:

(a) The terms "a State" and "the other State" mean France or Kuwait as the case may be;

(b) The term "person" includes an individual or a company;

(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 State" and "enterprise of the other State" mean respectively an enterprise carried on by a resident of a State and an enterprise carried on by a resident of the other State;

(e) The term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a State, except when the ship or aircraft is operated solely between places in the other State;

(f) The term "competent authority" means:

(i) In the case of France, the Minister in charge of the Budget or his authorized representative;

(ii) In the case of Kuwait, the Minister of Finance or his authorized representative.

2. As regards the application of the Convention by a State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

Article 4. RESIDENT

1. For the purposes of this Convention, the term "resident of a State" means:

(a) In the case of France, any person who, under French law, is liable to tax in France by reason of his domicile, residence, place of management or any other criterion of a similar nature;

(b) In the case of Kuwait, any person who is domiciled or established in Kuwait.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both States, then his status shall be determined as follows:

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

(b) If the State in which he has his centre of vital interests cannot be determined, or if he has no permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has a habitual abode;

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

(d) If he is a national of both States or of neither of them, the competent authorities of the 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 States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5. INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a State from immovable property (including income from agriculture or forestry) situated in the other State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the 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 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 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.

Article 6. BUSINESS PROFITS

1. The profits of an enterprise of a State shall be taxable only in that State unless the enterprise carries on business in the other State through a permanent establishment situated therein. If the enterprise carries on 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. The profits attributed to a permanent establishment are those which it might be expected to make if it were a distinct and separate enterprise dealing wholly independently with the enterprise of which it is a permanent establishment. In the determination of such profits, there shall be allowed as deductions the total amount of expenses which are incurred, whether in that State or elsewhere.

3. For the purposes of the preceding paragraphs, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on, but does not include a building site, a construction, assembly, or installation project, or supervisory or advisory services in connection therewith, lasting for a period of less than 6 months, or the maintenance of a fixed place of business solely for the purpose of delivery or purchase, or any other activity of a preparatory or auxiliary character.

Article 7. SHIPPING AND AIR TRANSPORT

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

2. Notwithstanding the foregoing provisions, profits from the operation of ships in international traffic derived by a company or partnership which is a resident of Kuwait, more than 25 per cent of the capital of which is owned, directly or indirectly, by persons who are not residents of Kuwait, may be taxed in France if the company or partnership has in France a permanent establishment.

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

4. The provisions of the preceding paragraphs shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 8. DIVIDENDS

1. Dividends paid by a company of a State to a resident of the other State may be taxed in the first-mentioned State only:

- If the beneficial owner of the dividends holds, directly or indirectly, at least 20 per cent of the capital of the company paying the dividends, but the tax so charged shall not exceed 5 per cent of the gross amount of the dividends, or
- If the holding in respect of which the dividends are paid is effectively connected with business carried on or independent personal services performed in that State by the beneficial owner of the dividends.

2. Notwithstanding article 1 of this Convention, the provisions of paragraph 1 shall apply also to dividends paid by a company of a State to the other State itself, the Central Bank or public institutions of that other State.

3. The term “dividends” as used in this article means income from shares, *jouissance* shares or *jouissance* rights, mining shares, founders’ shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. A resident of Kuwait who receives dividends paid by a company which is a resident of France may obtain the refund of the prepayment (*précompte*) relating to such dividends, in the event it has been paid by such company.

The gross amount of the prepayment (*précompte*) refunded shall be deemed to be dividends for the purposes of the provisions of this Convention.

Article 9. INCOME FROM DEBT-CLAIMS

1. Income from debt-claims arising in a State and paid to a resident of the other State may be taxed in the first-mentioned State, but if the debt-claim in respect of which the income is paid is not effectively connected with business carried on or independent personal services performed in that State by the beneficial owner of the income:

- (a) No tax shall be charged in that State if such income is paid:
 - (i) In connection with any business transaction, or
 - (ii) In respect of loans of any kind granted by a bank or a State itself; or
 - (iii) In respect of negotiable bonds;
- (b) The tax shall not exceed 5 per cent of the gross amount of the income in other cases.

2. Notwithstanding article 1 of this Convention, the provisions of paragraph 1 shall also apply to income from debt-claims arising in a State and paid to the other State itself, the Central Bank or public institutions of that other State.

3. The term “income from debt-claims” 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, and, in particular, income from Government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures.

Article 10. ROYALTIES

1. Royalties arising in a State and paid to a resident of the other State may be taxed in the first-mentioned State only if the right or property in respect of which the

royalties are paid is effectively connected with business carried on or independent personal services performed in that State by the beneficial owner of the royalties.

2. 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 work recorded for radio or television broadcasting, any patent, trade-mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

Article 11. CAPITAL GAINS

1. (a) Gains derived by a resident of a State from the alienation of immovable property referred to in article 5 and situated in the other State may be taxed in that other State.

(b) Gains from the alienation of shares in a company the assets of which consist principally of immovable property or rights to such property may be taxed in the State where that immovable property is situated when, under the laws of that State, such gains are subject to the same taxation treatment as gains from the alienation of immovable property. In the application of this provision, immovable property used by that company for its own industrial, commercial or agricultural activity or for the performance of non-commercial personal services shall be excluded from consideration.

2. Gains from the alienation of any property other than that referred to in paragraph 1 shall be taxable only in the State of which the alienator is a resident, unless the property in respect of whose alienation the gain arises is effectively connected with business carried on or independent personal services performed in the other State by the alienator.

3. Notwithstanding the provisions of paragraph 2, gains from the alienation of shares representing a substantial participation in the capital of a company may be taxed in the State of which the company is a resident. Participation shall be considered to be substantial when the alienator holds, directly or indirectly, shares which, together, provide an entitlement to 25 per cent or more of the company's profits.

Article 12. INDEPENDENT PERSONAL SERVICES

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

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

Article 13. DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of article 14, salaries, wages and other similar remuneration derived by a resident of a State in respect of an employment shall be taxable only in that State, unless the employment is exercised in the other 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 State in respect of an employment exercised in the other State shall be taxable only in the first-mentioned State if:

- (a) The recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned; and
- (b) The remuneration is paid 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 derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the State in which the place of effective management of the enterprise is situated.

Article 14. GOVERNMENTAL FUNCTIONS

Remuneration and pensions paid by a State or a political subdivision thereof to an individual in respect of services rendered to that State or subdivision shall be taxable only in that State, unless:

- That individual is a national of the other State or was a resident of the other State before rendering the said services, and the services were rendered in that other State; or
- The services were rendered in connection with a business carried on by a State or a political subdivision thereof.

Article 15. STUDENTS

1. Payments which a student or business apprentice who is or was immediately before visiting a State a resident of the other State and who is present in the first-mentioned 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 State, provided that such payments arise from sources outside that State.

2. Remuneration which a student or business apprentice who is or was immediately before visiting a State a resident of the other State, and who is present in the first-mentioned State solely for the purpose of his education or training derives in respect of services rendered in the first-mentioned State, shall not be taxed in that State, provided that such services are in connection with his studies or training and the remuneration for such services is necessary to complete the resources available to him for his maintenance.

Article 16. TEACHERS AND RESEARCHERS

1. Remuneration which a teacher or researcher who is or was immediately before visiting a State a resident of the other State, and who is present in the first-mentioned State solely for the purpose of teaching or engaging in research derives in respect of such activities, shall not be taxed in that State for a period not exceeding two years.

2. The provisions of paragraph 1 shall not apply to remuneration derived in respect of research undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

Article 17. INHERITANCES

1. Immovable property shall be subject to the inheritance tax only in the State where it is situated.

2. Tangible or intangible movable property which is effectively connected with independent personal services performed or business carried on in a State shall be subject to the inheritance tax only in that State.

3. Tangible movable property (including works of art and art collections) other than those referred to in paragraph 2 shall be subject to the inheritance tax only in the State where they are situated at the time of decease.

4. Intangible movable property (including securities, deposits, etc.) to which paragraph 2 of this article does not apply shall be subject to the inheritance tax only in the State where the deceased was a resident at the time of his death.

Article 18. SPECIAL PROVISIONS

1. Individuals who are residents of Kuwait and have one or several places of accommodation available to them for their private use in France without being domiciled there for taxation purposes under French law shall be exempt from the income tax charged on the basis of the rental value of such place or places of accommodation.

2. If a person who is a resident of a State under the domestic laws of that State is considered to be a resident of the other State on the basis of the citizenship criterion set forth in article 4, paragraph 2 (c), the first-mentioned State may refuse to grant that person the tax exemptions or reliefs accorded by the Convention to the residents of the other State but shall nevertheless treat that person as a non-resident in the application of its domestic laws.

Article 19. METHOD FOR ELIMINATION OF DOUBLE TAXATION

Double taxation shall be avoided in the following manner:

1. In the case of Kuwait, double taxation shall be avoided in accordance with the provisions of Kuwaiti law.

2. In the case of France:

(a) Income referred to in articles 5, 6, 11, 12 and 13 shall be exempt from the French taxes referred to in article 2, paragraph 1 (a), if the income is taxable in Kuwait under this Convention;

(b) Other income from Kuwait received by a resident of France may be taxed in France on the gross amount. The Kuwaiti tax levied on such income entitles residents of France to a tax credit corresponding to the amount of the Kuwaiti tax levied but which shall not exceed the amount of French tax attributable to such income. Such credit shall be allowed against taxes referred to in article 2, paragraph 1 (a), in the bases of which such income is included;

(c) The estate of a resident of France shall be exempt from the French taxes mentioned in article 2, paragraph 1 (a), if the said estate is taxable in Kuwait under this Convention;

(d) Notwithstanding the provisions of subparagraphs (a), (b) and (c) French tax is computed on income or property taxable in France under this Convention at the rate appropriate to the total of the income or property taxable in accordance with French law.

Article 20. MUTUAL AGREEMENT PROCEDURE

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

3. The competent authorities of the States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or 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 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 States.

5. The competent authorities of the two States shall by mutual agreement settle the mode of application of the Convention and, especially, the requirements to which the residents of a State shall be subjected in order to obtain, in the other State, the tax reliefs or exemptions provided for by the Convention.

Article 21. DIPLOMATIC AGENTS AND CONSULAR OFFICERS

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions and their personal domestics, of members of consular missions, or of members of permanent missions to international organizations under the general rules of international law or under the provisions of special agreements.

Article 22. TERRITORIAL SCOPE

1. This Convention shall apply:

- (a) In the case of Kuwait, to the mainland and islands which constitute the State of Kuwait, including the territorial sea, as well as to any area beyond the territorial sea which is, in accordance with international law, an area within which Kuwait may exercise rights with respect to the sea waters, the sea-bed and the sea sub-soil as well as to their natural resources;
- (b) In the case of France, to the European and overseas departments of the French Republic, including the territorial sea, as well as to any area beyond the territorial sea of these departments which is, in accordance with international law, an area within which France may exercise rights with respect to the sea waters, the sea-bed and the sea sub-soil as well as their natural resources.

2. This Convention may be extended, either in its entirety or with any necessary modifications, to the overseas territories of the French Republic which impose taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such

modifications and conditions, including conditions as to termination, as may be specified and agreed between the two States in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures.

3. Unless otherwise agreed by both States, the termination of the Convention by one of them under article 23 shall also terminate, in the manner provided for in that article, the application of the Convention to any territory to which it has been extended under this article.

Article 23. ENTRY INTO FORCE AND TERMINATION

1. Each State shall notify the other of the completion of the procedure required by its law for the entry into force of this Convention. This Convention shall enter into force on the first day of the second month following the receipt of the latter of these notifications.

2. Its provisions shall apply for the first time:

- (a) As regards taxes withheld at source, to amounts payable on or after 1 January 1981;
- (b) As regards other taxes on income, to income derived on or after 1 January of the calendar year 1981 or relating to the accounting period ending during that year;
- (c) As regards inheritance taxes, to the estates of persons deceased on or after 1 January 1981.

3. This Convention shall remain in force until the end of the fifth year following that of its entry into force. It may, however, be renewed for periods of five years following agreement between the two States by an exchange of notes through diplomatic channels. If the Convention is renewed, either State may, by giving at least six months written notice of termination through diplomatic channels, denounce the Convention for the end of a calendar year.

4. Its provisions shall apply for the last time:

- (a) As regards taxes withheld at source, to amounts payable on or before 31 December of the calendar year at the end of which it will cease to be in force;
- (b) As regards other taxes on income, to income derived during the calendar year at the end of which it will cease to be enforced or relating to the accounting period ending during that year;
- (c) As regards inheritance taxes, to the estates of persons deceased on or before 31 December of the calendar year at the end of which it will cease to be in force.

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

DONE at Kuwait on 7 February 1982, in duplicate, in the French and Arabic languages, both texts being equally authentic.

For the Government
of the French Republic:

[Signed]

PIERRE BLOUIN
Ambassador of France
to the State of Kuwait

For the Government
of the State of Kuwait:

[Signed]

ABDUL MOHSEN Y. AL-HUNAIF
Under-Secretary
Ministry of Finance

PROTOCOL

At the time of signature of the Convention between the Government of the French Republic and the Government of the State of Kuwait for the avoidance of double taxation with respect to taxes on income and on inheritances, the undersigned have agreed upon the following provision, which shall form an integral part of the Convention:

Nothing in this Convention shall preclude the application of such more favourable taxation treatment as may be provided for under the current French domestic law concerning foreign public investments.

IN WITNESS WHEREOF the undersigned have signed this protocol, which shall have the same force and validity as the Convention.

DONE at Kuwait on 7 February 1982, in duplicate, in the French and Arabic languages, aboth texts being equally authentic.

For the Government
of the French Republic:

[Signed]

PIERRE BLOUIN
Ambassador of France
to the State of Kuwait

For the Government
of the State of Kuwait:

[Signed]

ABDUL MOHSEN Y. AL-HUNAIIF
Under-Secretary
Ministry of Finance
