

No. 26935

**FRANCE
and
CONGO**

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, taxes on inheritance and registration and stamp duties (with protocol). Signed at Brazzaville on 27 November 1987

Authentic text: French.

Registered by France on 28 November 1989.

**FRANCE
et
CONGO**

Convention en vue d'éviter les doubles impositions et de prévenir l'évasion fiscale en matière d'impôts sur le revenu, d'impôts sur les successions, de droits d'enregistrement et de droits de timbre (avec protocole). Signée à Brazzaville le 27 novembre 1987

Texte authentique : français.

Enregistrée par la France le 28 novembre 1989.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF THE CONGO FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, TAXES ON INHERITANCE AND REGISTRATION AND STAMP DUTIES

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

Desiring to conclude a convention with a view to avoiding double taxation and preventing tax evasion with respect to taxes on income, taxes on inheritance and registration and stamp duties,

Have agreed as follows:

Article 1

PERSONAL SCOPE

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

Article 2

TAXES COVERED

1. This Convention shall apply to income taxes, taxes on inheritance, and registration and stamp duties imposed on behalf of a State or its local authorities, irrespective of the manner in which they are levied.

2. (a) There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation;

(b) There shall be regarded as taxes on inheritance all taxes levied at death, whether they take the form of taxes on the whole estate or on individual shares thereof, transfer taxes or taxes on gifts *mortis causa*.

3. The taxes to which the Convention now applies are:

(a) In the case of France:

- The income tax;
- The corporation tax;
- The inheritance tax;
- Registration and stamp duties;

¹ Came into force on 1 September 1989, i.e., the first day of the second month following the date of receipt of the last of the notifications (of 30 January and 7 July 1989) by which the Parties had informed each other of the completion of the required procedures, in accordance with article 32 (1).

— The tax on wages

including any deductions at source, withholding tax and prepayment with respect to the above taxes

(hereinafter referred to as “French taxes”);

(b) In the case of the Congo:

— The tax on wages;

— Individuals’ income tax;

— The complementary tax;

— The corporation tax;

— The special corporation tax;

— The tax on income from securities;

— The tax on rentals;

— The special tax on cash vouchers;

— Registration and stamp duties

including any deductions at source, withholding tax and prepayment with respect to the above taxes

(hereinafter referred to as “Congolesse taxes”).

4. The Convention shall apply also to any taxes identical or substantially similar to those listed in paragraph 3 of this article which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of States shall notify each other of substantial changes which have been made in their respective tax laws.

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” refer, as the case may be, to the French Republic and to the People’s Republic of the Congo.

(b) The term “person” includes 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 State” and “enterprise of the other State” mean respectively an enterprise carried on by a resident of 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 the French Republic, the Minister in charge of the Budget or his authorized representative;
- (ii) In the case of the People's Republic of the Congo, the Minister of Finance and the Budget 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 any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

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 not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

(c) If he has an 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 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 States, then it shall be deemed to be a resident of the 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 through which the business of an enterprise is wholly or partly carried on.

2. The term “permanent establishment” includes especially:

- (a) A place of management;
- (b) A branch;
- (c) An office;

(d) A factory;

(e) A workshop;

(f) A shop;

(g) A mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site, a construction or assembly project and supervisory activities in connection therewith shall only constitute a permanent establishment if they continue for a period of more than six months.

4. Notwithstanding the preceding provisions of this article, the term “permanent establishment” shall be deemed not 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 processing by another enterprise;

(d) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

(e) The maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) The maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person — other than an agent of an independent status to whom paragraph 6 applies — is acting on behalf of an enterprise and has, and habitually exercises, in a State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a business establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a State merely because it carries on business in that 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, where the agent whose services are used has available to him, on trust, a stock of duty-paid goods from which the sales and deliveries are made, and works exclusively or almost exclusively for an enterprise, such stock shall be deemed to imply the existence of a permanent establishment of the enterprise.

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

wise) shall not of itself constitute either company a permanent establishment of the other.

Article 6

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, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, springs and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall also 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 independent personal services.

5. Where ownership of shares or other rights in a company or other legal person gives the owner the right to dispose of immovable property situated in that State and owned by that company or that other legal person, the income derived by the owner from the direct use, letting or any other use of the said right, shall be taxable in that State.

Article 7

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. Where an enterprise of a State carries on business in the other State through a permanent establishment situated therein, there shall in each 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.

In the determination of the profits of a permanent establishment there shall be allowed as deductions expenses which are incurred in pursuit of the goals of that permanent establishment. A portion of the executive and general administrative expenses of the enterprise's head office shall be charged against the profits of the various permanent establishments proportionally to the turnover of each one.

3. In so far as it has been customary in a 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 among its various parts, nothing in paragraph 2 shall preclude that State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment shall, however, be such that the result shall be in accordance with the principles contained in this article.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase of goods or merchandise for the parent enterprise.

5. For the purposes of the preceding paragraphs, 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 not to do so.

6. 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.

Article 8

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.

Such profits shall also include extra income derived by the enterprise from the use of containers for the international transport of goods and merchandise.

2. 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.

3. The provisions of paragraph 1 shall also apply 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 State participates directly or indirectly in the management, control or capital of an enterprise of the other State, or

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

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

Article 10

DIVIDENDS

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

2. However, such dividends may also be taxed in the State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

(a) Fifteen per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends;

(b) Twenty per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

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, as well as income subjected to the same distribution treatment by the tax laws 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 beneficial owner of the dividends, being a resident of a State, carries on business in the other State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of article 7 or article 14, as the case may be, shall apply.

5. A resident of the Congo who receives dividends paid by a company which is a resident of France may obtain a refund of the prepayment relating to such dividends, in the event it has been paid by such company.

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

6. Where a company which is a resident of a State derives profits or income from the other State, that other State may not impose any tax on the dividends paid by the company, except in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company’s undistributed profits to a tax on the company’s undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

7. Notwithstanding the provisions of paragraph 6, where a company which is a resident of a State carries on business in the other State through a permanent establishment situated therein, the profits of that permanent establishment may, after deduction of corporation tax, be subject, under the legislation of that other State, to a tax not exceeding 15 per cent.

Article 11

INTEREST

1. Interest arising in a State and paid to a resident of the other State, who is the beneficial owner thereof, may be taxed only 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, and in particular, income from government securities and income from bonds and debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purposes of this article.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a State, carries on business in the other State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt claim in respect of which interest is paid is effectively connected therewith. In such cases the provisions of article 7 or article 14, as the case may be, shall apply.

4. Interest shall be deemed to arise in a State when the payer is that State itself, a territorial authority, a statutory body or a resident of that State. Where, however, the person paying the interest, whether he is a resident of the State or not, has in a State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

5. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, 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 beneficial owner in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In such case, the excess part of the payment shall remain taxable according to the laws of each State, due regard being had to the other provisions of this Convention.

Article 12

ROYALTIES

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

2. However, such royalties may also be taxed in the State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 15 per cent.

3. The term “royalties” as used in this article means payment 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 any other

sound or image recording, any patent, trade mark, design or model, plan, secret formula or process.

4. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a State, carries on business in the other State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected therewith. In such cases the provisions of article 7 or article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a State when the payer is that State itself, a territorial authority, a statutory body or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a State or not, has in a State a permanent establishment or a fixed base with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

6. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, 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 beneficial owner in the absence of such relationship, the provisions of this article shall apply only to the last-mentioned amount. In such case, the excess part of the payment shall remain taxable according to the laws of each State, due regard being had to the other provisions of this Convention.

Article 13

CAPITAL GAINS

1. Gains derived by a resident of a State from the alienation of immovable property referred to in article 6, paragraph 2, may be taxed in the State where such immovable property is situated.

Gains from the alienation of shares or other rights in a company or other legal person owning immovable property situated in a State may be taxed in that State when, under its legislation, they are subject to the same tax treatment as gains from the alienation of immovable property. Buildings used by that company or other legal person for its own industrial, commercial or agricultural operation or for the exercise of a non-commercial occupation shall not be taken into consideration in the application of this provision.

2. Gains from the alienation of shares that are part of a substantial equity holding in a company that is a resident of a State may be taxed in that State. An equity holding shall be considered substantial when the alienator, alone or with associates, owns, directly or indirectly, at least 25 per cent of the capital stock in the company.

3. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a State has in the other State or of movable property pertaining to a fixed base available to a resident

of a State in the other State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

4. Gains from the alienation of ships or aircraft operated in international traffic, or of movable property pertaining to the operation of such ships or aircraft, may be taxed only in the State in which the place of effective management of the enterprise is situated.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 may be taxed only in the State of which the alienator is a resident.

Article 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a State in respect of professional services or other activities of an independent character may be taxed 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, 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 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a State in respect of an employment may be taxed 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 may be taxed only in the first-mentioned State if:

(a) The recipient is present in the other State for a period or periods, including any normal days off, 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 by a resident of a State in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed only in that State.

Article 16

DIRECTORS' FEES

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

Article 17

ENTERTAINERS AND ATHLETES

1. Notwithstanding the provisions of articles 14 and 15, income derived by a resident of a State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of articles 7, 14 and 15, be taxed in the State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraph 1, remuneration or profits and wages, salaries and other similar income derived by an entertainer or athlete who is a resident of a State from his personal activities as such exercised in the other State may be taxed only in the first-mentioned State if these activities in the other State are supported by public funds of the first-mentioned State itself, a local authority or a statutory body of that State.

4. Notwithstanding the provisions of paragraph 2, where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such in a State accrues not to the entertainer or athlete himself but to another person, that income, notwithstanding the provisions of articles 7, 14 and 15, may be taxed only in the other State if that other person is supported by public funds of that other State itself or one of its local authorities or statutory bodies or is a non-profit organization of that other State.

Article 18

PENSIONS

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

2. Notwithstanding the provisions of paragraph 1, pensions and other payments made under the social security legislation of a State may be taxed in that State.

Article 19

GOVERNMENT SERVICE

1. Remuneration, other than a pension, paid by a State or a local authority thereof, or by a statutory body thereof, to an individual in respect of services rendered to that State or authority or statutory body, shall be taxable only in that State.
2. Any pension paid by, or out of funds created by, a State or a local authority thereof, or by a statutory body thereof, to an individual in respect of services rendered to that State or authority or to a statutory body, shall be taxable only in that State.
3. The provisions of articles 15, 16 and 18 shall apply to remuneration and pensions paid in respect of services rendered in connection with a business carried on by a State or local authority thereof or by a statutory body thereof.

Article 20

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. Notwithstanding the provisions of articles 14 and 15, 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 receives in respect of services rendered in the first-mentioned State shall not be taxed in the first-mentioned State, provided that such services are in connection with his education or training or that the remuneration for such services is necessary to supplement the resources available to him for the purpose of his maintenance.

Article 21

OTHER INCOME

1. Items of income of a resident of a 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 to income other than income from immovable property as defined in article 6, paragraph 2, if the recipient of such income, being a resident of a State, carries on business in the other State through a permanent establishment situated therein, or performs in the other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of article 7 or article 14, as the case may be, shall apply.

Article 22

INHERITANCE TAX: TAXATION RULES

1. Immovable property as defined in article 6, paragraph 2, forming part of the estate of a resident of a State and situated in the other State, may be taxed in that other State.

For the purposes of the application of the preceding paragraph, the term “immovable property” shall also include, as regards France, shares and other equity rights in a company or legal person owning immovable property situated in France which, for the purposes of French tax law, are subject to the same treatment as immovable property because the company or legal person is deemed not to have a legal personality distinct from its members’.

2. Tangible or intangible movable property belonging to a commercial, industrial or craft undertaking, forming part of the estate of a resident of a State and dependent on a permanent establishment of the said undertaking situated in the other State, may be taxed in that other State.

The provisions of this paragraph shall not apply to any equity held by the deceased in any commercial company in which capital is a significant consideration (corporation, stock partnership, limited liability company, cooperative company, civil company which for tax purposes is treated like a commercial company with capital) or to equity which the deceased held as a partner in a company with limited partnership.

3. Tangible or intangible movable property used in the exercise of independent personal services or other activities of an independent character and belonging to the estate of a resident of a State and dependent on a fixed base situated in the other State may be taxed in that other State.

4. Tangible movable property other than that referred to in paragraphs 2 and 3, including furniture, linen and household goods as well as cash, art objects and collections, may be taxed in the State where it is situated at the time of death.

However, boats and aircraft may be taxed in the State in which they are registered at the time of death.

5. Property of a deceased person’s estate to which articles 1 to 4 above do not apply may be taxed only in the State in which the deceased was domiciled at the time of his death.

Article 23

SUCCESSION DUTY: ESTATE LIABILITIES

1. Debts pertaining to the enterprises or activities referred to in article 22, paragraphs 2 and 3, shall be charged against the property belonging to such enterprises or used for such activities. If the enterprise has a permanent establishment or fixed base in a State, these debts shall be charged against the property used by such permanent establishment or fixed base.

2. Debts secured either on immovable property or on rights in immovable property, or on ships or aircraft as referred to in article 22, paragraph 4, or on property used in the exercise of a profession as provided for in article 22, para-

graph 3, or on the property of an enterprise of the kind referred to in article 22, paragraph 2, shall be charged against such property. If a debt is secured at the same time on property situated in both States, it shall be charged against the property situated in each of them in proportion to the taxable value thereof.

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

3. Debts not provided for in paragraphs 1 and 2 shall be charged against the value of property covered by the provisions of article 22, paragraph 5.

4. If after the procedure provided for in the three preceding paragraphs there remains an outstanding balance in one of the States, such balance shall be deducted from the value of any other property liable to inheritance tax in that State. If there is no other property subject to tax in that State, or if following such deduction a balance still remains, such balance shall be charged against the property subject to tax in the other State.

Article 24

REGISTRATION DUTIES: STAMP DUTIES

1. Subject to the provisions of paragraphs 2 and 3 below, when an instrument drawn up or a judgement rendered in either State is submitted for registration in the other State, the applicable fees in the latter State shall be assessed in accordance with the provisions of its domestic legislation, except that any registration duties already collected in the first-mentioned State shall be deducted from the fees due in the other State.

2. Instruments or judgements transferring, for a consideration, ownership or usufruct of immovable property or a business or use of immovable property, and instruments or judgements registering the assignment of a lease or of an option to lease all or part of an immovable property, may be subject to transfer tax only in the State in whose territory the immovable property or business in question is situated.

3. Company articles of association or amendments thereto shall be liable to the *ad valorem* capital contribution tax only in the State in which the company has its registered office. In cases of mergers or similar operations, the tax shall be levied in the State in which the new or surviving company has its office.

4. Any instrument, judgement or bill used in a State shall be stamped at the rate prevailing in that State except that any stamp duties collected in the other State shall be deducted.

Article 25

PROVISIONS FOR THE AVOIDANCE OF DOUBLE TAXATION

1. In the case of France:

(a) Income derived from the Congo and taxable there under the provisions of this Convention may also be taxed in France when paid to a resident of France. Congolese tax shall not be deducted for purposes of calculating taxable income in France; however, the recipient shall be entitled to a tax credit against French income tax on the tax base including such income. The tax credit shall be equal to:

- In respect of income referred to in articles 10 and 12, the amount of tax paid in the Congo under the provisions of the said articles. However, it may not be greater than the amount of French tax corresponding to such income;
- In respect of all other income, the amount of the corresponding French tax. This provision shall also apply to remuneration under article 19 when the recipient is a resident of France.

(b) Property referred to in article 22, paragraphs 1 to 4, that forms part of the estate of a person residing in France and that, under this Convention, is taxable in the Congo may also be taxed in France. Congolese tax levied on such property may be charged against the French tax referred to under article 2, paragraph 3 (a), up to the amount of the latter tax on the same property.

2. In the case of the Congo:

(a) Income derived from France and taxable there under the provisions of this Convention may also be taxed in the Congo when paid to a resident of the Congo. French tax shall not be deducted for purposes of calculating taxable income in the Congo; however, the recipient shall be entitled to a tax credit against Congolese income tax on the tax base including such income. The tax credit shall be equal to:

- In respect of income referred to in articles 10 and 12, the amount of the tax paid in France under the provisions of the said articles. However, it may not be greater than the amount of Congolese tax corresponding to such income;
- In respect of all other income, the amount of the corresponding Congolese tax. This provision shall also apply to remuneration under article 19 when the recipient is a resident of the Congo.

(b) Property referred to in article 22, paragraphs 1 to 4, that forms part of the estate of a person residing in the Congo and that, under this Convention, is taxable in France, may also be taxed in the Congo. French tax levied on such property may be charged against the Congolese tax referred to under article 2, paragraph 3 (b), up to the amount of the latter tax on the same property.

Article 26

NON-DISCRIMINATION

1. Nationals of a State shall not be subjected in the other 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. This provision shall, notwithstanding the provisions of article 1, also apply to persons who are not residents of one or both of the States.

2. The term “nationals” means:

- (a) All individuals possessing the nationality of a State;
- (b) All legal persons, partnerships and associations deriving their status as such from the laws in force in a State.

3. Stateless persons who are residents of a State shall not be subjected in the other 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 State in the same circumstances are or may be subjected.

4. The taxation on a permanent establishment which an enterprise of a State has in the other 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 State to grant to residents of the other 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.

5. Except where the provisions of article 9, of article 11, paragraph 5, or of article 12, paragraph 6, apply, interest, royalties and other disbursements paid by an enterprise of a State to a resident of the other State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

6. Enterprises of a State the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other State shall not be subjected in the first-mentioned State to any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

7. The provisions of this article shall, notwithstanding the provisions of article 2, apply to taxes of every kind and description.

8. Nationals of a State shall not be required, when leaving the territory of the other State temporarily or permanently, to comply with the formality of a tax clearance.

Article 27

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 or, if his case comes under article 26, paragraph 1, to that of the State of which he is a national. The case must be presented within three 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 not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the States.

3. The competent authorities of the States shall endeavour to resolve by mutual agreement any difficulties arising as to the application of the Convention.

The competent authorities of the States may consult together to endeavour to agree:

(a) To the same attribution in both States of the profits attributable to a permanent establishment situated in a State of an enterprise situated in the other State;

(b) To the same allocation of income between a resident of a State and an associated person referred to in article 9 who is a resident of the other State.

They may also consult together on 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 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 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 28

EXCHANGE OF INFORMATION

1. The competent authorities of the States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the States concerning taxes covered by the Convention, in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by article 1. Any information received by a State shall be treated as secret in the same manner as information received under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection or enforcement of, prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

(a) To carry out administrative measures at variance with the laws and administrative practice of that or of the other State;

(b) To supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other 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 29

ASSISTANCE IN COLLECTION

1. The two States agree to lend each other assistance and support with a view to the collection, in accordance with their respective laws or regulations, of the taxes

to which this Convention relates and of any tax increases, surcharges, late charges, interest and costs pertaining to the said taxes.

2. At the request of the requesting State, the requested State shall proceed to the recovery of the tax debts of the said State in accordance with the laws and administrative practice applicable to the recovery of its own tax debts, unless this Convention provides otherwise.

3. The provisions of the preceding paragraph shall apply only to tax debts which are not contested and for which an instrument has been drawn up permitting recovery in the requesting State.

4. Assistance granted with a view to the recovery of tax debts of a deceased person or his estate shall be limited to the value of the estate or of the share in such estate received by each of the legatees, depending on whether the debt is to be recovered from the estate or from the said legatees.

5. The requested State shall not be obliged to comply with the request:

(a) If the requesting State has not exhausted in its own territory all means of recovery of its tax debt, unless such recovery would entail considerable difficulty;

(b) If and to the extent that it considers the tax debt incompatible with the provisions of this or any other Convention to which both States are parties.

6. A request for administrative assistance with a view to recovery of a tax debt shall be accompanied:

(a) By a statement specifying that the tax debt concerns a tax to which the Convention relates and is not being contested;

(b) By an official copy of the instrument permitting execution in the requested State;

(c) By any other document required for recovery; and

(d) Where appropriate by a certified true copy of any decision relating to the matter issued by an administrative organ or a court.

7. At the request of the requesting State, the requested State shall take measures of protection to ensure the recovery of the tax debt if the latter is contested or if the enforceable instrument has not yet been issued.

8. The instrument permitting execution in the requesting State shall, where appropriate, and in accordance with the provisions in force in the requested State, be examined, approved and ratified, supplemented or replaced as soon as possible, following receipt of the request for assistance, by an instrument permitting execution in the requested State.

9. Questions concerning the limitation applicable to tax debts shall be governed exclusively by the laws of the requesting State. Requests for assistance with recovery shall specify the limitation applicable to tax debts.

10. Acts of recovery performed by the requested State in response to a request for assistance which, under the laws of that State, result in the suspension or interruption of the limitation, shall have the same effect with respect to the laws of the requesting State. The requested State shall inform the requesting State of the measures taken to that end.

11. Tax debts for the recovery of which assistance is granted shall not enjoy in the requested State any of the privileges applicable to such debts in that State.

12. The requested State may agree to a deadline for payment or to spread the payment over time if its legislation or administrative practice permits this under similar circumstances; it shall so inform the requesting State.

13. The assistance measures outlined above shall also apply to the recovery of any taxes other than those to which this Convention applies, as well as generally to any debt whatsoever owed either State.

Article 30

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 31

TERRITORIAL SCOPE

1. This Convention shall apply:

(a) In the case of France, to the European and overseas departments of the French Republic, including the territorial sea, and beyond to any area over which, in accordance with international law, the French Republic has sovereign rights for the purposes of the exploration and exploitation of the natural resources of the seabed, its subsoil and the superjacent waters;

(b) In the case of the Congo, to the territory of the People's Republic of the Congo, including the territorial sea and beyond any area over which, in accordance with international law, the People's Republic of the Congo has sovereign rights for the purposes of the exploration and exploitation of the natural resources of the seabed, its subsoil and the superjacent waters.

2. This Convention may be extended, either in its entirety or with any necessary modifications, to the overseas territories and other local authorities of the French Republic, which levy taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date as may be specified and agreed between the States, in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures. Such agreement shall also provide for any necessary modifications to the Convention and specify how it shall apply to the overseas territories to which it is extended.

3. Unless otherwise agreed by both States, the termination of the Convention by one of them under article 33 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 32

ENTRY INTO FORCE

1. Each State shall notify the other of the completion of the procedures required by its laws for the entry into force of this Convention. It shall enter into force on the first day of the second month following the receipt of the later of these notifications.

2. Its provisions shall apply for the first time:

(a) In respect of taxes withheld at source, to amounts payable on or after the date of entry into force of this Convention;

(b) In respect of other taxes on income, to income derived during the calendar year in which the Convention entered into force or relating to the accounting period ending during this year;

(c) In respect of taxes on inheritance, to the estates of persons deceased on or after the day the Convention enters into force;

(d) In respect of registration and stamp duties, to instruments and judgements dated after the entry into force of the Convention.

Article 33

TERMINATION

1. This Convention shall remain in force indefinitely. However, as of 1 January of the fifth year following the year in which this Convention enters into force, each State may, by giving at least six months' notice, through the diplomatic channel, of its intention, denounce the Convention with effect from the end of the calendar year.

2. In such an event, its provisions shall apply for the last time:

(a) In respect of taxes withheld at source, to amounts payable on or before 31 December of the calendar year at the end of which the termination is to take effect;

(b) In respect of other taxes on income, to income derived during the calendar year at the end of which the termination is to take effect or relating to the accounting period ending during this year;

(c) In respect of taxes on inheritance, to the estates of persons deceased on or before 31 December of the calendar year at the end of which the termination is to take effect;

(d) In respect of other registration and stamp duties, to instruments and judgements dated on or before 31 December of the calendar year at the end of which the termination is to take effect.

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

DONE at Brazzaville, on 27 November 1987, in duplicate in the French language, both texts being equally authentic.

For the Government
of the French Republic:

[Signed]

ROBERT DELOS SANTOS
Ambassador of France

For the Government
of the People's Republic
of the Congo:

[Signed]

PIERRE N'GAKA
Ambassador
Secretary-General
for Foreign Affairs and Cooperation

PROTOCOL

At the time of the signature of the Convention between the Government of the French Republic and the Government of the People's Republic of the Congo for the avoidance of double taxation with respect to taxes on income, taxes on inheritance and registration and stamp duties, the undersigned have agreed to the following provisions, which shall be an integral part of the Convention:

1. With respect to article 5:

The criterion of continuity mentioned in article 5, paragraph 3, shall not apply to companies that provide services and that are residents of a State, when they work for an oil company that is a resident of the other State.

2. With respect to article 7:

(a) Where an enterprise of a State sells goods or carries on business in the other State through a permanent establishment situated therein, the profits of this permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of the payments that are attributable to the actual activity of the permanent establishment for such sales or business.

In the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of such permanent establishment are not determined on the basis of the total amount of the contract, but are determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the State where the permanent establishment is situated. The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the State of which the enterprise is a resident.

(b) Payments of any kind received as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment shall be deemed to be profits of an enterprise to which the provisions of article 7 apply.

3. With respect to article 26:

(a) Nothing in paragraph 1 shall be construed as preventing France from granting only to persons possessing French nationality the benefit of exemption of the capital gains derived from the alienation of immovable property or part of immovable property constituting a residence in France of French persons who are not domiciled in France, according to the provisions of article 150 C of the *Code général des impôts*; and

(b) Nothing in paragraph 5 shall be construed as preventing France from applying the provisions of article 212 of the *Code général des impôts* as regards interest paid by a French company to a foreign parent company.

4. With respect to article 33, it is understood and agreed that the provisions of the Convention relating to the avoidance of double taxation, the mutual agreement procedure and administrative assistance shall continue to apply, after 31 December of the calendar year at the end of which the termination is to take effect as regards the assessment of the taxes on income, taxes on inheritance, registration and stamp duties covered by this Convention under article 33, paragraph 2.

DONE at Brazzaville, on 27 November 1987, in duplicate in the French language, both texts being equally authentic.

For the Government
of the French Republic:

[Signed]

ROBERT DELOS SANTOS
Ambassador of France

For the Government
of the People's Republic
of the Congo:

[Signed]

PIERRE N'GAKA
Ambassador
Secretary-General
for Foreign Affairs and Cooperation
